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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ANABEL R., a Person  
Coming Under the Juvenile Court  
Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

SHELLEY W.,

Defendant and Appellant.

B277453  
(Los Angeles County  
Super. Ct. No. CK67248)

APPEAL from orders of the Superior Court of Los Angeles County, Teresa Sullivan, Judge. Affirmed.

Linda J. Vogel, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel and Jeanette Cauble, Deputy  
County Counsel, for Plaintiff and Respondent.

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Appellant Shelley W. (Mother), mother of ten-year old Anabel R., appeals the order of the juvenile court finding jurisdiction appropriate under Welfare and Institutions Code section 300, subdivision (b) based on Mother's mental condition and abuse of marijuana, and the court's dispositional order terminating jurisdiction and granting physical custody of Anabel to her father, Salvador R.<sup>1</sup> Mother contends substantial evidence does not support that Anabel was at risk of serious physical harm, or that she was unable to care for Anabel due to her mental condition or substance abuse. We disagree and affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *A. Prior Proceeding*

Anabel had been the subject of a dependency proceeding in 2007, when she was an infant, due to Mother's mental problems. Among other things, Mother had submerged Anabel in water to "test her reflexes," had shaken her, had practiced CPR on her, and had tossed her into the air when she was only a few days old. Anabel was

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

placed with Father. Mother was provided services, including a psychological evaluation and individual counseling. In 2008, after Mother's condition improved, her visits became unmonitored and jurisdiction was terminated. Father had primary custody and Mother had weekend visitation.

### *B. Underlying Proceeding*

In October 2015, the Department of Children and Family Services (DCFS) learned that Mother had been involuntarily hospitalized, and that she was using marijuana in front of Anabel. The caseworker attempted to contact Mother, but was unable to do so until December. At that time, Mother said she used marijuana for medical reasons and refused to answer any more questions. The caseworker interviewed Mother's husband, Angel J., who confirmed Mother had been hospitalized and diagnosed with possible schizophrenia, and said she was refusing to take prescribed medication.<sup>2</sup> He said Mother had begun smoking marijuana in mid-2015 to treat stomach pain. She had recently begun having delusional thoughts related to religion. He described her as having "good days and bad days." Their neighbors had begun complaining about Mother's yelling and stomping around their apartment at night. Angel had not noticed any problems during Mother's visitations with Anabel. However, due to his work hours, he was not always present. A tenant in the same building said

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<sup>2</sup> In 2011, Mother married Jose J., generally referred to in the record by his middle name, "Angel."

Anabel had been observed visiting other apartments without supervision. A tenant also reported strange noises and a strong odor of marijuana coming from Mother's apartment.

Anabel denied any abuse and said she felt safe with Mother and did not want to stop visiting her. However, Anabel reported that Mother had been smoking marijuana for approximately a year, that Mother smoked marijuana in front of her, and that the fumes hurt her head and stomach.<sup>3</sup> In addition, in December 2015, Anabel called Father at 2:00 a.m. to pick her up from a visit because Mother was smoking marijuana and Anabel felt "scared."

Under the guidance of the caseworker, Father attempted to obtain a family court order limiting Mother's visitation rights. However, the family court denied Father's motion for modification of the custody order because he lacked personal knowledge of Mother's breakdown and hospitalization, and could provide no details as to her condition. The underlying petition was filed January 12, 2016. That same day, DCFS obtained an order authorizing Anabel's "[r]emoval" from Mother.

Prior to the May 2016 jurisdictional/dispositional hearing, Anabel was re-interviewed for the caseworker's report.<sup>4</sup> She said that Mother sometimes cried during her visits, and often talked to herself. Anabel said she got "scared" when Mother "act[ed] crazy," and that she wished

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<sup>3</sup> Anabel later stated that the smoke made her nose burn.

<sup>4</sup> The hearing was originally scheduled for March 2016, which was the date of the report.

Angel was always present during their visits. Anabel also became frightened when Mother talked about religion because Mother suggested God was coming to get Anabel and her friend and take them to heaven. Anabel reported Mother smoked marijuana three times a day. Asked where Mother kept her supply of marijuana, Anabel said she left “everything everywhere.” Anabel described Mother as a “heavy sleeper” who slept until 1:00 p.m. and did not easily awaken when Anabel tried to rouse her. Angel made breakfast for the girl when he was there, but she had nothing to eat if he was not. Anabel said she would be “ok” with having monitored visits because Mother told her “crazy things” and made her afraid.

Father expressed concern that Mother was not properly supervising Anabel. When he called to speak with his daughter on weekends, Mother would frequently say she had gone off with a friend. Once Mother allowed Anabel to go on an outing with a friend and the friend’s father, despite expressing concerns that the father had just been released from prison. Father said when he first learned of Mother’s use of medical marijuana, he asked her to not smoke around Anabel, but she refused.

When interviewed, Mother said she had begun taking the prescribed psychotropic medications, and was also continuing to use marijuana daily for pain and anxiety. She said she usually put the marijuana away in a cabinet, but had left it out “once or twice” and let Anabel hold a piece of

it once. She promised to smoke marijuana outside the girl's presence and to keep it out of the girl's reach in the future.

Angel clarified that Mother had been hospitalized four times in the recent past. In October 2015, he called paramedics because she had taken off her clothing and gone out on the balcony, and he was afraid she would harm herself.<sup>5</sup> Mother refused to take the medication prescribed at that time. Approximately one month later, Mother was found sitting on top of a car in the early morning hours and was taken in by authorities to be hospitalized.<sup>6</sup> In December, authorities were called by neighbors when they found Mother wearing nothing but a sheet, holding their cat. Mother was hospitalized a fourth time on January 31, 2016. Angel had taken her to work with him because she was depressed and crying, and he was concerned about leaving her alone. When it was time to leave, she refused to move and became nonresponsive. She remained hospitalized until February 8, 2016. Angel said Mother had recently changed from the happy, dynamic person she had been in the past. She appeared depressed, and had stopped working, cleaning or cooking.

In January 2016, Mother agreed to enroll in a mental health program. In February 2016, she began receiving

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<sup>5</sup> According to an October 6, 2015 police report, Mother was "naked and out of control," and "destroying things in her residence."

<sup>6</sup> A police report from November 24, 2015 said Mother was "jumping on cars, delusional, psychotic."

psychiatric services from Dr. Mark Ragins. Dr. Ragins said Mother had likely begun having “episodes” because Anabel had reached the age that Mother had been when her own mother was murdered. He said that although Mother had managed without medication for years, “what she was doing before [was] not working now.” His goal was to help Mother “get stabilized,” which required prescribed medications and “less marijuana,” and might “take some time.” Dr. Ragins expressed the view that Mother’s regular use of marijuana was “destabilizing her more than stabilizing her.”

At the May 19, 2016 hearing, Mother testified she had stopped smoking marijuana and was instead eating it once a day. She claimed it helped her with depression, anxiety and physical pain. She had stopped taking the medication prescribed during her last hospitalization because it had side effects and she preferred to ingest “a natural plant that grows on this earth . . . .” She did not deny smoking marijuana in front of Anabel, but denied it was “[with]in a distance where [the girl] could inhale it.” Counsel for DCFS and the attorney for Anabel argued in favor of DCFS’s recommendation: sustaining jurisdiction, granting Father primary custody, granting Mother monitored visitation, and issuing an exit order. Mother’s counsel argued that Mother’s use of marijuana helped her manage depression and anxiety and made her a “better parent.” He contended there was no evidence that Anabel was at risk from Mother’s continued use of marijuana, and asked the court to dismiss the petition in its entirety.

The court found true that Mother had a history of mental and emotional problems, including a diagnosis of depression, that she had a history of substance abuse, and that she was a current abuser of marijuana, all of which rendered her incapable of providing regular care and supervision of Anabel and placed Anabel at risk of serious harm. In making its ruling the court discussed the record in the prior proceeding, describing it as “evidence of direct threats of harm to the child’s health.” The court also referenced Mother’s recent hospitalizations, her refusal to take prescribed medication, and the lack of evidence that marijuana was therapeutic for someone in Mother’s condition. In the dispositional phase of the proceeding, the court concluded continued jurisdiction was not necessary and issued an exit order, granting full physical and legal custody to Father, and granting Mother monitored visitation twice weekly for two hours a day.<sup>7</sup> Mother appealed the court’s orders.

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<sup>7</sup> “When a juvenile court terminates its jurisdiction over a dependent child, it is empowered to make “exit orders” regarding custody and visitation. [Citations.] Such orders become part of any family court proceeding concerning the same child and will remain in effect until they are terminated or modified by the family court. [Citation.]” (*In re A.C.* (2011) 197 Cal.App.4th 796, 799.)



## DISCUSSION

### A. *Jurisdiction*

In order to assert jurisdiction over a minor, the juvenile court must find that he or she falls within one or more of the categories specified in section 300. (*In re M.R.* (2017) 7 Cal.App.5th 886, 896.) DCFS bears the burden of proving that the minor comes under the juvenile court's jurisdiction by a preponderance of the evidence. (*Ibid.*; see § 355, subd. (a).) On appeal, “we must uphold the court's [jurisdictional] findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

Here, jurisdiction was found appropriate under section 300, subdivision (b). The juvenile court may properly assert jurisdiction over a minor child under that provision where “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.” A true finding under subdivision (b) requires proof of: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’

to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) In asserting jurisdiction, “the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child [citation].” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216; accord, *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383.) The court may consider past events if there is reason to believe that the parent will continue or resume the conduct. (*In re Kadence, supra*, at p. 1383.)

As multiple courts have said, a parent’s use of marijuana alone is insufficient to support jurisdiction. (See, e.g., *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 452; *In re David M.* (2005) 134 Cal.App.4th 822, 829-830; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346.) The agency must present evidence that the use of marijuana created a specific, nonspeculative, substantial risk of serious harm to the child. (*In re David M., supra*, at p. 830; *In re Destiny S., supra*, at pp. 1003-1004; *In re Drake M.* (2012) 211 Cal.App.4th 754, 765-766.) For example, assertion of jurisdiction may be upheld where the parent’s marijuana smoking has become a persistent and regular habit that leads the parent to neglect or mistreat his or her children. (See, e.g., *Christopher R., supra*, 225 Cal.App.4th at pp. 1219-1220; *In re Alexis E., supra*, at p. 453; see *In re Samkirtana S.* (1990) 222 Cal.App.3d 1475, 1489 [evidence supported removal of children from custody of mother where mother’s excessive

use of alcohol led to failure to supervise]; § 300.2 [expressing Legislature’s view that “[t]he provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child”].) In determining risk, the age of the child involved is a significant factor, and assertion of jurisdiction is justified where the child of the substance abusing parents is “of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] physical health and safety.” (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824; accord, *In re Drake M.*, *supra*, at p. 767.)

The same is true with respect to a parent’s mental condition. The agency “has the burden of showing specifically how the minors have been or will be harmed and harm may not be presumed from the mere fact of mental illness of a parent.” (*In re David M.*, *supra*, 134 Cal.App.4th at p. 830, quoting *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; accord, *In re David D.* (1994) 28 Cal.App.4th 941, 953 [““Harm to the child cannot be presumed from the mere fact of mental illness of the parent . . . The social worker must demonstrate with specificity how the minor has been or will be harmed by the parents’ mental illness”” (italics omitted)].) Whether the issue is parental abuse of drugs, mental health or both, it is up to the juvenile court “to determine the degree to which a child is at risk based on an assessment of all the relevant factors in each case.” (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 766.)

DCFS met its burden here. In 2007, Mother was found to be suffering from a serious mental disorder that caused her to engage in actions that threatened baby Anabel's life and health, including holding her under water. While Anabel was no longer an infant, as a young child, she was still in need of reliable adult supervision. Mother had failed in her responsibility to properly care for the girl. Mother smoked marijuana in her daughter's presence, causing Anabel to inhale the fumes, and left the drug where it was easily accessible to the child. (See *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 825 [mother created substantial risk that 11-year old would ingest drugs by, among other things, "placing or leaving drugs in a location or locations where they were available to [the boy]" and "exposing [the boy] to her own drug use, thus impliedly approving such conduct and even encouraging him to believe that it is an appropriate or necessary means of coping with life's difficulties"]; *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993 ["Leaving drugs or drug paraphernalia within the child's reach is an example of negligent conduct that will support section 300, subdivision (b) dependency jurisdiction"]; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1651 [evidence supported finding that mother's drug use posed risk of harm where drug paraphernalia containing residue was left where child could reach it].) In addition, as Anabel described, Mother slept until the afternoon, leaving the girl on her own unless Angel happened to be present. She had seen Mother crying without reason and talking to herself, and said that Mother's

irrational behavior frightened her. A neighbor described the girl visiting other apartments unsupervised. Father reported that Mother allowed the girl to go on an outing with an adult whom Mother herself did not trust. Whether the product of her mental condition or her daily use of marijuana, these incidents supported the conclusion that Mother was not adequately supervising Anabel and was exposing her to a risk of serious harm within the meaning of subdivision (b) of section 300.

Mother contends the court improperly relied on her long past conduct to support its finding. The evidence of Mother's 2007 behavior established how far she could go toward endangering a child when her mental stability faltered. The court could properly take past conduct into account in considering whether Mother's current deteriorating mental condition posed a risk of harm. Mother contends there was no evidence of current risk at the time of the hearing because by then she had not been hospitalized for several months and was under the care of a doctor. We disagree. Mother testified that she had stopped taking her prescribed medication and was ingesting marijuana daily, despite Dr. Ragins's view that such drug use was contributing to her destabilization. Mother contends her coherence at the hearing established she was "cognitively intact." Angel said Mother had "good days and bad days." If Mother had a "bad day[]" when Anabel was visiting, she could be expected to engage in the type of behavior that had led to her hospitalization on four separate occasions in 2015

and 2016. A nine or ten-year old cannot be expected to cope with an out-of-control or nonresponsive parent. (See *In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1650 [evidence that mother was taken into custody one night because she was physically and emotionally unable to function supported determination that her daughter would be at risk if left in her care].)

As the court observed in *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197, “[o]ne cannot correct a problem one fails to acknowledge.” Mother refused to acknowledge her mental disorder or that her daily use of marijuana was not improving it. Mother had posed a serious risk to her daughter’s safety in the past. The court could reasonably conclude that history would repeat itself if Mother made no effort to bring her mental condition under control.

#### B. *Dispositional/Exit Order*

Mother’s only contention with respect to the court’s disposition is that the court had no authority to issue a dispositional order without proper jurisdiction. As we affirm the court’s jurisdictional order, there is no basis to reverse the dispositional or exit orders.

## **DISPOSITION**

The jurisdictional, dispositional and exit orders are affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.