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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ISRAEL V., a Person
Coming Under the Juvenile
Court Law.

B276612

(Los Angeles County
Super. Ct. No. DK05996)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,
Plaintiff and
Respondent,

v.

C. V.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of
Los Angeles County, Steff Padilla, Temporary Judge. (Pursuant
to Cal. Const. art. VI, § 21.) Affirmed.

Patricia K. Saucier, under appointment by the Court of
Appeal, for Defendant and Appellant.

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

INTRODUCTION

Israel V. became a dependent of the juvenile court following a domestic violence incident involving his mother, Crystal V. (mother), and her husband (stepfather). Israel was placed in his father's home. Mother and father's ability to co-parent Israel without conflict declined as the juvenile court case progressed. Mother repeatedly reported father to police and the Los Angeles Department of Children and Family Services (DCFS), claiming that father was using drugs, owned or used firearms, and was intimidating mother and Israel. Neither the police nor DCFS found these allegations to be substantiated. Mother petitioned the juvenile court under Welfare and Institutions Code¹ section 388 to change Israel's physical custody to mother; the court denied the petition. When the juvenile court terminated jurisdiction, it ordered joint legal custody, primary physical custody to father, and visitation to mother.

Mother appeals, arguing that evidence supports her allegations that father was attempting to sell a firearm and that father abuses drugs. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Detention

Israel lived with mother, stepfather, and mother and stepfather's two younger sons. In September 2014, when Israel was six years old, DCFS received a referral about Israel's family after a domestic violence incident involving mother and stepfather. The report to DCFS stated that mother said stepfather stopped using meth and was irritable and angry, and

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

he pushed mother to get a charging cable away from her. Mother called 911 and stepfather was arrested.

When DCFS investigated, mother denied the allegations of stepfather's drug use. She acknowledged that she had a restraining order against stepfather, but said it had expired. The social worker found that the restraining order was in effect until June 2016, and mother and stepfather had gotten married and conceived their third child while the restraining order was in effect.

When interviewed, Israel began to cry, and said that he hears mother and stepfather fighting and he fears for mother's safety. He denied any physical abuse toward him or his half-brothers.

The social worker spoke with father, who had visits with Israel on weekends. He said he was aware of fights between mother and stepfather. Father said he was willing to care for Israel; he had a house where Israel had his own room. Father also had two younger daughters who lived with him. Father acknowledged that he had a criminal history and some prior involvement with gangs, but said that he was no longer involved in those activities. The social worker visited father and found his home to be clean and well-maintained. There was a bedroom for Israel, a bedroom for father's two younger daughters, father's bedroom, and a spare bedroom.

Stepfather said that the domestic violence incident was a miscommunication that got blown out of proportion. He and mother planned to stay married, but he was living apart from mother at the time. Stepfather was on informal probation for violating the restraining order, but said he was not aware there was still an active restraining order. He said he had used

methamphetamine and marijuana in the past. Two separate allegations against stepfather of emotional abuse of Israel and his half-brother relating to domestic violence between stepfather and mother had been substantiated in 2010.

DCFS filed a juvenile dependency petition on October 27, 2014. Only an amended version is in the record on appeal, so the details of the original allegations are not clear. Allegations under section 300, subdivision (a) state that mother and stepfather's violent history, including mother allowing stepfather to live with her and the children despite a restraining order, placed the children at risk of physical harm. The petition also includes allegations under section 300, subdivision (b), which were amended to allege that the domestic violence, stepfather's criminal history, and mother allowing father to live in the home despite the restraining order, placed the children at risk of harm. A second allegation under section 300, subdivision (b), states that stepfather's history of drug use and convictions for driving under the influence placed the children at risk of harm. At the detention hearing, the court found a prima facie case for detaining Israel and mother's two younger children under section 300, subdivisions (a) and (b). Israel was released to father, and the younger children were released to their maternal great-grandmother. The court ordered monitored visitation for mother.

B. Jurisdiction/Disposition

The jurisdiction/disposition report dated January 8, 2015, noted that Israel was living with father in Bakersfield. Mother said she met father when she was 17, and the relationship quickly turned abusive. Mother recounted an incident in which father hit and tried to suffocate mother, and after mother called for help father led police on a high-speed chase. Mother said

father was incarcerated for three years as a result. Israel was conceived after the incarceration, but mother and father broke up before Israel was born. Father had become part of Israel's life only about a year before the current dependency case. Mother met stepfather before Israel was born. Mother and stepfather had a voluntary DCFS case in 2010 relating to stepfather's violence toward mother. Stepfather committed two additional instances of domestic violence while the case was pending, including one in which stepfather broke a window and another in which he tore mother's clothing in public. Stepfather did not comply with the case plan to attend a domestic violence program and substance abuse program. Stepfather's criminal history showed that he was convicted for violating a domestic violence protective order in 2011.

After the September 2014 domestic violence incident that led to the dependency case, stepfather was arrested in November 2014 when he went to mother's house and banged on the balcony door. Mother said stepfather was not using drugs at the time of the September 2014 incident; he had been clean for one year. Mother also said that her children had never witnessed any domestic violence. When the social worker told mother that Israel cried in his interview because he was scared by the domestic violence, mother said this was false and Israel did not cry.

An addendum report dated February 2, 2015 stated that the social worker met with father and Israel at father's house. Father lived with his girlfriend, their two daughters, and Israel. Father worked for an aunt fixing up houses to sell. Israel was well-behaved and was doing well in school. Father said he was not willing to complete drug testing.

Mother said stepfather was not living with her and she had enrolled in therapy to address domestic violence issues. She had completed parenting classes. She wanted to reunify with her children as soon as possible, and she was not focused on reunifying with stepfather. Mother's therapist said that mother had "expressed a lot of concern for her son Israel's well being." Mother contacted DCFS saying that she smelled marijuana at father's house when she picked up Israel, and she reported that Israel was intimidated and emotionally abused by father. Mother and father had a disagreement about getting Israel's hair cut.

Because of mother's allegations against father, a DCFS social worker made an unannounced visit to father's house on January 6, 2015. Father told the social worker that mother's allegations were false. Father said he was working as a welder until he was laid off a couple of months before. He said the haircut disagreement was because he did not want Israel's head shaved, but mother got his head shaved anyway. Israel was in good health, clean, with no signs of abuse. Israel said he liked living with father. When the social worker asked Israel, then seven years old, whether he would like to live with father or mother if he had the choice, Israel did not respond. Israel interacted and played well with his two younger half-sisters.

On January 24, mother told a social worker that she was angry that no one addressed her earlier concerns about Israel. She said Israel was intimidated by father and when he had a stomachache, father yelled at him rather than taking him to the doctor. A social worker met with Israel again on January 31, 2015. The social worker noted that Israel was shy and quiet, and did not express himself freely. Israel said he loved mother, and he wanted mother and stepfather to stop fighting. He wanted to

continue having contact with his entire family. Israel denied seeing any drugs or smoking at father's house. He said he was happy living with father, and denied any abuse, yelling, or intimidation. The addendum report noted that Israel had denied abuse to three different social workers. The report also noted that conflicts between mother and father were making co-parenting difficult.

A last minute information dated March 12, 2015 stated that father was served with a citation to appear in court the following day based on a photo posted on Facebook in 2011 of father at a shooting range with an AK-47 rifle. Father said he thought this was another effort by mother to harass him, as the photo was from 2011 and the rifle was legally rented and used at the shooting range.² Father said he did not have weapons in his home. The social worker toured the house and did not observe any guns or ammunition.

At the adjudication hearing on May 5, 2015, mother and stepfather waived their rights and stipulated to a factual basis for the allegations in the petition. The court dismissed the allegations under section 300, subdivision (a), and sustained the allegations under section 300, subdivision (b). Israel was placed in father's home, and the court ordered visitation for mother and family reunification services.

C. Maintenance

An interim review report dated July 23, 2015, stated that Israel continued to live with father and his half-sisters. Israel denied any physical, emotional, verbal, or sexual abuse. He was adjusting well and getting along with his sisters. Israel had been visiting mother and his brothers almost every weekend, and he

² The picture with the rifle is not in the record on appeal.

spoke with them on the phone often. Father said Israel was doing well at home and in school.

Mother was in full compliance with her case plan. She had completed parenting classes and continued to participate in individual counseling. Mother “demonstrated a working knowledge of the objectives” of counseling, and she did not have a plan to reestablish a relationship with stepfather. Mother said that the placement of Israel with father was “psychologically and emotionally damaging to Israel due to separation from other family members and the unfamiliar environment.” Stepfather was in a drug and alcohol rehab program and progressing well. Stepfather said he did not plan to resume his relationship with mother.

A short interim review report dated August 17, 2015 stated that mother and Israel had been having regular visits and phone calls. Mother was in full compliance with her case plan.

A status review report dated November 5, 2015 stated that Israel remained with father, and mother’s two other sons remained with their maternal great-grandparents. Mother lived in the great-grandparents’ home with the children during the week, and had unmonitored weekend visits at mother’s apartment. Mother was in full compliance with her case plan, and she demonstrated increased knowledge about the effects of domestic violence on herself and her children. Mother’s apartment was clean, organized, and had a loving atmosphere. The older boys had bunk beds, the younger boy had a bed, and the baby, who had been born after the start of the dependency case, had a crib. Mother was not planning to reunite with stepfather.

Israel and one of his brothers said they have a lot of fun together at visits, and said reunification of the family was important to them. Mother said she wanted Israel back in her care. She thought it was not fair that Israel was living away from the family that he grew up with, and “[h]e feels like he’s being punished by having to live in his Father’s house.”

Father reported that Israel is “a great kid. . . . I can’t imagine a more caring and loving child.” The social worker noted that father demonstrated a high level of parenting skill with Israel, and met all of Israel’s needs. Israel got along with his sisters well. Israel reported no neglect or physical, emotional, or sexual abuse. When asked where he would live if given the choice, Israel said with mother and his brothers. His second choice was with father and his sisters. DCFS recommended that jurisdiction and reunification services be terminated, and that the court grant joint legal custody with sole physical custody to father.

D. Mother’s 388 petition and termination of jurisdiction

At the section 364 hearing on November 5, 2015, the court granted a continuance for a contested hearing. Mother filed a petition under section 388 on December 31, 2015, seeking primary physical custody of Israel. Mother attached photographs of what appears to be a screenshot of a text message exchange; the screenshot photo was sent as a text message. In the photo, one phone (phone 1) sent three texts in a row: “Still got that?” “My bro bro from the hood wants that,” and “With clip included tho.” Another phone (phone 2) responded, “1 30. . . .” (ellipses in text). Phone 1 said, “130 for it?” Phone 2 said, “800 for it and one 30rd clip for it . . .” Phone 1 said, “Oh n emm you told me 750 killa.” Phone 2 replied, “Yea 750.”

Following the screenshot photo, a text message reads, “So you can see Carnal no funnies on how I conduct biz ok cArnal. Luv you waiting on his response. Just sent em Buenas Noches ati y todos.” Subsequent messages show a welding machine, welding rods, and another text, “Si or no? And no bevel clips included. Just Miller machine by its self.” The next message states, “Too slow my boi. His helper bout it for \$800. And did Include Welding Cables and Power Cord. Very Good Condition! \$900.00.”

Another photograph with mother’s 388 petition appears to be a screenshot of a photograph posted on social media. In the record, the photo is mostly dark, but cannabis-containing potato chips are visible. Along with the photo is a date, December 11 with no year included, and a caption stating, “Today’s medicine along with tha RAW fish.”

In her petition, mother argued, “Father’s series of text messages can only be interpreted to mean that father was attempting to sell a firearm along with a 30 round ammunition clip. Father then realized he accidentally messaged mother and went through great effort to provide a different interpretation.” Mother also argued that the photo of marijuana was posted on December 11, 2015, a day that Israel was in father’s care.

A last minute information dated January 11, 2016 stated that mother reported father’s text messages to DCFS. She told the social worker that she also called the Los Angeles Police Department to report father. When the social worker called the police department to inquire, he was told that the police were not opening an investigation due to lack of evidence of a crime. The social worker contacted father, who said he was attempting to connect two people about the sale of a welder. Father said he

does not own or sell firearms. Father also told the social worker that he has a medical marijuana card, and he never uses marijuana in the presence of the children or while he is caring for the children. The last-minute information recommended that jurisdiction over Israel be terminated, and joint legal custody be awarded to both parents with physical custody awarded to father.

There was a section 364 review hearing on January 11, 2016. The order placing mother's younger sons at their grandparents' house was terminated, and the boys were placed in mother's care. The court said of the younger boys, "[T]here's no current risk to the children of being placed with the mother. Mother's complied with her case plan." The order placing Israel in father's care remained in place, father was ordered not to delete any text messages from his cell phone, and mother was given weekend visits with Israel on the first, third, and fifth weekends each month.³ The court continued the section 364 review and hearing on the section 388 petition.

A last-minute information dated March 2, 2016 stated that Israel continued to live in father's home, and father "shows a high level of parenting skills." The social worker noted that he had worked on the case for more than a year, and "[d]uring the past year of supervision the Department has not observed any child safety concerns in the home of Father." When asked whether he would prefer to live at mother's house or father's house during the week, Israel said he did not know. The last-minute information again recommended that supervision of

³ At the hearing, mother's counsel said that visits with Israel had occurred "roughly" every other weekend, but after there had been some disagreements over the holidays, mother wanted more of a set schedule.

Israel be terminated, joint legal custody be awarded to both parents, and physical custody be awarded to father.

At a hearing on April 4, 2016, counsel for mother said that father's text messages "clearly indicate that he's either trying to sell or buy a firearm," and father is "a convicted felon, and it's an assault rifle." The court expressed concern that the text messages showed that father, as a convicted felon, was in possession of a firearm. Counsel for father noted that mother called the police about the texts, and the police did not find anything to be concerned about. Father said the texts referenced welding equipment.

A social worker whose name is not noted in the record said that DCFS social workers had been to father's house every month, and the house was clean and appropriate, with no safety concerns. When the court asked for a recommendation, the social worker said, "[M]y recommendation is keep the same situation that we have right now. Let the child stay in Bakersfield [with father] because he's already registered in the school, he's already got his friends, he's already with extracurricular activities. Split custody, and primary residence in Bakersfield." Counsel for Israel joined in the request, stating, "That's my client's position, as well as he very strongly wants to remain with his father." Counsel for mother said father posted a picture of himself on Facebook in which he had possession of a firearm at a gun range. The hearing was not completed before the lunch break, and the court granted a continuance.

A last minute information dated May 23, 2016 stated that mother contacted DCFS to report that she thought father was under the influence of methamphetamine or cocaine when she last had contact with him on April 29 and May 1. Father denied

use of drugs and voluntarily drug tested on May 3, 2016. The test was negative for all drugs except cannabinoids. Father had a valid marijuana prescription. A social worker visited father's home on May 13, 2016, and father expressed his frustration with having to defend against mother's continuing allegations. On May 17, 2016, mother said she was highly concerned for Israel's safety because she believed that father was using methamphetamine. The report also states, "Mother and Father have both stated the level of communication between them has degraded to an ineffective state." Mother and father agreed to exchange Israel for visitation at a local sheriff's station.

Letters from mother, father, mother's mother (maternal grandmother), and father's aunt (paternal aunt) were attached to the last minute information. Mother reported in her letter that father yelled at her on the phone. Mother also said that on April 29 when she went to pick up Israel at father's house, no one answered the door so she went directly to the Bakersfield police station to report father for violating a court order. Father was in Los Angeles with Israel at a Dodgers game, and offered to take Israel to mother's apartment. When they finally met in the late evening to exchange Israel, mother thought father was under the influence of drugs and reported him to the sheriff's department in Lancaster. Maternal grandmother, who was with mother on the evening of April 28, reported father to DCFS the following day. Mother also said in her letter that her neighbors thought father was on "meth."

Maternal grandmother's letter discussed the events of the evening of April 29th, saying that the "tone" of father's text messages that evening "varied from friendly to confrontational." Father agreed to drop Israel off at mother's apartment, but

mother was delayed due to traffic from a car accident. When the parties finally met at 11:50 p.m., after both had expressed being tired, maternal grandmother said she exited the car, and “looked [father] directly in the face and I stated that my grandson is not a ‘pawn’ in some type of game.” Maternal grandmother said father’s eyes were dilated and she thought father was under the influence of drugs. Maternal grandmother was also upset to find that Israel’s baseball uniform for his game the following day was dirty, and had father’s last name printed on it instead of mother’s and Israel’s last name. Maternal grandmother said she does not think Israel feels safe around his father.

Father’s letters expressed frustration that mother had been creating problems with respect to drop-offs and pickups, and that she had made multiple reports to police. Father reported that at one exchange mother was yelling and video-recording him; at one of Israel’s baseball games mother kept Israel away from father. Father also was upset because although he was the non-offending parent, mother’s allegations kept leading to needless DCFS investigations.

Paternal aunt’s letter stated that father was building a better life following a difficult past. She said father was enrolled in college and hoping to get a counseling degree. She had spent time with father, the mother of father’s two daughters, and all three children, and opined that father is “not perfect but he cares for his children.” Paternal aunt was concerned that mother and paternal grandmother were making false accusations that father was using drugs. Paternal aunt also expressed concern that the confrontational nature of mother’s actions was escalating, and recommended that a third party be present during exchanges of Israel.

At the continued hearing on May 23, 2016, mother's counsel again argued that father's texts showed he was trying to buy or sell firearms. Mother's counsel also argued that father tested positive for cannabinoids shortly before Israel was supposed to be dropped off for a visit. Father's counsel argued that the police found no basis for the gun allegations, there was no evidence that father owned firearms, and despite mother's allegations about drugs, father's drug test showed that he did not use methamphetamine. Israel's counsel said that Israel has been in his father's care for nearly two years, and he was doing well in father's care.

Social worker Mani Rouhani testified that father told him the text messages were about welding equipment. Rouhani also said the police told him they were not planning to investigate the allegations about a gun sale because there was insufficient evidence that father did anything illegal. Rouhani testified that mother showed him the Facebook picture of father with an assault rifle "from years before the case even started." Rouhani said he had never seen anything involving father and Israel that caused him concern. He also testified that Israel was doing well in school, participating in extracurricular activities, getting along with his sisters, and had a good relationship with paternal aunt.

The court expressed concern about terminating jurisdiction while mother continued to make allegations against father. The court asked Rouhani, "So here is my concern, that the minute I close this case, mother's going to call [DCFS] and say that father's under the influence, and we'll be back here. Do you share those concerns?" Rouhani replied, "It's a possibility. Yeah."

The court asked Rouhani why he recommended that Israel's primary residence remain with father. Rouhani responded that Israel had been in father's home for two years and he was doing very well there. Also, Israel told Rouhani that he wanted to stay at father's house. Rouhani also said that there was a no-contact order between Israel and stepfather, and mother and stepfather had both suggested that they might reunite, which could be an issue for Israel.

Father testified that he was convicted of a felony in 2001. The picture of him with a rifle was taken at a shooting range in 2011. Father said that despite his previous conviction, he was under the impression that he was legally allowed to use firearms when he went to the shooting range. Father admitted he posted the picture depicting marijuana on Facebook, but he could not remember if Israel was home that evening or spending the night at an aunt's house.

Mother testified that she was not planning to reunite with stepfather. She testified that father attempted to change Israel's weekend schedule by telling her about the change instead of asking her, which is what led to the events of the April 29 exchange that the parties discussed in their letters. Mother also admitted that she did not receive father's texts on the afternoon of April 29th because her phone had died and she had been charging it, adding to some confusion about when and where Israel was going to be picked up. Mother said that on another occasion, Israel began to cry when he spilled food, and he said father yells at him when he spills. Mother said this showed that Israel was afraid of father. Mother also testified that father was "for sure" under the influence of drugs on the night of April 29th because his eyes were dilated and he was being verbally abusive.

Mother conceded that Israel has adjusted well to being in father's care.

The parties summarized their positions in closing arguments. Mother's counsel asked for primary physical custody of Israel. Father's counsel asked that sole physical and sole legal custody be awarded to father, because the ability of mother and father to co-parent Israel had diminished. Counsel for Israel said Israel expressed a strong desire to stay with father, and asked that mother's section 388 petition be denied. DCFS recommended terminating jurisdiction and awarding joint legal custody to both parents, and primary physical custody to father.

The court admitted into evidence the interim review reports dated July 23, 2015 and August 17, 2015; the status review report dated November 5, 2015; and the last minute informations dated January 11, March 2, and May 23, 2016. The court denied mother's 388 petition, stating that the best interest of Israel would not be served by the requested change. The court terminated jurisdiction, and awarded joint legal custody with primary physical custody to father.

Mother timely appealed.

DISCUSSION

A. Section 388 petition

Section 388 states that a parent "may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." (§ 388, subd. (a)(1).) The parent requesting the change "bears the burden of showing both a change of circumstance exists and that the proposed change is in

the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

We review the denial of a section 388 petition for abuse of discretion. (*In re K.S.* (2016) 244 Cal.App.4th 327, 339-340.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) "Determination of a petition to modify is committed to the sound discretion of the juvenile court and, absent a showing of a clear abuse of discretion, the decision of the juvenile court must be upheld." (*In re S.R.* (2009) 173 Cal.App.4th 864, 870.)

Mother argues that father's drug use constitutes a change of circumstances. Much of mother's argument focuses on the opinions of mother and maternal grandmother that during the April 29, 2016 interaction, father was "extremely aggressive," his eyes were dilated, and father was "behaving erratically." Mother also points out that father initially said he did not use drugs and refused to take a drug test for DCFS, but when he took a drug test on May 3, 2016 it was positive for marijuana. Mother also says father's texts show that he was attempting to sell a firearm.

Mother also argues that denial of the section 388 petition was not in Israel's best interest because Israel was at risk in father's care, mother was in compliance with her case plan, and Israel wanted to live with mother and his brothers. We find no abuse of discretion.

DCFS investigated all of the issues mother raised and found that there was no cause for concern. DCFS investigated mother's allegations of drug use immediately after mother made them. The social worker reported that father had a valid medical marijuana card, and father said he used marijuana when the

children were in someone else's care. Israel told social workers that he saw no evidence of anyone smoking in the house. There was no evidence that father was ever under the influence of drugs while he was caring for Israel. There was also no evidence that father had drug abuse issues that interfered with his ability to parent Israel. To the contrary, the evidence showed that father's parenting was adequate and Israel was thriving in father's care. Evidence of a parent's medical marijuana use, without more, does not support a finding that a parent is unable to care for a child. (See, e.g., *In re Drake M.* (2012) 211 Cal.App.4th 754, 769 (*Drake M.*).

In addition, father's vague texts about the sale of something referenced as "that" and "it," which included "one 30rd clip," does not necessarily lead to the conclusion that he was buying or selling a firearm. Father explained that his texts were intended to connect two friends interested in selling and purchasing welding equipment. DCFS contacted police about mother's report and found that police did not consider the evidence sufficient to constitute a crime. DCFS investigated father's home, and they found no basis to conclude that father was in possession of any firearms. Although the extremely vague texts could be interpreted multiple ways, the court did not abuse its discretion by concluding that the texts, coupled with DCFS's findings that there were no firearms in father's home, did not warrant a revised order under section 388. "“When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” [Citations.]” (*In re Stephanie M., supra*, 7 Cal.4th at p. 318-319.)

Moreover, the trial court did not abuse its discretion in finding that Israel's best interests would not be served by granting mother's section 388 petition. Israel had been living with father since initiation of the case in October 2014. By the time of the section 388 hearing in May 2016, Israel had been living at father's house for more than a year and a half. He was thriving, doing well in school, engaged in extracurricular activities, and got along well with his sisters. Importantly, despite the distance between father's and mother's homes, Israel maintained regular visitation with mother and his brothers, he had regular phone contact with mother, and mother attended at least some of Israel's baseball games. Mother did not show that it would be in Israel's best interests to change his living situation to live primarily with mother with visitation to father.

Because Israel was thriving in father's care and DCFS found no safety concerns related to father's marijuana use or texts, the juvenile court did not abuse its discretion by finding that it was not in Israel's best interests to grant the section 388 petition.

B. Termination of jurisdiction under section 364

Mother also argues that the court should not have terminated jurisdiction. "Where, as here, the social services agency recommends termination of jurisdiction, termination will be the 'default result' unless either the parent, the guardian, or the child objects and establishes by a preponderance of the evidence that conditions justifying retention of jurisdiction exist or are likely to exist if supervision is withdrawn." (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1163 (*Aurora P.*)). Because mother asked that the court retain jurisdiction, she "bore the

burden to establish the existence of conditions justifying retention of dependency jurisdiction.” (*Ibid.*)

Mother contends that we should review the court’s order terminating jurisdiction under the substantial evidence standard. However, “[i]n the case where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment.” (*Aurora P.*, *supra*, 241 Cal.App.4th at p. 1156, quoting *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Where, as here, the juvenile court found that mother failed to carry her burden of proof to show that the juvenile court should maintain jurisdiction, “the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law.” (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) We review mother’s challenge to the court’s section 364 ruling under this standard.

Mother argues that jurisdiction should not have been terminated because “Father’s denial of drug use, his refusal to drug test and his positive drug test for a high level of marijuana would have justified initial assumption of jurisdiction over Israel under section 300.”⁴ In support of her argument, mother cites *In*

⁴ Mother argues that father tested positive for “high levels” of marijuana use, but she does not point to any evidence suggesting that the level of marijuana in father’s test reflects the amount of marijuana consumed, when it was consumed, or whether it exceeded standard levels (if there is such a measurement) for individuals using medical marijuana. In other words, mother presents nothing but her own arguments to support her contention that father’s marijuana level was unusually elevated.

re J.F. (2014) 228 Cal.App.4th 202. There, DCFS recommended terminating jurisdiction, the child asked the court to retain jurisdiction, and the court retained jurisdiction. The mother appealed, and the Court of Appeal noted that section 364, subdivision (c) states in part, “The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn.” (*Id.* at p. 210.) The court held that despite the statutory language referencing the social worker or the department, “the juvenile court may retain jurisdiction if the evidence supports that retention, irrespective of the recommendation of the Department.” (*Id.* at p. 212.)

Mother argues that here, father’s drug use warranted jurisdiction under section 300, subdivision (b), and therefore the juvenile court should have retained jurisdiction. We disagree. “[W]ithout more, the mere usage of drugs by a parent is not a sufficient basis on which dependency jurisdiction can be found.” (*Drake M., supra*, 211 Cal.App.4th at p. 764; see also *In re Alexis E.* (2009) 171 Cal.App.4th 438, 452 [“the mere use of marijuana by a parent will not support a finding of risk to minors”]; *In re David M.* (2005) 134 Cal.App.4th 822, 830 [jurisdiction under § 300, subd. (b) is not warranted in the absence of evidence of a specific, defined risk of harm to a child resulting from a parent’s substance abuse]; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346 [under section 366.22, where mother was otherwise able to care for her children, evidence of drug use alone did not justify a finding that the children’s return to mother

would create a substantial risk of detriment to the physical or emotional well-being of the children].)

Mother argues that father appeared and behaved as if he were under the influence of drugs while caring for Israel and driving him to mother's home. The April 29 incident, however, involved miscommunication due to mother's phone not being charged, mother's delay of several hours due to a traffic accident, father and Israel's attendance at a Dodgers game, and a late night hand-off. It is not surprising that tempers flared under these circumstances, and the fact that mother interpreted father's communication as aggressive is not evidence of drug use. Importantly, there is no objective evidence that father was using drugs in the presence of Israel or while driving Israel anywhere. The positive drug test several days later shows nothing more than that father used marijuana at some point before taking the test. It does not establish a basis for jurisdiction under section 300, subdivision (b).

"[U]nder section 364(c), the juvenile court must terminate dependency jurisdiction unless either the parent, the guardian, the child, or the social services agency establishes by a preponderance of the evidence that the conditions justifying assumption of jurisdiction exist or will exist if supervision is withdrawn." (*Aurora P.*, *supra*, 241 Cal.App.4th at pp. 1155-1156.) Here, mother did not meet this burden, and she has not established that the court erred as a matter of law by terminating jurisdiction under section 364.

DISPOSITION

Affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.