

Filed 1/14/20 In re Phoenix G. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re PHOENIX G., a Person Coming  
Under the Juvenile Court Law.

B296431  
(Los Angeles County  
Super. Ct. No. 19CCJP00286A)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

TAMAR C.,

Defendant and Appellant.

APPEAL from a finding and order of the Superior Court of  
Los Angeles County. Emma Castro, Juvenile Court Referee.  
Affirmed.

Christine E. Johnson, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, and Stephanie Jo Reagan, Principal  
Deputy County Counsel, for Plaintiff and Respondent.

Patricia G. Bell, under appointment by the Court of Appeal,  
for Minor.

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Tamar C. (mother) and her son Phoenix G. (Phoenix, born Jan. 2010) challenge the juvenile court's jurisdictional finding that Phoenix was a person described by Welfare and Institutions Code section 300,<sup>1</sup> claiming that no substantial evidence supports the juvenile court's finding that mother's history of mental and emotional problems placed Phoenix at substantial risk of physical harm. Mother also objects to the juvenile court's dispositional order.

We affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

*Detention report (Jan. 16, 2019)*

November Referral

On November 23, 2018, the Department of Children and Family Services (DCFS) received a child welfare report

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

concerning eight-year-old Phoenix.<sup>2</sup> Reportedly, mother was observed striking Phoenix at a restaurant numerous times on his shoulders and buttocks with both an open hand and a closed fist, while using full force. She also reportedly screamed and cursed at him, as he cried and screamed for her to stop. The reporting party stated that this was not an isolated incident and mother had frequently been seen hitting Phoenix and screaming at him. She was also reported to consume alcohol to excess and to have untreated bipolar disorder.

A social worker spoke with law enforcement. They indicated that they had been called to the restaurant, but were unable to make contact with mother or Phoenix.

A social worker went to mother's address and interviewed her. She and Phoenix were living in a room that mother had found on Airbnb; the social worker noted that there was food and that the room had working utilities, was clean, and was free of hazards. Mother denied that she had hit Phoenix or called him any names; she suggested that Phoenix's father had made the referral. She also said that the restaurant manager was present while she was at the restaurant, and she provided the social worker with his name and telephone number.

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<sup>2</sup> This was not the first referral that DCFS had received concerning Phoenix. There were at least four prior referrals, alleging domestic violence between mother and Phoenix's father. There also was a prior dependency petition filed on behalf of Phoenix; Phoenix had been declared a dependent child in 2013, and, because mother was in compliance with the case plan, the juvenile court terminated dependency jurisdiction in 2014.

During the interview, mother disclosed that she suffered from anxiety and had been diagnosed with post-traumatic stress disorder (PTSD). She used marijuana for her anxiety and told Phoenix that it was “mommy[’s] medication.” She said that it had been almost two years since Phoenix had attended school. She asserted that he was being home-schooled, but acknowledged that it was not a “set program” and that they just did activities together. Mother explained that because of their unstable living situation, it was difficult to follow a set, accredited program, and Phoenix learned through the Internet and through interactive programs on his laptop. She also said that she had had difficulty finding a school for Phoenix to attend because he lacked immunizations. She disclosed that it had been a while since Phoenix had been to the doctor, and she said that she needed to follow up with an annual medical examination for him.

The social worker noted that Phoenix was wearing clean clothing and appeared well groomed, with no marks or bruises. He spoke very well and answered questions without hesitation. He denied not having food or being hungry. He also expressed disbelief at the referral’s allegations, noted only a few people had been at the restaurant at the time, denied mother used physical discipline, and said, “I feel 100% safe with my mom.” He admitted that he had not been in school for over a year, and said that he read on the computer and used a program to teach himself different aspects of history, science, and other subjects. He showed the social worker that he could read and knew his multiplication tables. He said that he did not have a set time for learning, but that he “review[ed] things” throughout the day. Regarding his father, Phoenix said that he rarely saw him but had seen him for a few hours for Thanksgiving.

### December Referral

On December 12, 2018, DCFS received a second referral, after it was reported that law enforcement responded to the home on December 10, 2018, following reports that mother was beating Phoenix repeatedly in the hallway of their Airbnb and then took him into their room, where she continued to hit and scream at him. Law enforcement left after calming mother down. It was reported that the next day, law enforcement again responded to the address after reports that mother was again beating and screaming at Phoenix and shattered glass and holes were observed in mother's room. Police again calmed mother down and left the location without speaking to Phoenix.

Social workers responded on December 12, 2018, and spoke with Phoenix. He was well-dressed and appropriately groomed with no marks or bruises. He denied any physical abuse or physical discipline by mother; this time, he whispered his answers and, on several occasions, had to be asked to repeat his statements. He denied that mother had yelled, screamed, hit him, or thrown any objects. He said that mother was not home and that his maternal grandmother had been caring for him when police arrived. He said that he and his grandmother had gotten into an argument and she yelled loudly.

Phoenix was not sure who called in the referral, but he assumed it was his father. He said that he had seen his father a month prior when they were staying at an Airbnb in Hollywood. He said that his father had slept over with him and mother, but he denied being left alone with him.

Phoenix said that mother smoked marijuana about one to two times a day. He denied seeing changes when she smoked and said that she was calm. He also said that she drank, but not

enough to get drunk. He said that mother acted happier and more relaxed after she smoked or drank. While mother sometimes raised her voice, he did not consider it to be yelling or screaming. He admitted that mother had raised her voice the night before because she and the maternal grandmother had gotten into an argument. He reiterated that he felt safe with mother and said that he loved his family. He wished that they would not argue with each other and that they could all be together in peace.

When mother was interviewed, she appeared alert and coherent. She thought Phoenix's father was responsible for both investigations and had falsified reports to cause more problems for her. She also blamed the maternal grandmother for police having been called, stating that the maternal grandmother had been screaming at her and that Phoenix had yelled at the maternal grandmother to stop. Mother denied the allegations in the referral, including the allegation that she spoke with police and that they had to calm her down.

Regarding the police's visit the following day, mother said that she had left Phoenix with the maternal grandmother and learned when she returned that noise complaints had been made and that Phoenix had had a temper tantrum and that the maternal grandmother had yelled at him. Again mother denied the allegations that she spoke with police and that they came to the home.

Mother reported that she had been formally diagnosed with complex PTSD with dissociative features. She also self-reported having periods of depression and anxiety. She attributed these conditions to childhood abuse and domestic violence with Phoenix's father. She also said that due to prior trauma, she was

very jumpy and easily startled. She identified deep breathing, meditation, chanting, and taking walks as means of coping. She said that when she felt depressed, she would disassociate and feel glum. She said, “I don’t feel like getting out of bed but I know I can’t be like that because I have Phoenix.” She denied experiencing such depression in the last two years and said that she was not currently receiving any counseling or therapy. She was in the process of obtaining housing through the GAIN program; she felt that “things” were continuing to pile on and she just wanted to make sure that she and Phoenix survived.

The maternal grandmother was also interviewed. She said that on December 10, 2018, she and mother had gotten into a fight. She said that they always fought and that mother sometimes had no cause or trigger. The maternal grandmother indicated that Phoenix was present at the time, and he was crying and screaming “stop mom.” The maternal grandmother said that police showed up and mother answered the door. She said that police came the following day as well due to an argument between her and Phoenix. The maternal grandmother said that Phoenix had had a temper tantrum and threw her phone, and she did not know how to deescalate his behavior. Mother was not present and the maternal grandmother had locked herself in the bathroom and yelled for Phoenix to stop. She said that officers arrived and saw no abuse.

The maternal grandmother said that mother had struggled with mental health challenges and had been diagnosed with bipolar disorder. She further disclosed that mother had been hospitalized four times in a two- or three-month period in 2008 because she was a danger to herself.

### Mother Sends Phoenix to Live with a Friend

On December 14, 2018, mother told the social worker that she had decided to send Phoenix to live a friend, Jennifer W. (J.W.), who lived in Folsom, California. J.W. told the social worker that she was mother's childhood friend and that she was aware of mother's current living situation and struggles with providing Phoenix with stability; J.W. was willing to care for Phoenix.

On December 19, 2018, mother and J.W. showed the social worker a notarized document allowing J.W. to care for Phoenix for six months. J.W. said that she and Phoenix were scheduled to fly out on December 19 and she planned to enroll him in school and ensure that he received medical care and appropriate immunizations. Mother indicated that she planned to complete the requirements for housing assistance, get a job, and obtain mental health services while Phoenix was away. Phoenix was nervous and excited about his upcoming trip, and said that he would miss mother.

On December 28, 2018, J.W. informed the social worker that Phoenix would be returning to mother's care. She indicated that it had been very difficult for Phoenix to adjust and integrate into the home with her husband and children. She said that Phoenix lacked structure, and she expressed concern that he needed to be around other children. She also reported that he had a big issue with his computer use and would become angry, throw fits, and say bad words. J.W. had informed mother that she needed to reintegrate him into school and focus on teaching him age-appropriate tasks, such as how to tie his shoes and how to bathe himself properly.



When the social worker spoke with Phoenix, he said that he was “doing great,” he had been sleeping in his own room, and everyone had been nice to him. He also said that he was looking forward to seeing mother upon his return.

#### DCFS’s Further Investigation

Meanwhile, DCFS tried, but was unable, to speak with the restaurant manager or Airbnb host. Los Angeles Police Department logs showed two calls had been made regarding the family. The log from December 11, 2018, indicated that two females were in a bedroom yelling and causing a disturbance. DCFS reported that the logs revealed no evidence of child abuse.

The social worker expressed to mother a number of concerns, including the family’s unstable housing situation, Phoenix not being enrolled in school, Phoenix not having up-to-date medical care, mother’s use of marijuana to self-medicate, and mother’s unaddressed mental health issues. The social worker informed mother that due to these concerns and high risk for future abuse, DCFS was considering opening a dependency case.

Mother acknowledged DCFS’s concerns and said that she was willing to cooperate and accept voluntary services. But she did not want to involve the court, stating that it would be a struggle for her. Mother agreed to have Phoenix seen at a medical hub clinic, and she submitted to a drug and alcohol test on January 2, 2019. The results showed that she tested positive for cannabinoids.

On January 7, 2019, the social worker went to mother’s house to see mother and Phoenix. Mother said that she had a voucher to stay two more nights. There was sufficient food and no safety hazards or drug paraphernalia was observed. Mother

said that she had an intake appointment at a mental health clinic scheduled for January 31, and Phoenix's medical hub appointment was scheduled for January 14.

The social worker then discussed the results of mother's drug test with her. Mother said that the marijuana she had consumed had a high THC content, and she expressed that it helped her with her work as a clairvoyant and to combat her anxiety. The social worker also discussed DCFS's concerns that Phoenix had not been receiving regular medical care, that Phoenix had not been enrolled in school for two years, and that mother was not participating in mental health services and was self-medicating with marijuana to combat her anxiety. Mother responded that Phoenix had a roof over his head and she provided him with food, love, and care.

The social worker then spoke with mother's companion, Bradley W. (B.W.), who was present. He had no concerns about abuse or neglect and reported that mother and Phoenix had a good bond. B.W. was concerned that mother lacked stability and support. He also said that mother would stress out, but he felt that was to be expected given her circumstances. He was aware that mother suffered from PTSD and said that it was difficult for her to plan as she was "constantly thinking about things going wrong." Regarding Phoenix, B.W. said that Phoenix was around a lot of adults and was very smart, but B.W. believed that Phoenix needed to be in school and to interact with children his own age.

DCFS assessed the family and determined that there was a high risk for future abuse as a result of mother's untreated mental health problems and her abuse of marijuana. DCFS noted that mother had been diagnosed in 2007 with complex

PTSD with disassociated features. She self-reported episodes of depression and anxiety; she reported periods of not wanting to get out of bed and feeling overwhelmed. And, although she acknowledged the need for mental health treatment and had an appointment scheduled, she was not currently participating in any mental health treatment. DCFS was also concerned that mother was abusing marijuana to cope with her stress and anxiety. In fact, mother had tested positive with high potency marijuana while caring for Phoenix.

DCFS also saw that Phoenix had an active Medi-Cal case, but had not seen a doctor in over two years and was not up-to-date on his immunizations. And, he had not been enrolled in school for two years. DCFS noted that this isolation had impacted his socialization and ability to perform age-appropriate tasks, including hygiene tasks. Further, mother was unable to set boundaries, impacting Phoenix's emotional state, as evidenced by his tantrums and use of profanity.

Based upon the foregoing, DCFS determined that the family needed court-supervised family maintenance services.

*Section 300 petition and initial hearing*

On January 15, 2019, DCFS filed a petition on behalf of Phoenix, pursuant to section 300, subdivision (b)(1), based upon mother's abuse of marijuana.

At the hearing, mother informed the juvenile court that Phoenix was not affiliated with a formal in-home school program, claiming that she was using a method called "unschooling," meaning that the child led the studies; they studied based upon what Phoenix was interested in. She said that she made the decision to home-school Phoenix because she objected to vaccinations on religious grounds. She then advised the juvenile

court that she intended to reenroll him in school by February; she claimed that she had started getting him vaccinations so that he could return to school.

Mother stated that she was not on any psychiatric medication.

Based upon mother's behavior at the hearing, the juvenile court indicated that it believed that mother had impulse control issues.

The juvenile court ordered Phoenix to remain released to mother on the condition that she obtain a psychiatric evaluation. It directed mother to continue Phoenix's school enrollment process. And, it ordered mother to participate in random and on-demand drug tests.

*Jurisdiction/disposition report* (Mar. 6, 2019)

By February 2019, mother had enrolled Phoenix in school. Mother submitted to a drug test on February 4, 2019, and it was positive for cannabinoids; but, DCFS was no longer concerned that mother had high levels of marijuana in her system.

On February 5, 2019, DCFS interviewed Phoenix. He said that mother drank wine, but denied seeing her intoxicated. He stated that mother smoked marijuana two to three times per week. He denied feeling unsafe or uncomfortable with her. He denied worrying about mother, except for one time when he said that she acted like a "zombie." When asked to elaborate, Phoenix said that it had happened less than a year ago. According to Phoenix, mother was asleep on the floor and then woke up "like a zombie." He did not add any other details; he just said that mother "woke up strange." He could not recall whether mother had smoked marijuana or drank wine when it

happened. He said that he and mother laughed about it afterwards.

Regarding the incidents reported in the detention report, Phoenix said that there was an incident where he and his maternal grandmother were arguing and the police were called. When asked if he argued with mother, he indicated that he felt that everyone argued with mother; he could not recall anything specific that they had argued about. When they argued, they raised their voices, but they did not throw anything or become physical. Phoenix said that he had recently seen his father and wanted to spend more time with him. He added that father used to hit mother. When asked what would make his situation better, he said that mother needed a better lifestyle—a better home, a car, and some money.

Mother was interviewed by telephone on February 11, 2019. She denied a history of substance abuse. Switching subjects, she denied that she had engaged in domestic assaults with father (as the prior sustained petition alleged). Switching subjects again, she discussed her use of medical marijuana, stating that she had been upfront about it. She said that she used marijuana for her PTSD. Although the social worker tried to keep mother on topic, she constantly switched subjects.

According to mother, she was diagnosed with PTSD in 2006, after voluntarily going to a clinic and learning that she had been misdiagnosed as having bipolar disorder.

She stated that in 2005 to 2006, the maternal grandmother had lied about mother having suicidal ideation and had mother put in a psychiatric ward. Mother said that the maternal grandmother was invested in mother being bipolar, claiming that

the maternal grandmother was the one with mental health issues.

Regarding the incident in the restaurant, mother denied striking Phoenix or calling him names. She admitted that Phoenix had become upset and had begun to act out in the restaurant, and she said that she took him to the bathroom to speak to him privately; she denied hitting him or yelling at him.

She reported that she had Medi-Cal and she denied that she had not obtained treatment because she could not afford it. She felt that counseling did not work for her, so she was following her own treatment plan of yoga and chanting. While she had been offered an antidepressant, she did not want to take it; she denied being prescribed any antipsychotics. She said that the marijuana she took was not prescribed by the doctor who had diagnosed her PTSD, but that it really helped her.

Later, mother informed the social worker that after their conversation, she began to cry and was unable to focus. She went on to explain the details of her PTSD and that going over traumatic events was a trigger; she felt like she was reliving them. Mother felt that the interview had caused her trauma.

Mother and the social worker's conversation resumed on February 13, 2019. She reported getting into arguments with the maternal grandmother on December 7 and 8, 2018, at the Airbnb. She begged the maternal grandmother to stop arguing as a neighbor had reported that police had been called. Mother denied that the police made contact with her on December 10 or 11, 2018; she stated that the information on the police logs and in the referral was inaccurate.

The social worker assessed that throughout the interview, mother went through a range of emotions rather quickly. At

times, she was cooperative and willing to assist with the investigation. Other times, she was extremely frustrated and complained about how difficult or busy her current situation was. Mother also felt the need to explain how certain conversations “triggered” her, and she seemed to boast of all the situations that she was currently facing.

*First amended section 300 petition (Mar. 5, 2019)*

On March 5, 2019, DCFS filed a first amended section 300 petition, adding the allegation that Phoenix was at substantial risk of physical harm due to mother’s untreated mental and emotional condition.

*Adjudication/disposition hearing (Mar. 13, 2019)*

After receiving various documents into evidence, the matter was argued.

After entertaining oral argument, the juvenile court noted that it had observed the “very, very high” level of marijuana in mother’s system on January 12, 2019, but found that there was no nexus showing that Phoenix would suffer serious physical harm due to mother’s ongoing marijuana use. Thus, it struck count (b)(1) of the first amended petition.

The juvenile court then stated that it did not believe that mother was homeschooling Phoenix. But, it acknowledged that the failure to ensure that a child attends school or participates in a structured school program is not by itself jurisdictional.

That said, the juvenile court stressed that it had to consider the totality of the circumstances and, based on that totality, it intended to amend the allegations of the first amended section 300 petition to aver that mother’s history of mental and emotional problems, including her chronic depression, interfered with her ability to provide Phoenix with regular care. The

juvenile court explained that for it to sustain the (b)(2) count, it was not necessary to have an expert testify regarding mother's mental health conditions. After all, mother did not deny her mental health issues, admitted that she had a mental health diagnosis, and admitted that she suffered from depression. Regarding her depression, the juvenile court observed that it appeared to be chronic as opposed to isolated. Moreover, the juvenile court noted that mother had admitted that she had been given a diagnosis of bipolar disorder; even though mother is not a medical professional, she asserted that she was misdiagnosed. Mother also had four psychiatric hospitalizations. Although they occurred before Phoenix was born, they represented a significant number of psychiatric hospitalizations for a parent with a current mental health diagnosis and who was in denial, all of which impacted her ability to care for Phoenix.

Moreover, mother failed to participate in any kind of traditional mental health treatment; the juvenile court did not believe that mother's yoga, deep breathing, and other nontraditional treatments were sufficient to address what appeared to be a serious mental health disorder.

The juvenile court further noted mother's constant moving and uprooting of Phoenix as well as evidence of his chaotic and challenging family home environment. The juvenile court was also concerned about Phoenix's isolation, lack of social contact, and inordinate amount of time spent on the computer. In so noting, the juvenile court commented upon the failed placement with J.W. and J.W.'s belief that court supervision was needed.

And, the juvenile court was troubled by the incident of the physical altercation between mother and Phoenix in the restaurant.



Based upon the totality of the circumstances, the juvenile court sustained count (b)(2) of the first amended petition, as follows: “[Mother] has a history of mental and emotional problems, including a diagnosis of Bi-Polar Disorder and Post Traumatic Stress Disorder, which interferes with mother’s ability to provide regular care for the child. On prior occasions, the mother failed to regularly participate in mental health services for the mother’s psychiatric condition. Mother refused to take the mother’s prescribed psychotropic medication. Such untreated mental and emotional condition on the part of the mother endangers the child’s physical health and safety and places the child at risk of serious physical harm, damage and danger.”

The juvenile court declared Phoenix a dependent of the court. It ordered Phoenix to remain placed with mother on specified conditions, including that mother participate in regular and ongoing therapy, that Phoenix continue to attend traditional school daily, that Phoenix be enrolled in school-based counseling, and that Phoenix complete his immunizations. It authorized DCFS to request an on-demand drug test if it appeared warranted, and directed DCFS to provide services referrals for mother and Phoenix.

#### *Mother’s and Phoenix’s appeals*

Mother’s and Phoenix’s timely appeals ensued.

### **DISCUSSION**

Mother and Phoenix contend that the juvenile court erred when it sustained count (b)(2) of the first amended section 300 petition because there was no evidence that mother’s mental health interfered with her ability to provide regular care to Phoenix or that Phoenix was at substantial risk of abuse or neglect. Mother further asserts that because the juvenile court

did not have grounds to sustain the section 300 petition, the resulting dispositional order must be reversed as well.

I. *Applicable law and standard of review*

“Juvenile dependency proceedings are intended to protect children who are currently being abused or neglected, ‘and to ensure the safety, protection, and physical and emotional well-being of *children who are at risk of that harm.*’ (§ 300.2, italics added.) ‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ [Citations.] The focus of section 300 is on averting harm to the child. [Citation.]” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.)

Section 300, subdivision (b)(1), authorizes dependency jurisdiction where “there is a substantial risk that the child will suffer[] serious physical harm or illness, as a result of . . . the inability of the parent or guardian to provide regular care for the child due to the parent’s . . . mental illness.” (§ 300, subd. (b)(1).) Thus, in this case, DCFS was required to establish one or more of the statutorily-specified omissions in providing care for Phoenix (inability to protect or supervise, failure to provide with adequate food, clothing, shelter, or medical treatment, or inability to provide regular care due to mental illness); causation; and serious physical harm or illness or a substantial risk thereof. (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 561; *In re David M.* (2005) 134 Cal.App.4th 822, 829.) Although the question under section 300 is whether the circumstances at the time of the hearing subject the minor to the defined risk of harm (*In re James R.* (2009) 176 Cal.App.4th 129, 135), the juvenile court may nevertheless consider past events in deciding whether a child currently needs the court’s protection. (*In re T.V., supra*,

217 Cal.App.4th at p. 133.) “A parent’s past conduct is a good predictor of future behavior.” (*Ibid.*)

Furthermore, “[f]acts supporting allegations that a child is one described by section 300 are cumulative.” (*In re T.V., supra*, 217 Cal.App.4th at p. 133.) Thus, “the court ‘must consider all the circumstances affecting the child, wherever they occur.’ [Citation.]” (*Ibid.*)

We review the juvenile court’s findings for substantial evidence. (*In re T.V., supra*, 217 Cal.App.4th at p. 133.) To determine whether substantial evidence supports the juvenile court’s findings, we consider the entire record and draw all reasonable inferences in support of those findings. (*Ibid.*) We do not pass on the credibility of witnesses, resolve conflicts in the evidence, or weigh the evidence. (*Ibid.*) We must affirm the juvenile court’s findings even if other evidence supports a contrary finding. (*Ibid.*)

## II. *The juvenile court did not err*

Applying these legal principles, we conclude that the juvenile court’s findings are supported by substantial evidence. First, there is ample evidence of mother’s mental illness. By her own report, she had been diagnosed with PTSD. She was also diagnosed with bipolar disorder. And she suffered from anxiety and episodes of depression.

In addition to these current mental health concerns, there was uncontroverted evidence that mother had four past psychiatric hospitalizations. Though these occurred prior to Phoenix’s birth, the juvenile court noted that four psychiatric hospitalizations was significant, and supported the juvenile court’s determination that mother’s mental health issues were chronic and long-standing.

Second, there is ample evidence that mother's untreated mental illness rendered her unable to provide Phoenix with regular care. Even though Phoenix had an active Medi-Cal case, he had not been to a doctor in over two years. By mother's own admission, Phoenix needed a medical exam and was not up-to-date on his immunizations.<sup>3</sup>

There was other evidence of mother's inability to provide Phoenix with regular care. He had not been enrolled in school in two years and had not been properly home-schooled in that time. Phoenix also had not learned age-appropriate tasks, such as tying his shoe or bathing himself properly.

Admittedly, at the time of the jurisdictional hearing, Phoenix was enrolled in school, had received one immunization, and had been seen at the medical hub clinic. But the juvenile court could infer that none of this would have occurred had it not intervened on Phoenix's behalf. And, there is no indication that mother will continue to follow through with her care of Phoenix absent court supervision. She was not receiving any counseling or therapy to address her mental health issues.

The cases cited by mother and Phoenix in their appellate briefs are readily distinguishable. For example, in *In re Joaquin C.*, *supra*, 15 Cal.App.5th 537, there was ample evidence of the mother's mental illness, but no evidence that "her condition rendered her unable to adequately supervise, protect, or provide regular care for her son." (*Id.* at p. 564.) In contrast, here, there

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<sup>3</sup> While mother initially claimed that she had not immunized Phoenix based on religious grounds, she later admitted that she planned to give him vaccinations as he got older and she expressed no concerns with allowing J.W. to have him vaccinated.

is evidence that mother's mental illness rendered her unable to provide appropriate care for Phoenix. She did not have stable housing; he had not obtained regular medical care; he was not sufficiently supervised on the computer; he had not been enrolled in school and had not learned age-appropriate tasks. The totality of this evidence distinguishes mother's case from *In re Joaquin C.*

In *In re Matthew S.* (1996) 41 Cal.App.4th 1311, the mother had participated in extensive therapy, had a well-kept home, provided meals to the children, consistently obtained medical treatment for them, and the children were healthy and well-groomed. (*Id.* at p. 1319.) Here, mother was not participating in any sort of treatment and had not consistently ensured that Phoenix obtained medical care. And, as the juvenile court expressly noted, "mother's constant moving and uprooting the child . . . [was] very stressful and very indicative of a chaotic and challenging family home environment for this young boy."

In *In re James R.*, *supra*, 176 Cal.App.4th 129, the child welfare agency did not believe that the mother's mental health problem impaired her ability to care for her children; both parents were meeting the children's medical, educational, and developmental needs; the parents had stable income and housing; the mother's psychotherapist testified that the mother did not pose a risk to the children; and the children were safe with their father, who ensured that their needs were met. (*Id.* at pp. 132–134.) In contrast, here mother was not meeting Phoenix's medical and educational needs; mother did not have stable income or housing; and mother was not under the care of a mental health clinician.

For the same reasons, *In re David M.*, *supra*, 134 Cal.App.4th 822 does not aid mother or Phoenix on appeal. In

that case, there was no evidence that the mother was unable to care for or protect the children; there was no evidence that the parents' mental problems impacted their ability to provide a decent home for their child; and there was evidence that the toddler had received regular and appropriate medical care. (*Id.* at pp. 827, 830.) Again, in contrast, there is evidence here that mother could not provide basic care for Phoenix—he had not seen a doctor in over two years.

Third, there was evidence that Phoenix was at substantial risk of serious physical harm.

“Harm to a child cannot be presumed from the mere fact the parent has a mental illness.’ [Citation.]” (*In re Travis C.* (2017) 13 Cal.App.5th 1219, 1226.) But, DCFS is not required to precisely predict how a parent’s untreated mental health conditions will harm a child. (*Id.* at pp. 1226–1227.) Rather, it is sufficient for jurisdiction that a parent’s mental and emotional problems and choice to forego treatment create a substantial risk of some serious physical harm or illness. (*Id.* at p. 1227.) After all, as set forth above, dependency proceedings were designed “to prevent risk, not ignore it.” (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1004.) And here there were several indicators of risk.<sup>4</sup>

As we have already indicated, mother was unable to provide Phoenix with regular care. She still had not taken steps to address her mental health issues, issues that placed Phoenix at risk. Moreover, although mother and Phoenix denied the

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<sup>4</sup> We agree with mother that the failure to attend school regularly did not, by itself, place Phoenix at substantial risk of serious physical harm. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388–389.)

allegations in the child welfare referral, there is evidence that mother was screaming and hitting Phoenix in a restaurant. Further, there is evidence that there were such heated arguments in the Airbnb, police had to be called. In light of all of this evidence, we conclude that the juvenile court's jurisdictional finding is supported by substantial evidence. It follows that the dispositional order is affirmed as well.

**DISPOSITION**

The juvenile court's jurisdictional finding and dispositional order are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
CHAVEZ