Filed 8/31/17 In re A.V. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.V., a Person Coming Under the Juvenile Court Law.	B280156 (Los Angeles County Super. Ct. No. DK13091)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.V., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Natalie P. Stone, Judge. Affirmed

Annie Greenleaf for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

Mother Deserie V. appeals from a disposition order concerning her son, Andrew. Mother was incarcerated at various points during the case and was not present for the adjudication hearing. She contends her absence at that hearing violated her due process right to present evidence and her statutory right to be present under Penal Code section 2625, subdivision (d). Mother also argues that the court's findings that both she and Andrew's father, Michael G., who is not party to this appeal, suffered from substance abuse problems that placed Andrew at risk of harm, that were not supported by substantial evidence.

We conclude that any violation of mother's statutory right to appear at the adjudication hearing was harmless. We further conclude that substantial evidence supported the court's findings regarding her substance abuse problems and the risk they pose to Andrew. We accordingly need not and do not consider whether mother has standing to challenge the findings regarding father, or whether those findings are supported by substantial evidence. The order of the juvenile court is affirmed.

BACKGROUND

Investigation and Detention

Andrew, born in 2010, is the youngest of mother's five children. Three of his siblings are adults. The other, J., born in 2005, was at all relevant times under the legal guardianship of maternal grandmother (grandmother).

Andrew came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on June 30, 2015, when a referral alleged that mother was abusing alcohol and methamphetamine and not supervising Andrew properly. The referral also alleged there was a recent shooting at the family home. A second referral on July 6, 2015 alleged that there

was a "'shoot out' at mothers [*sic*] home and that mother uses drugs." The June 30, 2015 referral was "promoted," and the second referral was closed.[1]

An emergency response social worker initiated an investigation. Mother denied the allegations of neglect, though she informed the social worker that maternal grandfather (grandfather) had gang ties and recently had been shot in front of the family's home. Mother took a drug test the next day; the test was positive for methamphetamine. When confronted with the positive results, mother admitted to using methamphetamine. Mother was "open and cooperative" and expressed a desire to "clean up" and "be sober." She and the social worker prepared a safety plan under which Andrew would stay with grandmother while mother "detoxes this week."

The social worker interviewed grandmother on July 7, 2015. Grandmother reported that she had only a "limited" relationship with mother. She confirmed that she was J.'s legal

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[1] According to the detention report, DCFS received four previous referrals related to the family. In 2003, a caller reported that "mother abandons her children and has also recently relapsed." Mother was not interviewed and DCFS was unable to verify her current residence. However, the referral was closed "because children appear to be well cared for and are not at immediate risk of abuse or neglect." In 2010, a caller reported that mother's older children were smoking marijuana. "Mother admitted to knowing child's marijuana use and was complying with probation. Child was linked to services." In 2014, DCFS received two referrals alleging that mother was using methamphetamine; the first also alleged that she "left the children without making any arrangement." The first referral was closed as inconclusive and the second was closed as unfounded.

guardian. Grandmother explained that she "asked for Andrew but mother only allowed her to have" J. The social worker also interviewed J., who reported that grandmother "rarely" left her alone with mother. J. denied any abuse, but told the social worker, "whenever I come down to see my Mom, I think she can do better . . . she is doing bad stuff because when I go over there she acts weird." J. further reported that Andrew was "changing" and was "attached to my Mom, to her lifestyle." DCFS reported that mother had a criminal history dating back to 1999 which included convictions for drug possession and driving under the influence.

Mother's two adult sons, Walter and Michael, who apparently lived with her and grandfather, denied that mother abused drugs. Michael explained that Andrew was "taken care of by everybody here" in the home. Michael further noted that Andrew "'follows me around'" and said that he did not want Andrew to be like him because he was a "'wild' one." Michael admitted that he used marijuana outside the home but denied that mother used it with him. Both Walter and Michael reported that they tried to stay out of mother's business and knew little about her life.

On July 21, 2015, mother called the social worker to report that she had detoxed, was clean and sober, and was trying to enroll in a drug treatment program. Six days later, grandmother reported that mother had been arrested for driving under the influence and was in custody in San Bernardino County. Grandmother also stated that she did not want Andrew to be formally placed with her, but was happy to watch him until mother's expected release date of September 23, 2015.

On July 31, 2015, father called the social worker to report that he had been sober for a month and was living in a sober living home. Father stated he was in treatment voluntarily and would be willing to leave to care for Andrew. He stated that he saw Andrew "regularly," whenever he called for a visit, and last saw him in June 2015.

During an in-person interview with the social worker approximately one week later, father stated that he "was not currently in the position to care for his child" and gave consent "for DCFS to remove custody of the child Andrew from his care." Father admitted that he had a history of relapsing despite seeking treatment for his drug use "and also continues to go in and out of jail/prison." These statements were corroborated by father's criminal history, which contained arrests and convictions dating back to 1993. Father told the social worker that mother also abused drugs and alcohol. Father also reported that he knew "for a fact" that grandfather had been the target of a shooting and expressed concern that mother and Andrew had lived with him.

On August 18, 2015, a social worker called grandmother to check on Andrew. Grandmother reported that Andrew had been living with a maternal great aunt, Leticia C., since August 14. According to grandmother, Leticia tried to enroll Andrew in school but had difficulty because he did not have all of his vaccinations. Grandmother also reported that mother had been transferred to Glen Helen Rehabilitation Center in San Bernardino.

A social worker visited Leticia's home on August 19, 2015. Leticia described Andrew as a good child and said she wanted to keep him in her care. The social worker noted that Andrew

seemed comfortable in his surroundings and with his cousins.

A social worker visited mother at Glen Helen on August 21, 2015. Mother told the social worker she was in custody for allegedly stealing a vehicle and was optimistic about her chances of prevailing at trial. Mother became tearful when the social worker asked about Andrew; she did not know where he was or what was going on with him. When informed that Andrew was staying with Leticia, mother said she was okay with him staying there. Mother became tearful again, however, when the social worker "discussed the need for detention to assure the child Andrew remains well cared for." Mother gave consent for Andrew's detention after the social worker told her that detention would allow mother time to address her issues, that reunification was the goal, and that a detention hearing would be held.

DCFS detained Andrew on August 25, 2015 and placed him with Leticia.

Petition and Detention Hearing

On August 28, 2015, DCFS filed a petition to declare Andrew a dependent under Welfare and Institutions Code, section 300, subdivision (b).[2] Count b-1 of the petition alleged that mother "has a history of substance abuse and is a current user of methamphetamine, amphetamine and alcohol, which renders the mother incapable of providing regular care and supervision of the child. On 07/07/2015, and on prior occasions, the mother was under the influence of illicit drugs while the child was in the mother's care and supervision. On 07/07/2015, the mother had a positive toxicology screen for methamphetamine and amphetamine. On 07/23/2015, the mother [w]as arrested for

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[2] All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

Driving Under the Influence Alcohol Drugs [*sic*]. The mother is a Registered Controlled Substance Offender and has a criminal history of convictions of Driving Under the Influence of Alcohol Drugs, Driving Under the Influence of Alcohol 0.08 Percent, Possess Controlled Substance. The child is of such a young age requiring constant care and supervision . . . of the child. The mother's substance abuse endangers the child's physical health and safety, and places the child at risk of serious physical harm and damage." Count b-2 contained similar allegations about father.

The court held a detention hearing on August 28, 2015. Father appeared and was appointed counsel. Father denied the allegations in the petition. The court found him to be Andrew's presumed father. It ordered reunification services for both parents.

Because mother had been transferred to a different facility, DCFS was not able to arrange for her presence at the detention hearing. A separate arraignment hearing was held for her on October 16, 2015. She was appointed counsel and denied the allegations at that time. The court set the adjudication and disposition hearing for October 29, 2015.

Jurisdiction/Disposition Report

DCFS filed a jurisdiction/disposition report in advance of the scheduled hearing. According to the report, DCFS interviewed mother on October 7, 2015; she had been released from custody. At that time mother acknowledged that both she and father "'have struggled with substance abuse.'" Mother began using methamphetamine more than 20 years earlier, when she was 16 years old, and has used various drugs off and on since. She reported that she "'binges'" on drugs when going out

with friends or "when she was stressed, or had problems." She began using drugs again approximately one year ago. Mother informed the social worker that she thought father "recently relapsed" as well. Mother admitted that she had drug-related criminal convictions but nevertheless described herself as a "'functional addict.'" DCFS was not able to locate and interview father, who had left his sober living home.

Mother reported that she was happy with Andrew's placement with Leticia, and DCFS noted that he was doing well there. Mother visited him several times per week. DCFS noted that mother was honest and able to communicate her needs. It provided her with referrals for services.

DCFS recommended that both counts in the petition be sustained. It further recommended that both parents complete a substance abuse treatment program, parenting classes, and individual counseling.

Continued Hearings

The court convened the adjudication and disposition hearing as scheduled on October 29, 2015. Neither parent was present. Mother's counsel explained that mother was having car trouble and requested a continuance. The court continued the hearing to December 14, 2015 with no objection from any party.

Neither parent appeared at the December 14, 2015 hearing. Father's counsel reported that father's whereabouts were unknown; the court ordered DCFS to conduct a due diligence search for him. New counsel appeared on mother's behalf and reported that it was unclear from the file whether mother received notice of the hearing from DCFS or her previous attorney. The court ordered a six-week continuance to allow DCFS sufficient time to perform its due diligence search for

father. The court set January 25, 2016 as the new hearing date, and ordered "[n]o further continuances on this trial."

On the day of the hearing, DCFS filed a last-minute information notifying the court that it had located father at North Kern County State Prison. DCFS further reported that it was unable to get father to the hearing, because "[a] statewide removal takes approximately 6 weeks to process." The last-minute information also included information about mother: "The mother is reported to be visiting the child however is not making contact with [the assigned social workers]. Further the mother is not participating in drug testing." DCFS attached six no-show drug test results to the filing.

A referee presided over the hearing on January 25. Neither mother nor father was present. The parties informed the court that DCFS had located father: he was incarcerated in Kern County. No explanation was provided for mother's absence. After holding a discussion off the record, the court ordered a "statewide in and out" for father to ensure that he could be brought to court for the adjudication hearing, which it continued to March 9, 2016.

DCFS filed a last-minute information in advance of the March 9 hearing. It reported that father had been moved from North Kern County to Chuckawalla State Prison, and that DCFS did not have adequate notice to submit an updated statewide removal request for him. DCFS reported that, "[s]ince the last hearing, the mother continues to visit with the child however is not compliant with drug testing or maintaining contact with service CSW Kelvin Roberts. The mother was provided notice of hearing to the last known address . . . ."

Neither mother nor father appeared at the March 9, 2016 hearing. Mother's counsel informed the court that, according to grandmother, mother had been arrested in mid-February and was incarcerated at Lynwood. Father's counsel confirmed that father recently had been moved to Chuckawalla State Prison. Counsel for mother and father requested a fourth continuance so that both parents could be ordered from their respective places of incarceration and be present at the hearing.

The court granted the continuance reluctantly. It explained: "It bothers me to have to order another continuance, because several hearings ago, I ordered no further continuances. That was on December 14th I ordered no further continuances. Then Steven Klaif, the referee, on January 25th did continue the hearing the last time because it was determined that father was in a state prison and that he had not been transported. And so every time we . . . have a delay of six weeks when someone is in a state prison. So now I'm going to have to again delay this case and set it out to April 20th so that there's enough time for a statewide removal order to be effective to get father here from Chuckawalla State Prison and . . . . . [¶] an in and out for the mother is ordered for April 20th in the event that she is in local custody still at that time. Even if mother and father cannot be here for whatever reason on April 20th, we are going forward on that date, because it's the interest of the child in having permanency that is most important and does trump the parents' rights to be here. I feel that we have done everything we could to try to get these parents to be here."

Mother's counsel objected. She informed the court that if "mother is still incarcerated and for some reason she is not brought out except if she waives it, I will argue that through no

fault of her own, and that would be a denial of due process." Mother's counsel also stated that she would "personally write to her to notify her of the date."

Adjudication Hearing

DCFS filed a last-minute information one week before the continued hearing date. DCFS reported that father "indicated he does not want to be physically present and waives his right to appear." It attached a signed waiver from father. Mother did not waive her appearance; a "county removal order was submitted" for her.

DCFS filed another last-minute information on the day of the hearing. It advised the court that mother had been transferred from county custody to state prison after being convicted of receiving stolen property and driving without a license. Mother was sentenced to 32 months in custody and would have to serve 85 percent of her sentence due to a prior strike.

At the hearing, the court noted that mother was absent due to her recent transfer to state prison. Father was absent due to his signed waiver. Mother's counsel requested a continuance of six weeks so that a statewide removal order could be effectuated. She argued that the adjudication and disposition hearing was one of the most important hearings in the dependency process, and that mother had a right to be present under Penal Code section 2625, subdivision (d). Counsel also directed the court to *In re M.M.* (2015) 236 Cal.App.4th 955, in which the court of appeal found prejudicial error where a contested jurisdiction and disposition hearing was held without the presence of an incarcerated parent.

The court denied the request for a continuance. It explained, "I am not going to find good cause to continue. And, generally speaking, I would continue if this was the first or second time that we had needed to continue it. And I have continued this case repeatedly. Beginning - - the first adjudication date was October 29th. This is on a petition that was filed on August 28th. That was over seven months ago. That first time, mother was having car problems. She was unable to get to court. Mother's counsel's request for a continuance was granted, continued to December 14th. On December 14th, mother's counsel requested a continuance. The prior attorney may not have provided mother with notice for the hearing that day. Good cause found. Matter continued to January 25th for adjudication. On that date, I said no further continuances. That was in December. On January 25th, Referee Klaif was here. He must not have seen that I ordered no further continuances. He allowed for a continuance because, at that time, the father was incarcerated, and a statewide in and out was ordered for him. Then it was continued to March 9th. On that date I, one last time, agreed to continue it for the mother and father, who at that time were both incarcerated, so that both could be transported. And I signed removal orders. And, actually, I asked for statewide removal orders. Those weren't apparently done. There was for father."

The court continued, "[a]t this point, the child's interest in permanence outweighs the due process rights of the mother to be here. There were numerous continuances granted. And I understand this last failure of her to appear is - - can't be blamed on her, but that doesn't make it any less detrimental to the child to have his case just languish in dependency court. An

adjudication should never go past the six-month mark, and now we're well past that. So that's why I'm denying the request for a continuance."

The trial court admitted into evidence the detention report, the jurisdiction/disposition report, and three of the four last-minute informations. No other evidence was presented.

Counsel for DCFS argued that both counts in the petition should be sustained. She emphasized both parents' histories of substance abuse and criminal conduct. She also noted that father had expressed concern about mother caring for Andrew, and that mother had failed to appear for six of her seven scheduled drug tests. As to father, DCFS's counsel argued that he "indicated that he was not in a position to take care of the child because of his drug use issues," and had a history of relapsing. Andrew's counsel joined these arguments. She also pointed out that mother's other minor child, J., was in grandmother's care, yet still was affected by mother's drug use; J. told a social worker that mother "was doing bad stuff" and "act[ing] weird" during visits. Andrew's counsel also noted that grandmother had a "limited" relationship with mother, and had been unsuccessful in convincing mother to allow her to care for Andrew.

Mother's and father's counsel both argued that there was no nexus between their drug use and risk of harm to Andrew. Mother's counsel argued that mother was a "functional addict" and that there was "not one shred of evidence that shows that because the mother has been using, that the child hasn't been properly taken care of." She further argued that Andrew was five years old, "not a newborn," and contended that mother seemingly "has a very close relationship both with the maternal

grandmother, who has helped her with the child, and also with the aunt, where the child is now placed." Father's counsel argued that no nexus was shown as to father because Andrew was never in his care and custody; father simply visited Andrew and was not his custodial parent. Father's counsel also emphasized that father voluntarily sought treatment for his drug use, and that there was no evidence that he currently was using drugs or used them during the pendency of the case.

The court sustained both counts of the petition as pled. It found a nexus of harm as to both parents, noting that Andrew was not enrolled in school or fully immunized at the time of detention, and "mother was, it seems, in and out of jail or under the threat of going to jail constantly because of her substance abuse issues." The court accordingly found Andrew was "in very substantial danger of physical harm and neglect."

When the court indicated an intention to move on to the disposition phase of the hearing, the parties raised the issues of whether mother would be eligible for family reunification services in light of her incarceration, and whether she received proper notice if she were not. Mother's counsel requested a continuance so that a statewide removal order could be issued for mother's attendance at the disposition hearing. The court ordered DCFS to provide mother notice "immediately" of its recommendation to deny her reunification services. It further issued statewide removal orders for both parents and set the matter for a contested disposition hearing on June 1, 2016.

Disposition Hearing

DCFS provided the requisite notice of hearing to both parents. Mother returned the form acknowledging and exercising her right to be present. Father waived his right to be present.

Mother appeared at the June 1, 2016 hearing. Counsel for DCFS argued that she should not receive family reunification services under section 361.5, subdivision (e)(1) because her anticipated release date exceeded the reunification period. She argued that father should receive services, as his anticipated release date was in December.

Father's counsel submitted without argument. Mother's counsel urged the court to exercise its discretion in favor of providing her with services. She also noted that mother's "primary concern" was that Andrew be placed with grandmother, who recently expressed an interest in both placement and legal guardianship. Andrew's counsel agreed with mother that grandmother should be assessed for placement. She did not take a position on whether mother should receive services.

The court ordered reunification services for both parents. It found that there was not clear and convincing evidence that providing services to mother would be detrimental to Andrew. It further observed that, at five years old, Andrew had a bond with mother. However, the court also found by clear and convincing evidence that returning Andrew to mother's care would place him at a substantial risk of harm and there were no reasonable means to protect him short of removal. It declared Andrew a dependent and set the matter for a six-month review hearing under section 366.21, subdivision (e).

Mother timely appealed.

DISCUSSION

I. Mother's Absence from Adjudication Hearing

Penal Code section 2625, subdivision (d) provides that "no petition to adjudge the child of a prisoner a dependent child of the court pursuant to subdivision (a), (b), (c), (d), (e), (f), (i), or (j) of

Section 300 of the Welfare and Institutions Code may be adjudicated without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner or an affidavit signed by the warden, superintendent, or other person in charge of the institution, or his or her designated representative stating that the prisoner has, by express statement or action, indicated an intent not to appear at the proceeding." Mother contends that this provision afforded her the right to be present at the adjudication hearing, and that her absence caused her prejudicial error. We agree with the former, but not the latter contention.

In *In re Jesusa V.* (2004) 32 Cal.4th 588, 622 (*Jesusa V.*) the Supreme Court held that Penal Code section 2625, subdivision (d) "requires *both* the prisoner [parent] *and* the prisoner's attorney to be present," unless the parent waives his or her appearance. Mother was not present at the adjudication hearing despite expressing a desire to be; this violated the statute.[3] As mother acknowledges, however, violation of an incarcerated parent's statutory right to be present is not per se reversible error. The *Jesusa V.* court held that such error is reversible only if it is reasonably probable that a more favorable result would have been reached if the parent had been present at the hearing. (*Jesusa V.*, *supra*, 32 Cal.4th at p. 625 (citing *People v. Watson* (1956) 46 Cal.2d 818, 836); see also *In re M.M.*, *supra*, 236 Cal.App.4th at p. 963.)

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[3] It did not violate mother's due process rights. (See *Jesusa V.*, *supra*, 32 Cal.4th at pp. 602, 625-626; *In re M.M.*, *supra*, 236 Cal.App.4th at p. 962, fn. 7.)

In *Jesusa V.*, the court concluded that the error inherent in an incarcerated parent's involuntary absence from an adjudication hearing was harmless where "[t]he relevant issues involved in the dependency [petition] had been explored in reports filed months before the hearing; the juvenile court had granted a lengthy continuance to permit [the parent] to respond to those points and conduct discovery; and the court had advised counsel to consider having [the parent] file a declaration." (*Jesusa V.*, *supra*, 32 Cal.4th at p. 625.) The court further noted that the parent did not submit a declaration, his attorney did not submit an offer of proof or present the live testimony of any witnesses, and neither had identified evidence the parent would have presented had he been in attendance. (*Id.* at pp. 625-626.)

The court reached the opposite conclusion in *In re M.M.*, *supra*, 236 Cal.App.4th 955. There, an incarcerated mother was involuntarily absent from an adjudication/disposition hearing concerning allegations that she failed to protect her four-year-old son M.M. when she took him with her to engage in prostitution, and that she failed to make appropriate plans for his care while she was incarcerated. (*In re M.M.*, *supra*, 236 Cal.App.4th at pp. 958, 962.) The mother disputed the allegations in the petition, telling social workers that she had been interviewing for a job at a strip club and left her son in the car with her boyfriend. (*Id.* at pp. 959-960.) The mother also "insisted" that the police "must have lied" in their report of the incident. (*Id.* at p. 960.)

The *In re M.M.* court concluded that the mother's absence from the hearing was prejudicial. The court first emphasized that "nothing suggested the court needed to proceed immediately to adjudicate the petition and craft a disposition order." (*In re M.M.*, *supra*, 236 Cal.App.4th at p. 962.) It explained, "M.M. had

been placed with his maternal grandmother prior to the scheduled hearing date, so a continuance would not have been destabilizing or otherwise contrary to his interests (cf. Welf. & Inst. Code, § 352, subd. (a) [authorizing continuance of dependency hearings, provided 'no continuance shall be granted that is contrary to the interest of the minor']); the court's concern about the effectiveness of an order requiring [the mother's] presence because she was housed in another county was based on incomplete information about [the mother's] status, which the court made no effort to verify or supplement, and was insufficient in any event to justify disregard of Penal Code section 2625's clear mandate; and neither the social worker nor any other individual was present to testify at the hearing, so there was no issue of witness inconvenience." (*Id.* at pp. 962-963.)

The *In re M.M.* court also emphasized the potential importance of the mother's live testimony. It noted that the mother disputed the facts alleged in the petition, and could have testified to her version of events had she been present. "[I]f her oral testimony were believed," the court reasoned, "there is no doubt the result of the challenged proceedings would have been more favorable to her." (*In re M.M.*, *supra*, at p. 964.)

Mother argues that her case is more analogous to *In re M.M.* than *Jesusa V.* She contends "there was no compelling reason why the court needed to go forward with adjudication that day," as Andrew "was with the same relative caregiver at adjudication as he was at the time of detention," and his interest in permanence did not outweigh her interest in being present at the hearing adjudicating the petition concerning him. She also argues that "[c]ritical information regarding Mother's care of the child as well as how Mother evaluated the appropriateness of

Andrew's caregivers could only come from Mother's oral testimony." We disagree.

Unlike the adjudication hearing in *In re M.M.*, which occurred on the first scheduled date less than one month after the dependency petition was filed, the adjudication hearing here was continued four times, to a date nearly eight months after the petition was filed. The disposition hearing, at which mother was present, did not occur until another month had elapsed. During that time, Andrew's case was, as the court noted, "languishing."

As a general rule, only "exceptional circumstances" warrant holding a disposition hearing more than 60 days "after the hearing at which the minor was ordered removed or detained," and "[i]n no event shall the court grant continuances that would cause the [disposition] hearing pursuant to Section 361 to be completed more than six months after the [detention] hearing pursuant to Section 319." (§ 352, subds. (a) & (b).) Moreover, "no continuance shall be granted that is contrary to the interest of the minor"; "the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (§ 352, subd. (a).)

The court properly considered these provisions as a counterbalance to mother's interest in appearing at the hearing. Mother asserts that section 352 "does not automatically bar or trump Mother's right to present evidence," but the court here gave no indication that it believed section 352 was absolute or even predominant over Penal Code section 2625. Rather, the court weighed the deleterious effects on Andrew of a fifth continuance against mother's statutory right to be present and appropriately "[gave] substantial weight to a minor's need for

prompt resolution of his or her custody status." (§ 352, subd. (a).) Permanence for the child may not be the paramount concern until later in the dependency process, after reunification services are terminated (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309), but it is always an important concern, and the court properly considered it as such at this stage of the proceedings.

The court's weighing approach was particularly appropriate on the facts of this case. Mother did not appear for the first scheduled hearing and also failed to appear on the third scheduled date for unknown reasons. DCFS also reported that mother was evading her social worker and failing to appear for drug tests; though mother's words evinced a desire to be involved in the case and take steps to regain custody of Andrew, these actions did not. The court had good reason to conclude that the hearing should move forward.

The record does not support mother's conclusion that a different result was probable if she had been present and/or testified at the adjudication hearing. The mother in *In re M.M.* disputed the fundamental factual underpinnings of the petition. DCFS alleged she was prostituting with a pimp in the presence of her son; the mother claimed she was attending a job interview with her boyfriend. The mother's presence and testimony in that case accordingly were reasonably likely to have an impact on the court's credibility determinations and jurisdictional findings. Here, in contrast, the petition alleged that mother had a substance abuse problem, tested positive for methamphetamines, had several drug-related convictions, and endangered Andrew, a child of tender years. Mother disputed only that she endangered Andrew, her young son; she admitted having a longstanding substance abuse problem, using methamphetamine, and

suffering drug-related convictions. Several non-DCFS witnesses, including Andrew's siblings and great aunt, told DCFS the effect this was having on Andrew, and mother acknowledged living in a home at which a gang shooting occurred. It is not probable that mother's testimony would have led to a more favorable result for her.

II. Jurisdictional Findings

Mother also contends substantial evidence did not support the court's conclusion that Andrew was at substantial risk of harm due to current or past drug use by her or father. We disagree.

We review the court's jurisdictional findings and order for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Under this standard, "[w]e review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible." (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) If a dependency petition enumerates multiple statutory bases for the court's jurisdiction over a child, we may affirm a finding that jurisdiction exists if any one of those statutory bases is supported by substantial evidence; in such a case, we need not consider whether other alleged jurisdictional grounds also enjoy substantial evidentiary support. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*).) "[A] jurisdictional finding good against one parent is good against both" because dependency jurisdiction attaches to the child, not the parents. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.)

Section 300, subdivision (b) permits the assertion of jurisdiction where "the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse." "Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.)" (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215-1216 (*In re Christopher R.*).) In such a case, the evidence must establish ""'that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm. . . .' [Citation.]'" (*In re A.G.* (2013) 220 Cal.App.4th 675, 683.)

The court may consider past events in deciding whether a child currently needs the court's protection. (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 165.) A parent's "'[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue.' (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In re Christopher R.*[, *supra*,] 225 Cal.App.4th 1210, 1216.)" (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383-1384.)

In addition, assertion of jurisdiction is warranted where the child 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, *Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.) Children age six and under are of "'tender years.'" (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219.) For such a child, "'the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of harm.'" (*Ibid.*; see also *Drake M.*, *supra*, 211 Cal.App.4th at p. 767.)

Andrew was five years old when he was detained. A finding of substance abuse by mother accordingly was prima face evidence that he was subject to a substantial risk of harm. The *Drake M.* court held that "a finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient to (1) show that the parent or guardian at issue had been diagnosed as having a current substance abuse problem by a medical professional; or (2) establish that the parent or guardian at issue has a current substance abuse problem as defined in the DSM-IV-TR. The full definition of 'substance abuse' found in the DSM-IV-TR describes the condition as '[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: [¶] (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household)[; ¶] (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use)[; ¶] (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly

conduct)[; and ¶] (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).' (DSM-IV-TR, at p. 199.)" (*Drake M.*, *supra*, 211 Cal.App.4th at p. 766.) Mother contends she does not meet this definition because "it looks at *recurrent* legal issues, *recurrent* failures to fulfill major obligations at work," and she only "had one arrest for a driving under the influence in the year prior to detention."

We are not persuaded. The *Drake M.* definition is "generally useful and workable," but "it is not a comprehensive, exclusive definition mandated by either the Legislature or the Supreme Court." (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218.) Like the court in *Christopher R.*, "we are unwilling to accept [mother's] argument that only someone who has been diagnosed by a medical professional or who falls within one of the specific DSM-IV-TR categories can be found to be a current substance abuser." (*Ibid.*) Here, mother described herself as an addict, told social workers she used methamphetamine to cope with stress and personal problems, was arrested for driving under the influence mere days after purportedly detoxing, and had a history of drug- and alcohol-related arrests and convictions, including several for the physically hazardous activity of driving under the influence. Mother's second-youngest child, J., was under grandmother's legal guardianship, and she allowed Andrew to be supervised by her self-described "wild" son and gang-affiliated father. J. told a social worker that mother acted "weird" when she visited, and opined that Andrew was "changing" as result of his exposure to mother's "lifestyle." Mother did not timely immunize Andrew and did not make

arrangements for his care during her first incarceration in this case—she told a social worker "she did not know where he was or what was going on with him." All of these circumstances support the court's finding that mother's substance use had crossed the line into substance abuse, justifying its exercise of jurisdiction over Andrew.

Mother's efforts at detoxing and attempting to enroll in a drug treatment program are commendable, but they did not rebut the prima facie evidence that her substance abuse placed Andrew at risk. Indeed, mother was arrested for driving under the influence within a week of purportedly detoxing, did not know who was supervising Andrew, and made little effort to work toward resolving her issues while she was out of custody. Substantial evidence supported the court's jurisdictional findings on count b-1.

Because we conclude that the court's findings on the count involving mother were supported by substantial evidence, we affirm the finding that jurisdiction exists as to Andrew. We need not and do not consider whether mother properly may challenge the other alleged jurisdictional grounds—count b-2, involving father— or whether the court's findings on that count have substantial evidentiary support. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 762-763.)

DISPOSITION

The order of the juvenile court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.