Filed 9/19/12 In re G.S. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re G.S., a Person Coming Under the Juvenile Court Law.	B238349 (Los Angeles County Super. Ct. No. CK89421)
LOS ANGELES COUNTY DEPRARTMENT OF CHILDREN AND FAMILY SERVICES., Plaintiff and Respondent, v. IVAN S., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Timothy Saito, Judge. Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

Ivan S. (father) appeals from the juvenile court's jurisdictional and dispositional orders finding minor, three-year-old G.S., to be a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300[1] and ordering custody to be placed under the supervision of the Department of Children and Family Services (DCFS).[2] Father contends that (1) there is insufficient evidence to support the finding that G.S. was subject to the jurisdiction of the juvenile court under section 300, subdivision (b), and (2) there is insufficient evidence to support the removal order under section 361, subdivision (c).

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Background

G.S. was born in July 2008 and lived most of her life in the home of her maternal grandparents, Ana C. (Ana) and Julio C. (Julio) (collectively grandparents), with mother, father and mother's sister Jessica C. (Jessica).

Father had a 2010 criminal conviction of misdemeanor possession of marijuana and a bench warrant issued for vehicular hit and run.

G.S. was physically healthy, had no known medical, developmental or behavioral problems and was current on her immunizations.

Referral and voluntary services

In October 2009, there was a prior referral to DCFS, alleging that father assaulted mother, mother was kicked out of her home because of domestic violence, father was using illegal drugs and mother was drinking daily. The allegations could not be substantiated and were therefore determined to be unfounded.

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

2 G.S.'s mother, Karla C. (mother), a party in the court below, is not a party to this appeal. We refer to mother and father collectively as parents.

On January 20, 2011, as the result of a call to the Child Abuse Hotline alleging emotional abuse of G.S. by the parents and physical abuse by father, DCFS investigated. Interviews confirmed the emotional abuse but not the physical abuse.

As a result, parents entered a voluntary maintenance agreement, mother being provided with voluntary maintenance services and father with voluntary reunification services. Mother continued living with G.S. at the home of grandparents. Father was required to live elsewhere and have monitored visitation. Because mother left G.S. for long periods with grandparents and returned home under the influence of alcohol, the voluntary maintenance agreement was invalidated.

In April 2011, continuing allegations of emotional abuse of G.S. led parents to enter another voluntary services agreement, whereby they were both given voluntary reunification services. Mother was to move out of grandparent's house, and G.S. was to remain in their care. Mother and father were to participate in parenting classes, domestic violence counseling and random drug and alcohol testing and father in a substance abuse program. They had monitored visits with G.S.

Mother visited G.S. regularly but did not enroll in the services in which she agreed to participate. She subsequently entered a substance abuse program and thereafter moved into a transitional living center. Father failed to visit G.S. consistently, attending only 10 of 21 scheduled monitored visits. But he interacted well with G.S. during those visits. He too failed to enroll in the agreed upon services.

Out of 11 toxicology tests that were scheduled, father failed to appear for two, tested positive for marijuana and alcohol on two, and tested positive for marijuana alone on the rest. He said that he used marijuana for insomnia.

Detention report

The detention report stated that mother was living with a friend, and father was living with his brother. Mother denied domestic violence and claimed the bruises she frequently received were from bumping into things or falling. She said father slapped her face and the back of her head with an open hand in the past, but only playfully. She denied that father ever hit her with a closed fist or ever hit G.S.

At an August 17, 2011 team decision meeting, it was decided that DCFS would file a section 300 petition and detain G.S. with grandparents, pending a detention hearing, because of parents' noncompliance with the voluntary maintenance agreement, continued domestic violence, and father's continued substance abuse.

The section 300 petition

On August 22, 2011, DCFS filed a section 300 petition (Petition) under subdivision (b), which, as subsequently amended, alleged that: (1) parents had a history of violent altercations resulting in bruising to mother (count b-1); (2) father had a history of substance abuse, currently used marijuana, had nine positive toxicology tests between February and August 2011, had a criminal conviction for marijuana possession in 2010, and remedial services had failed to resolve his problems, rendering father incapable of regularly caring for G.S.; and (3) mother had an unresolved history of substance abuse, rendering her periodically incapable of providing G.S. regular care (count b-3). Each of the counts alleged that the conduct endangered G.S.'s physical health and safety and placed her at risk of physical harm.[3]

The August 22, 2011 detention hearing

At the August 22, 2011 detention hearing, the juvenile court found a prima facie case that G.S. was a person within section 300, subdivisions (a) and (b). It also found that her continuing to live with the parents would create a substantial danger to her physical and emotional health, and there was no reasonable means to protect G.S. without removal. It ordered (1) temporary care for and placement of G.S. vested in the DCFS, (2) G.S. to be detained with the grandparents, (3) parents to be given monitored visitation, drug testing, parenting classes and a drug program, and (4) G.S. to receive a mental health and/or developmental assessment.

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[3] Before being amended, the Petition also contained an allegation under section 300, subdivision (a).

Jurisdiction/disposition report

DCFS prepared a jurisdiction/disposition report, which provided information obtained in interviews. Ana reported that she saw mother and father enter their bedroom when mother was pregnant and heard father screaming "bad words" at mother. Ana saw mother crying many times and saw marks and bruises on mother's arms. One time, after G.S. was born, Ana walked into the room without knocking and saw mother holding G.S. and father with raised hands as if he were about to hit mother in the face. But Ana never actually saw mother or father strike each other. At one time, mother called Ana to pick her up and told Ana that she was tired of father hitting her. Ana reported that father smoked marijuana when he was in the bedroom with G.S. at least three or four times but stopped smoking it in the home after Ana objected. Ana saw father drinking beer, but not excessively.

Mother's sister, Jessica, also observed bruises on mother's arms and heard her screaming "all the time" and fighting behind closed doors once or twice a week. Fearing that mother would try and protect father from going to jail, Jessica recorded mother saying that father hit her. When mother and father argued, Jessica took G.S., so G.S. would not get hurt. Jessica never directly observed physical violence between the parents. She saw marijuana smoke coming from father's room when father lived with them and knew father was fired from his job for smoking marijuana. In January 2011, mother told Jessica that father was drinking excessively on a daily basis.

Mother and father's version of events was quite different. Mother said that her relationship with father was very supportive and that their only problem was that her family never accepted him. She said that father would never "really hit" her. He would just pull her because she drank too much. He tried to leave when she drank, but she would not let him go. She denied that father ever struck her in the face, screamed or used profanity at her. Mother estimated that altercations between her and father occurred once a week. Mother said that father was a marijuana user before she met him, that it affected his ability to parent and that it was the reason he was fired from his job. She also said that he drank "about everyday when we could." Mother denied that father smoked

marijuana in the home or in the presence of G.S. She said that he smoked three to five times a week and drank three or four cans of beer a day and more on weekends.

Father told interviewers that he never hit or put his hands on mother and that he had never been violent. He stated that he only smoked marijuana three to four times a month with friends and never smoked it in front of G.S. or in his house. He claimed to have stopped smoking it. Father said that his conviction for marijuana possession in 2010 was when he went to court for a "fix it" ticket and they found a small amount of marijuana in his pocket which had fallen there when he was smoking marijuana with a friend.

The parents visited G.S., and the visits were going well.

October 3, 2011 Jurisdiction hearing

On October 3, 2011, at the jurisdiction hearing, mother signed a waiver of rights and entered a no contest plea to the allegations against her (count b-3). The juvenile court admitted in evidence without objection the August 22, 2011 detention report, the September 26, 2011 jurisdictional/disposition report, the September 29, 2011 last minute information, containing drug test results and the October 3, 2011 last minute information, containing a letter from mother's substance abuse program.

The juvenile court heard argument on the domestic violence and substance abuse counts against father. Afterwards, it dismissed the allegations under section 300, subdivision (a) and count b-4.[4] It sustained the allegations: in count b-1, regarding the history of violent altercations between mother and father, based upon mother's bruising, parents screaming at each other behind closed doors once or twice a week, Ana seeing father about to strike mother in the face and mother's statement to others that father had hit her; in count b-2, relating to father's marijuana use, after deleting reference to alcohol, based upon recent positive toxicology reports, father's lack of a medical marijuana card,

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4 Count b-4 alleged that mother left G.S. with Ana for an extended period of time without making arrangements for G.S.'s ongoing care and supervision, endangering G.S.'s health and safety.

his long history of marijuana use, Ana smelling marijuana smoke in the house when children were present, mother saying she was subject to secondhand marijuana smoke from father and G.S. being only three years old and unable to know to leave the room if father was smoking marijuana; and count 3 relating to mother's history of substance abuse.

December 5, 2011 disposition hearing

At the disposition hearing, the same DCFS reports admitted at the jurisdiction hearing were admitted without objection. Father's counsel argued that the DCFS had failed to meet its burden of establishing by clear and convincing evidence that returning G.S. to father would create a substantial risk of danger to her physical or emotional health. Counsel for DCFS and counsel for G.S. argued that father had failed to do anything to address his problems and should be required to complete the case plan requirements before G.S. should be returned to his custody.

The juvenile court "[found] by clear and convincing evidence, pursuant to Welfare and Institutions Code section 361(c), that there's a substantial danger, or would be if the children were returned home, to the physical health, safety, protection, or physical or emotional well-being of the child. There are no reasonable means by which the child's physical health or emotional health could be protected without removal." The court noted that while father had made a start toward completing the requirements of his case plan, he had not made enough progress given the history to justify returning G.S. to his custody. Over father's objection, it declared G.S. to be a dependent of the court, ordered that her care, custody and control be placed under the supervision of the DCFS, confirmed that DCFS had placed her with Ana, ordered monitored visitation for parents, to be liberalized within the discretion of the DCFS, and ordered that parents participate in drug and alcohol rehabilitation program with random drug testing, individual counseling and a parenting program. It also ordered father to participate in a 52-week domestic violence counseling program.

DISCUSSION

I. Sufficiency of evidence to support jurisdictional finding

A. Background

The juvenile court found that G.S. was subject to its jurisdiction because her parents had a history of domestic altercations (count b-1), father had a history of substance abuse and currently used marijuana (count b-2), and mother had an unresolved history of substance abuse (count b-3), all of which endangered G.S.

B. Contentions

Father contends that evidence of his conduct is insufficient to support juvenile court jurisdiction over G.S. under section 300, subdivision (b). He argues that there was no evidence of domestic violence at the time of the jurisdiction hearing because the parents had been living apart for at least six months, with no evidence they intended to live together again. There was also no evidence that father had any history of domestic violence with anyone other than mother or that G.S. was hurt when her parents were living together. Father also argues that there was no evidence of any substantial risk of danger to G.S. from his marijuana use. Father's contention that his conduct did not provide a basis for jurisdiction is without merit, and, in any event, jurisdiction was proper based upon mother's conduct.

C. Standard of review

The petitioner in a dependency proceeding must prove by a preponderance of evidence that the child who is the subject of the petition comes under the juvenile court's jurisdiction. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) We review jurisdictional findings under the substantial evidence standard. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574; *In re A.S.* (2011) 202 Cal.App.4th 237, 244.) Under this standard, we determine whether there is any substantial evidence, contradicted or uncontradicted, which supports the conclusion of the trier of fact. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.) All evidentiary conflicts are resolved in favor of the respondent, and where more than one inference can reasonably be deduced from the facts, we cannot substitute

our own deductions for those of the trier of fact. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

D. Substantial evidence supports the domestic violence allegation

Section 300, subdivision (b) authorizes dependency jurisdiction where a 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 or guardian to adequately supervise or protect the child. This reflects that the focus of dependency proceedings is to avert harm to the child. (*In re A.S.*, *supra,* 202 Cal.App.4th at p. 247.) Physical violence between a child's parents may support the exercise of dependency jurisdiction under the failure to protect from risk of serious harm factor, if there is evidence the violence is ongoing or likely to continue and that it placed the child physically at risk of physical harm. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194–195.)

The gravamen of father's argument here, that the evidence of domestic violence does not support jurisdiction, is that there was no showing that G.S. was at substantial risk of serious physical injury from that violence *at the time of the jurisdiction hearing*. He cites *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*), which states that "the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm." (*Rocco M.*, *supra*, at p. 824.)[5] Father argues that G.S. had not lived in a house where domestic violence was occurring for over six months, as her parents were living apart with nothing in the record to suggest that they planned to resume living together. "In short, the court had no evidence . . . of incidents occurring sufficiently close to the time of the hearing to establish that [G.S.] was at *substantial* risk of future harm."

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5 *Rocco M.* derived its views concerning the future risk requirement from case law that considered the prior statutory scheme which established jurisdiction where "'"home is an unfit place,"'" indicating an intent that the unfitness must exist at the time of the hearing. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1436.)

While *Rocco M.* states that it is the circumstances at the time of the hearing that determine jurisdiction, it did not conclude that past conduct was irrelevant to that determination, but rather that "evidence of past conduct may be probative of current conditions." (*Rocco M., supra,* 1 Cal.App.4th at p. 824.) There must be reason to believe the prior acts may continue in the future. (*Ibid*.) While the current circumstances are relevant to the issue of risk, a parent's past conduct must also be considered in determining whether the child is at risk. (See *In re S.O.* (2002) 103 Cal.App.4th 453, 461; *In re Cole C.* (2009) 174 Cal.App.4th 900, 916 [consider circumstances surrounding abuse, neglect, age and any other factors probative on whether substantial risk].) Other cases have stated that current risk of harm is not required to support the initial exercise of dependency jurisdiction, under section 300, subdivision (b). (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261 ["current risk of harm is not required to support the initial exercise of dependency jurisdiction under section 300, subdivision (b), which is satisfied by a showing the child *has suffered* or there is a substantial risk that the child will suffer, serious physical harm or abuse"]; *In re J.K.*, *supra*, 174 Cal.App.4th at p. 1435, fn. 5 ["at least with respect to section 300, subdivision (b), prior abuse and harm may be sufficient to support the *initial* exercise of jurisdiction"].)

Whether past conduct is determinative of section 300, subdivision (b) jurisdiction or simply probative evidence of the conditions at the time of the jurisdiction hearing, we conclude that the evidence here, including past conduct, was sufficient to support the juvenile court's finding that, at the time of the jurisdiction hearing, there was a substantial risk that father's prior conduct would continue in the future and subject G.S. to serious physical harm or illness.

Of paramount importance is the tender age of G.S., who was only three years old at the time of the jurisdiction hearing and just over one year old at the time of the first referral to the DCFS. In infancy, a child is unable to protect himself or herself and is at an age of greatest dependency on the parents' care and protection. "[I]nfancy [is] an inherently hazardous period of life." (*Rocco M., supra,* 1 Cal.App.4th at p. 825.) The

juvenile court is therefore justified in considering a child's age in assessing the gravity of the risk to the child from the parents' conduct.

Unlike in *Rocco M.* where the appellate court found that the past conduct was not repetitive or foreseeable, here the past conduct reflected father's personal issues that were likely to be repetitive in the future unless addressed. The record also reflects father's reticence to address those issues. There was substantial evidence of a history of past domestic violence between mother and father. Ana and Jessica heard father, both before G.S.'s birth and after, screaming profanity at mother at least once a week. Ana saw mother crying many times, and both Ana and Jessica observed bruises on mother's arms. Ana and Jessica were both told by mother that she had been hit by father, Jessica recording mother's statement, fearing that mother would deny saying it to protect father. The danger to infant G.S. was manifest, as, on one occasion, Ana walked into the room unannounced and saw father with his hands raised about to hit mother in the face, *while she was holding G.S.* Jessica reported to DCFS that she would take G.S. when parents argued, fearing that G.S. might otherwise be injured. Even mother acknowledged that father was physical with her, though trying to put an innocent spin on it. She said he hit her playfully and merely pulled her but did not hit her.

Thus, the Petition was based, not on a single, unforeseeable incident that was not likely to recur, but on an ongoing course of violent conduct between mother and father. This history of frequent violence justified the juvenile court's conclusion that domestic violence was likely to continue in the future.

Father argues that there is no risk of future domestic violence because he does not live with mother, as G.S. has lived with her grandparents for six months. Father ignores the fact that G.S. was being protected from the violence by living with the grandparents pursuant to a voluntary family reunification plan, which required father to move from the grandparents' residence. Simply because the parents were not living together at the time of the jurisdiction hearing does not ensure that they will not live together in the future. (See *In re Carlos T.* (2009) 174 Cal.App.4th 795, 806 [father's argument that there was no substantial risk of serious physical injury to his daughter because he was incarcerated

after being convicted was rejected by the appellate court, which concluded that there was a possibility that his conviction would be reversed, and he would be freed].) Here, it appears that father stopped living with mother as a condition of the initial voluntary services agreement, and it is unclear if he intends to resume living with her. Even if they do not live together again, because they are coparents to G.S., they will likely have substantial future interaction. For example, even after mother and father separated, mother asked Ana to pick her up, saying that she was tired of being hit by father.

Additionally, father was reluctant to register and participate in the required services. He failed to enroll in the services required by the voluntary services agreement. Between the time that G.S. was adjudicated a dependent of the juvenile court and the disposition hearing, a period of more than two months, he had still not made sufficient progress in following the case plan and addressing his issues to assure the juvenile court that those issues would not recur in the future.

Finally, father argues that there is no evidence that G.S. was ever physically harmed during any of the domestic violence incidents. Physical harm is not required to establish juvenile court jurisdiction. (*In re Cole C., supra,* 174 Cal.App.4th at p. 917.) "'A removal order is proper if based on proof of a parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." [Citation.] The court may consider a parent's past conduct as well as present circumstances.'" (*A.S., supra,* 202 Cal.App.4th at p. 247.)

E. Substantial evidence supports the substance abuse allegation

The dependency statutes reflect the significance of parental substance abuse as a factor in obtaining dependency jurisdiction. Section 300.2 provides that, "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (See also § 300, subd. (b) [referring to the harm to the child from "the parents'. . . mental illness, developmental disability, or *substance abuse*" (italics added)].) "We begin with a

purely legal premise, i.e., that a child's ingestion of illegal drugs constitutes 'serious physical harm' for purposes of section 300.'" (*Rocco M., supra,* 1 Cal.App.4th at p. 825.)

Father argues that there is insufficient evidence that his marijuana use created a substantial risk to G.S. because there was no showing that she had suffered any harm as a result. While mere use of medical marijuana by a parent will not render a child a dependent of the juvenile court (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 452–453 ["the mere use of marijuana by a parent will not support a finding of risk to minors"]), here there was more. Father was a substance abuser, impacting his work and his parenting. Mother reported that, though he had no medical marijuana card, father was a marijuana user before she met him and that marijuana use affected his ability to parent. He was fired from his job because of it. He had a prior conviction of possession of marijuana.

Though father's alcohol abuse was not a basis for finding juvenile court jurisdiction, his use of alcohol was often combined with his use of marijuana, thereby enhancing its deleterious effects and increasing the danger to G.S. Mother also reported that father drank three or four cans of beer a day during the week and more on weekends. Ana reported that father smoked marijuana when he was in the bedroom with G.S. on numerous occasions, as Ana saw smoke coming out from the door. She saw this occur three or four times. Father's 11 scheduled toxicology tests corroborated his use of marijuana and alcohol; two of the tests showed the presence of both substances and seven showed the presence of marijuana alone. Father failed to appear for the other two tests.

There is no assurance that father's smoking marijuana in a closed room with G.S. present did not cause physical harm to the child. In any event, appellant's constant use of that drug in G.S.'s presence created a substantial risk of physical harm, even if none had yet been experienced, and indiscriminate use in front of her, when she gets older, will convey to her that ingesting illegal drugs is acceptable behavior.

F. Jurisdiction over G.S. is proper due to mother's plea

Assuming arguendo that father's conduct was insufficient to support the juvenile court's exercise of jurisdiction over G.S. under section 300, subdivision (b), mother's admission of the allegations against her were sufficient. A single jurisdictional finding supported by substantial evidence is all that is required in order for the juvenile court to sustain a section 300 petition. (*In re I.A.*, (2011) 201 Cal.App.4th 1484, 1491 (*I.A.*) ["The court asserts jurisdiction with respect to a child when one of the statutory prerequisites listed in section 300 has been demonstrated"].) Thus, the juvenile court can obtain jurisdiction over a child based upon the actions of one parent, though the other parent is a model parent. (*Ibid.*; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; § 302, subd. (a); *In re Joshua G.* (2005) 129 Cal.App.4th 189, 202 [juvenile court has jurisdiction over the children in dependency proceedings if the actions of either parent bring the child within one of the statutory definitions].)

As explained in *I.A., supra*, 201 Cal.App.4th at pages 1491–1492: "As a result of this focus on the child, it is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300 . . . the child comes within the court's jurisdiction, ... For jurisdictional purposes, it is irrelevant which parent created those circumstances. . . . As a result, it is commonly said that a jurisdictional finding involving one parent is '"good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent."' [Citation.]"

II. Sufficiency of disposition removal order

A. Background

The juvenile court found at the disposition hearing that there would be substantial danger to G.S.'s physical health, safety, protection or physical or emotional well-being if she were returned to her parents' custody, and there was no reasonable means to protect

her physical or emotional health without removal. It ordered G.S. removed from parental custody.

B. Contention

Father contends that there was insufficient evidence to support the juvenile court's dispositional order, removing G.S. from father's custody. He argues that at monitored visits, the monitor reported that he interacted well with G.S., and the risk of domestic violence was low because he and mother were living separately. He further argues that there was no evidence as to the frequency with which he used marijuana. He also asserts that the trial court failed to consider a remedy less drastic than removal of G.S. These contentions are without merit.

C. Standard of review

We begin by observing that in dependency proceedings the burden of proof is substantially greater at the dispositional phase than it is at the jurisdictional phase if the minor is removed from his or her home. (*In re Cheryl H.* (1984) 153 Cal.App.3d 1098, 1113, disapproved on other grounds in *People v. Brown* (1994) 8 Cal.4th 746 & *People v. Raley* (1992) 2 Cal.4th 870, 893.) Disposition orders removing a child from parental custody are subject to the clear and convincing standard of proof in light of the constitutionally protected rights of parents to the care, custody and control of their children. (§ 361, subd. (c); *In re Isayah C.* (2004) 118 Cal.App.4th 684, 694.) We review dispositional findings and removal orders under the substantial evidence standard as described in part IC, *ante*. (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 574; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

D. Authority for juvenile court removal order

After the juvenile court finds a child to be within its jurisdiction, it must conduct a dispositional hearing at which it must decide where the child will live while under the court's supervision. (*In re N.M.* (2011) 197 Cal.App.4th 159, 169.) Removal of a child from the custody of his or her parents is governed by section 361, subdivision (c), which provides in part: "A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the

petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [that] [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . . [¶] . . . [¶] (d) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home. . . ."

Hence, there are two findings that must be made in order to remove a child from a parent: (1) substantial danger to the child's physical health, and (2) no less restrictive alternative means to protect the child in the home. (Cal. Juvenile Dependency Practice (Cont.Ed.Bar 2011) Disposition, §§ 5.24–5.25, pp. 328–331.) In order to avert harm to the child, "'The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate.'" (*In re N.M.*, *supra*, 197 Cal.App.4th at pp. 169–170).

E. Substantial danger to G.S.

Father makes virtually the same arguments as to the insufficiency of the evidence to support the removal order as he made in connection with the jurisdictional findings. He argues that even if we find that there was sufficient evidence to support jurisdiction, there is insufficient evidence of substantial danger to meet the heightened standard of proof required for a dispositional removal order. We conclude that the facts set forth in part ID&E, *ante*, in support of the juvenile court's jurisdictional findings also sufficient to support its removal order by clear and convincing evidence.

Father cites *In re W.O.* (1979) 88 Cal.App.3d 906 (*W.O.*), for the proposition that a remote possibility that the minors would be endangered by their present environment did not provide a sufficient basis for removing them from parental custody. The facts before us are a far cry from those in *W.O.* In that case, two infants were removed from their parent's home because cocaine and marijuana were discovered at the residence, in places not readily accessible by the children. Other than the drugs, the children were

receiving excellent care in the home, the home was well kept and adequately furnished; both parents were deeply concerned for their children and there was a warm and affectionate family relationship; witnesses testified that the parents did not appear to be under the influence. The appellate court concluded that this evidence did not support a finding that parental custody would harm the children. (*Id*. at pp. 908–909.) A remote possibility that the children might be endangered by the home environment was not sufficient to remove them from parental custody. (*Id*. at p. 911.)

In the matter before us, there is more than father's mere possession of marijuana or other drugs. Father has a history of substance abuse and began using marijuana before mother met him. There is strong evidence that father failed to protect G.S. from the negative effects of secondhand marijuana smoke, as he smoked it in a closed room with his infant child present, according to mother four to five times a week. He compounded his abuse by drinking alcohol on a daily basis, often with marijuana. He had a conviction for possession of marijuana. Moreover, father was not simply an occasional or recreational marijuana user, but a frequent user, whose parenting was adversely affected by his use.

F. Alternative means of protecting child without removal

Section 361, subdivision (d) provides that "[t]he court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . . The court shall state the facts on which the decision to remove the minor is based." The minute order of the juvenile court so stated.

Father argues that the juvenile court failed to consider alternative means of protecting G.S. without removing her from the home. The juvenile court's minute order of the disposition hearing indicates that reasonable efforts were made to prevent the need for removal. The court noted that despite alternative efforts of the DCFS before filing the Petition and detention of G.S., father continued to test positive in toxicology screens. Due to father's problems and his reticence to address them, there was no alternative that would have provided G.S. with ample security.

DISPOSITION

The orders appealed from are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ