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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re JOSH R. et al., Persons  
Coming Under the Juvenile Court  
Law.

B277029  
(Los Angeles County  
Super. Ct. No. DK16232)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

VERONICA R.,

Defendant and Appellant.

APPEAL from jurisdictional findings and order of the  
Superior Court of Los Angeles County, Marguerite Downing,  
Judge. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, John C. Savittieri, Senior Deputy County Counsel, for Plaintiff and Respondent.

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Veronica R. (mother) appeals from jurisdictional findings and an order requiring random drug testing. Mother contends there is insufficient evidence to support the jurisdictional findings, and the random drug testing order was an abuse of discretion. The Los Angeles County Department of Children and Family Services (Department) contends the jurisdictional findings are supported by substantial evidence, and the drug testing order was not an abuse of discretion.

While mother's appeal was pending, the dependency court sustained a supplemental petition under Welfare and Institutions Code section 387,<sup>1</sup> removed the children from mother's custody, and ordered reunification services and monitored visitation for mother. The Department separately filed a request for judicial notice and a motion to dismiss mother's appeal. We grant the Department's request for judicial notice, deny its motion to dismiss, and affirm the jurisdictional findings and the drug testing order.

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

## FACTUAL AND PROCEDURAL BACKGROUND

### *Initial proceedings*

Mother and Carlos R. (father)<sup>2</sup> have three children, born September 2009, July 2013, and December 2014. The parents have a history of domestic violence dating back to 2008. Two referrals to the Department in January and March of 2014 were closed as inconclusive, when mother claimed she had moved out and was not planning to reunify with father.

In May 2014, mother reported to police she had separated from father and moved out in December 2013. Father wanted to see the children, and mother agreed to meet him around the corner from her parents' home. During their meeting, father became angry, pushed mother and grabbed her by the neck with enough force to leave a scratch. The police were called, but father left before they arrived.

Mother admits to having used methamphetamine about twice a week from 2014 until May 2015. In May 2015, mother and the three children moved in with maternal grandparents, but father continued to stalk and harass the family, leading to many calls to the police department.

In September 2015, mother obtained a five-year restraining order protecting her and the children from father. The police were called to maternal grandparents'

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<sup>2</sup> Father is not a party to this appeal.

home at least four times after the restraining order was issued. At least twice in October 2015, father violated the restraining order, approaching mother and threatening her. On October 13, 2015, father approached mother while she was holding their youngest child. Father slapped mother and threatened to kill her. The police were called and father was arrested.

Father's arrest triggered a referral to the Department, and investigation into this case began. A social worker made two unannounced visits to the maternal grandparents' home in November and December 2015, but mother was not home either time. The social worker left a business card, but the Department's report does not indicate whether mother contacted anyone at the Department. In February 2016, a different social worker received the referral, and interviewed maternal grandmother, mother, and mother's oldest child. Maternal grandmother expressed concern about continuing threats from father. She conveyed that "although there is a restraining order in place she does not believe father will abide by it and expects he will violate it. She expressed that she feels herself, mother and the children remain unsafe because father is still a danger to them." The social worker and mother developed a safety plan. Mother agreed she would (1) remain in maternal grandparents' home, (2) call the police if father came to the home or approached mother in the street, (3) take the children to the doctor, and (4) submit to a drug test.

The social worker tried, without success, to contact

father. Father has an extensive rap sheet, and was most recently convicted of a number of crimes related to drugs and violence, including an August 2, 2015 felony conviction for drug possession with intent to sell, and two convictions on December 10, 2015, for misdemeanor possession of drug paraphernalia and felony manufacture, sale or possession of metal knuckles.

The Department filed a petition on March 28, 2016, alleging the children were described under subdivision (a) of section 300 based on the parents' history of domestic violence, father's repeated violations of the restraining order against him, and mother's delay in contacting law enforcement. The petition repeated the same allegation under subdivision (b), along with allegations that mother and father each have a history of substance abuse that places the children at risk of harm. The Department considered the children to be at high risk for future emotional or physical harm, based on father's dangerous and inappropriate conduct, as father continued to stalk the family and disregard the restraining order. The Department recommended that the children remain in the home with mother, but court intervention was necessary to ensure participation in services. The court made the following orders at the detention hearing: (1) the children were detained from father, (2) mother was to cooperate with any request for on-demand drug testing, and (3) a referral to family preservation services was required.

The Department's April 21, 2016 jurisdiction and

disposition report stated that mother was willing and able to protect the children from abuse or neglect, but father had not made himself available to the Department, and he posed a continuing threat to mother and the children. The report expressed concerns about father's "unresolved issues with domestic violence and substance abuse," but also noted that removal from mother was not necessary. A last minute information report dated April 25, 2016 stated father had spoken to the social worker by phone, and denied any physical altercations with mother or violating the restraining order against him. He also denied using drugs around his children, although he admitted he had used methamphetamine "last year."

At a hearing on May 19, 2016, the court appointed counsel for father, who asked for a continuance and for the Department to include father's drug test results in a supplemental report. The court granted both requests. The Department's June 3, 2016 last minute information report stated father had not made himself available, and the Department had not been able to test father for drugs.

At the adjudication hearing on June 21, 2016, mother's counsel argued the court should strike mother from the allegations regarding domestic violence and father's drug use, and argued there was insufficient evidence to sustain allegations regarding mother's drug use. The Department argued that mother's history of using drugs with father and while caring for the children, coupled with her reluctance to call law enforcement for fear of retaliation by father,

provided sufficient evidence to support the petition allegations against her.

The court sustained the domestic violence allegations, as well as the allegations relating to father's drug use. The children were only removed from father, so they remained placed with mother. The court ordered mother to appear for eight random drug test dates, complete parenting classes, join a domestic violence support group, and enroll in individual counseling. The court also ordered individual counseling for the oldest child and age-appropriate therapy for the younger two. Mother filed a notice of appeal the following day.

### *Post-appeal proceedings*<sup>3</sup>

In November 2016, the Department filed a supplemental petition under section 387, alleging that mother allowed father unlimited access to the children and that an incident of domestic violence occurred in October 2016 in the children's presence, where father had injured mother. The court detained the children from mother, and at a hearing in December 2016, the court made findings under section 387, sustaining an amended allegation that

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<sup>3</sup> The information discussed in this section is based on the exhibits to the Department's request for judicial notice, which we grant pursuant to Evidence Code sections 452, subdivision (d), and 453.

mother allowed father “to have unlimited access to the children in violation of the Juvenile Court orders that the father have monitored visits with the children, the mother not to monitor the father’s visits. The parents violated a restraining order protecting the mother from father.” It ordered the children removed from mother’s custody.

## DISCUSSION

### *Department’s motion to dismiss Mother’s appeal of jurisdictional findings*

On March 27, 2017, the Department filed a motion with this court seeking to dismiss mother’s appeal. The Department contends that the dependency court’s post-appeal orders render mother’s appeal moot. Relying on *In re A.B.* (2014) 225 Cal.App.4th 1358, 1363–1365 (*A.B.*), the Department argues that the dependency court’s decision to sustain the section 387 petition allegations and remove the children from mother’s custody provides an alternative basis for jurisdiction regardless of the outcome of the current appeal. We disagree.

“An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. [Citation.]’ (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054.)” (*In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498.) The court in *A.B.* considered two petitions in a single appeal. The dependency court sustained



the first petition alleging mother's severely cluttered apartment placed her two-year-old daughter at risk of harm. A subsequent petition filed under section 342 four months later alleged two additional counts, relating to mother's decision to entrust the child's care to maternal grandmother and mother's failure to provide adequate food or care for the child. In rejecting mother's challenge to the lower court's order sustaining the first petition, Division One of this court found that portion of mother's appeal moot because "no effective relief would be provided to mother by reversing jurisdiction under the original petition because jurisdiction was established independently under the subsequent petition on entirely new and independent facts." (*A.B.*, *supra*, 225 Cal.App.4th at p. 1364.) The court continued by explaining that "so long as the jurisdictional finding under the subsequent petition is supported by substantial evidence, reversal of the jurisdictional finding under the original petition would be futile." (*Ibid.*)

The case before us is distinguishable from *A.B.*, because the second petition was filed under section 387, not section 342, and the validity of the court's order sustaining the later petition allegation is not before us in the current appeal. The Department's motion to dismiss mother's appeal emphasizes that the procedural and evidentiary requirements for a section 387 petition are the same as for a section 300 petition. This argument ignores the underlying purpose of a section 387 petition, which is not to allege a separate basis for jurisdiction, but to allege facts that

warrant a change in disposition, specifically a child's placement. Explaining that petitions operate as basic pleading devices in dependency cases, a sister court described a section 342 petition as "a subsequent petition for children who are already dependents when there are 'new facts or circumstances' that bring them within a category of section 300 'other than those under which the original petition was sustained' (§ 342)." (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1035.) The same court described a section 387 petition as "a supplemental petition when there are facts which indicate that a previous disposition is not appropriate. (§ 387)." (*Ibid.*) Because a section 387 petition serves as the basis for placement, rather than jurisdiction, the reasoning of *A.B.* is inapplicable to mother's appeal. We deny the Department's motion to dismiss.

### *Jurisdictional findings*

Mother contends there was insufficient evidence to support the court's jurisdictional findings because she had obtained a restraining order against father in September 2015, and either she or maternal grandmother called the police whenever father violated the restraining order. Mother argues that because there was no evidence father had any contact with mother or the children since November 2015, there is no evidentiary basis for the court's finding that the children were at current or future risk of physical or emotional harm.

We apply the substantial evidence standard of review when examining the sufficiency of the evidence supporting the court’s jurisdictional findings. “[W]e draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) The pertinent inquiry is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Subdivision (b) of section 300 supports dependency court jurisdiction if a child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent’s failure to adequately supervise or protect the child. “The three elements for [jurisdiction under] a section 300, subdivision (b) finding are: ‘(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the [child], or a “substantial risk” of such harm or illness.’ [Citation.] The third element, however, effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1395-1396.)

“Physical violence between a child’s parents may

support the exercise of jurisdiction under section 300, subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) Domestic violence in the household where children live creates a substantial risk of serious harm or illness and is detrimental to children. (*In re E.B.* (2010) 184 Cal.App.4th 568, 576; *In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194.) Violence by one parent against another harms the children even if it is not directly witnessed by the children. Past abuse or violent behavior is a good indication that future abuse is likely to occur. (*In re E.B.*, *supra*, at p. 576 [father’s physical and emotional abuse of mother within earshot of the children was a factor to support the conclusion that father presented a substantial risk of physical harm to the children at the time of the hearing].)

In this case, there is substantial evidence to support the court’s finding that the children were at risk of harm, based on the history of domestic violence between mother and father, including father’s repeated violations of the restraining order against him. Mother had previously denied domestic violence to the police and reconciled with father despite assuring investigators she had no plans to do so. Despite mother’s more recent commendable actions in moving out and obtaining a restraining order to shield herself and her children from father’s violent proclivities, the unfortunate fact remains that she still lives in close

proximity to her former abuser. Both mother and father's past actions demonstrate that a restraining order is an insufficient deterrence to further harassment and abuse. As maternal grandmother told the social worker, she feels that father is watching them, and she does not feel free to leave the home because father would come and do something bad. Based on these facts, we find substantial evidence supports the dependency court's assertion of jurisdiction under section 300, subdivision (b).

Since jurisdiction over the children was proper based on the parents' history of domestic violence, we need not address the court's other jurisdictional findings. "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

### *Drug testing order*

Mother contends the court abused its discretion in ordering her to undergo random drug testing. We find no abuse of discretion.

Once a dependency court finds jurisdiction under section 300, it has authority to “make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court.” (§ 362, subd. (a).) The court “has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion. [Citations.] The court’s determination in this regard will not be reversed absent a clear abuse of discretion.’ [Citation.]” (*In re Corrine W.* (2009) 45 Cal.4th 522, 532.)

Mother admitted to regularly using methamphetamine while caring for her young children. Although she has denied any current drug use, mother’s history is sufficient to support the conclusion that the order for random drug testing was not an abuse of discretion.

## DISPOSITION

The court's jurisdictional findings and its order requiring mother to undergo random drug testing are affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

LANDIN, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.