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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.Z. et al., Persons  
Coming Under the Juvenile  
Court Law.

B272090  
(Los Angeles County  
Super. Ct. No. DK13938)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

Y.M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County. Stephen Marpet, Commissioner. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Keith Davis, Assistant County Counsel, and Julia Roberson, Deputy County Counsel, for Plaintiff and Respondent.

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Defendant and appellant Y.M. (Mother) appeals both the juvenile court's jurisdictional order sustaining a Welfare and Institutions Code, section 300, subdivision (b)<sup>1</sup> petition as to her six-year-old daughter and four-year-old son as well as the court's disposition order removing the children from her care. Mother argues not only that the juvenile court's orders are not supported by substantial evidence but also that the court acted in excess of its jurisdiction when it removed the children from her care. We disagree and affirm.

## **BACKGROUND**

### **1. Mother's Prior Hospitalizations**

Mother has a history of hospitalization due to her mental illness. Sometime in 2014 (the record is not clear on the exact date), Mother was hospitalized and learned for the first time that she had a mental illness. She was in the hospital for about two weeks because she was hearing and seeing things. Mother began taking prescribed medication and seeing a psychiatrist and a therapist. By mid-2014, however, Mother stopped taking her medication and stopped seeing her doctor and therapist because she felt better. She did well through the end of the year.

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

By early 2015, however, Mother began exhibiting strange behavior, including not sleeping or eating, pacing back and forth, and staring blankly. In July 2015, Mother attempted suicide by walking out of a store, where she had been with her two children and their father (Father), and into traffic. Father called 911 and Mother was hospitalized for a week. Upon discharge, she was given medication, but only enough to last a couple of weeks.

On September 20, 2015, Mother again attempted suicide while with the children. After getting in an argument with Father, Mother went into the bathroom. When she came out, she looked drowsy and was stumbling and losing consciousness. Father called 911 and Mother was taken to the hospital, where she stayed for about four days. Mother was discharged from the hospital on a Friday, was again prescribed medication, and had appointments first with a therapist and then a psychiatrist the following week.

Mother appeared for her appointments the following week. Notes from those appointments indicate Mother was “irritable, anxious, and dysphoric” and “sad, constricted, and worried.” Mother reported having auditory hallucinations, paranoia, trouble sleeping, and memory problems. She indicated her symptoms had worsened over the past week. She was prescribed antipsychotics and antidepressants, and advised to continue with therapy.

## **2. Mother’s Most Recent Hospitalization**

It is unclear why, but within a day of her therapist and psychiatrist appointments, Mother again was admitted to the hospital. This time, however, her family was unaware of her hospitalization and a missing person’s report was filed.

Around the same time, on September 30, 2015, the Los Angeles County Department of Children and Family Services (Department) received a referral about the family. The referral indicated Father had become physical on separate occasions with both Mother and maternal grandmother in the presence of the children. The referral also stated Mother had mental health issues, including schizophrenia. According to the referral, Mother had been missing for 24 hours and Father had filed a missing person's report, although Father claims maternal grandmother filed the report. It appears maternal grandmother prompted the referral to the Department and that parts of it, namely, Father's physical abuse of Mother and maternal grandmother, were not corroborated or were later denied.

Police eventually located Mother in the hospital and she was discharged later the same week. She was prescribed medication and appeared to be taking it according to her doctor's orders.

In early October 2015, following her discharge from the hospital, Mother was interviewed by Department social workers. Mother explained she was currently seeing a therapist and a psychiatrist, and taking medication to treat her illness. During the interview, she appeared "dazed, tired and drowsy." Mother indicated she did not "feel ready to be myself with the kids," although she felt fine to be with the children as long as she was not alone with them. She explained Father was taking care of the children while she sought help for her mental illness. Father was also helping her manage her mental illness. She stated she attempted suicide only once, when she ingested pills a month or so before.

Mother also denied any domestic abuse by Father. She indicated he pushed her once during an argument in 2012, but no physical altercations had occurred since then. She did not see any altercation between Father and maternal grandmother, and Father told her the claims were not true.

A few days later, Mother was interviewed again. She seemed more coherent, although still a bit slow. She indicated she had been taking her medication as prescribed and had attended her scheduled therapist appointment that day. She stated that, after previous hospitalizations, she had stopped seeing her therapist and had stopped taking her medicine because she thought she was better.

The Department also interviewed Father, who confirmed that Mother had a mental illness and twice had attempted suicide. Although Father and Mother were no longer in a relationship, Father explained Mother was living with him and the children because of her mental health issues and because he knew she wanted to see the children. However, he was taking care of the children and would not allow Mother to be alone with them for fear she might try to commit suicide again while with them. When Father was working, a friend would pick up the children from school and care for them until Father was able to bring them home. Father admitted that he and maternal grandmother did not get along. But he denied any domestic abuse or ever harming or threatening to harm his children.

It appears that, after the interview, Father asked Mother to move out and live with maternal grandmother because he believed that would be better for Mother's health. Father said she could still visit with the children after school.

The Department also interviewed paternal grandfather, who denied any domestic abuse problems between Father and Mother, and believed Mother was a good mother. His only concern was whether Mother would continue taking her medication as prescribed. Paternal grandfather confirmed that Father would not leave the children alone with Mother. In another interview, Father's friend Ana, who sometimes picked up the children from school, similarly stated that Father instructed her not to allow Mother to be alone with the children or to take the children from Ana's home. Because Mother was also friends with Ana, Father allowed Mother to visit the children while at Ana's home, but never alone. Ana also stated she knew of no domestic abuse problems between Mother and Father and had no concerns about the family.

Maternal grandmother was also interviewed. At the time, she was housing and caring for Mother. Maternal grandmother did not have a warm relationship with Father or his family, but she denied there being any domestic violence problems between Father and Mother. She stated her ex-husband suffered from schizophrenia and all of their children had been diagnosed with a mental health condition. Maternal grandmother did not believe Mother should be in a relationship with Father because she thought it was "not healthy." She reported that all her children developed their mental health conditions after falling in love.

A Department social worker also spoke with Father's brother (paternal uncle), who had lived on and off with Father and Mother for a couple of years. He had no concerns about Father or the children. He was worried about Mother, especially when not taking her medication. He reported that, after Mother would visit maternal grandmother, Mother would act "different"

and, in particular, would talk about taking the children away from Father. Paternal uncle believed Mother's family was "always trying to cause problems."

Mother's psychiatrist was also interviewed in early October 2015. Although at the time she had seen Mother only once, she indicated Mother was "not mentally stable" and "cannot stay with the kids" because she could "be a risk" to the children.

### **3. Dependency Proceedings**

On October 21, 2015, and based on the information outlined above, the Department filed a dependency petition. The petition included one count, alleging Mother's mental and emotional problems made her unable to care for her two children and seeking jurisdiction over the children under section 300, subdivision (b). Father was not named in the petition. The Department recommended the children be removed from Mother and remain with Father under Department supervision. At the detention hearing that same day, the juvenile court ordered the two children detained from Mother and released to Father. Mother was given monitored visits with the children.

About two and a half months later, on January 5, 2016, the Department filed a jurisdiction/disposition report. The Department reported the children were living with Father and appeared well cared for. In further interviews with the Department, Mother indicated she was taking her medication daily and said, if necessary for her safety and that of her children, she would do so for the rest of her life. She felt she could be unmonitored with her children. Father discussed Mother's past hospitalizations and how he has tried to help her as much as he can. He said he did not "have anger towards her" and would let her see and talk with the children when she wants.

He stated she is “a great mother” but when she is not taking her medication, she is “not capable at all.” Both Mother and Father appeared committed to their children.

Mother’s psychiatrist indicated Mother was “doing very well in treatment.” Although when she first met with Mother months before, the psychiatrist believed Mother was incapable of caring for her children, by January 2016, the psychiatrist “believe[d] mother is capable of caring for her children.” Similarly, Mother’s therapist stated Mother had “shown remarkable progress.” Mother was taking her medication and had never missed an appointment. The therapist believed Mother “would be fine” caring for her children.

After having conducted these further interviews, the Department considered the children’s future safety risk to be “high.” The Department recommended Mother receive family reunification services and Father receive family maintenance enhancement services.

By the end of January 2016, the Department again reported Mother continued to take her medication as prescribed. The children remained in Father’s care and Mother’s visits with the children were going well. The Department indicated there were no concerns with respect to the children’s safety while with Father. The Department recommended that the juvenile court sustain the petition, terminate jurisdiction, and order sole physical custody to Father, with joint legal custody to both parents and monitored visits for Mother.

On April 1, 2016, the Department reported Mother’s visits with the children continued to go well. Mother’s therapist again reported “no issues or concerns.” The Department had “no issues or concerns regarding the children and their father.” And, Father



felt things were “back to normal.” Father stated that because of his work schedule, Mother had been caring for the children more, although it was unclear whether she was alone with the children. The Department recommended overnight visits for Mother at maternal grandmother’s house.

On April 4, 2016, the juvenile court held the adjudication and disposition hearing. At the hearing, the Department recommended that the court sustain the petition, then close the case with a family law order. The Department argued that because Mother’s mental stability was “very new,” the juvenile court should enter a family law order so that Father would “more clearly be able to protect the children.” Counsel for the children agreed, stating, “Even though Mother is doing fairly well, she has had ongoing episodes, as far as her medication. The occurrence and incidents that occurred were frequently in front of the children and involved the children so I am joining with the Department.” Mother’s counsel, however, urged the court to dismiss the petition, arguing there was “no current risk to these children.” Counsel noted that six months had passed since the detention hearing and that Mother acknowledged, and had been successfully addressing, her mental health issue. Counsel also highlighted Mother’s therapist’s comments that Mother had made “remarkable progress” and “will be fine” caring for the children.

The juvenile court sustained the petition, finding there was “ample evidence” to support it. The court stated it was “clear [Mother] has a mental health issue and, today, she’s dealing with it medically, taking her medications. The issue is what do we look to that crystal ball in the future. She has a problem, it’s not going away. So, as long as she takes her medication, I’m sure

that she's going to be a productive citizen. The problem is, she has a history of going on, going off and when she's off, there's a big problem."

The court ordered the children removed from Mother and placed in Father's home. The court ordered sole physical and legal custody to Father, with Mother to have reasonable monitored visits, including overnight monitored visits, and terminated jurisdiction. The court explained that, if after at least six months Mother was still taking her prescribed medication, she could proceed in family court to apply for more visitation.

On April 4, 2016, Mother appealed.

On April 11, 2016, the juvenile court entered a final custody order giving Father sole physical and legal custody of the children and ordering monitored visits for Mother, including monitored overnight visits at maternal grandmother's home.

## **DISCUSSION**

### **1. Appealability**

As Mother correctly explains, her notice of appeal is premature. Mother filed her notice of appeal on April 4, 2016, but the juvenile court's final custody order was not filed until April 11, 2016.

We treat Mother's premature appeal as having been taken from the subsequently entered final custody order and review her appeal on the merits. (Cal. Rules of Court, rule 8.406(d) ["notice of appeal is premature if filed before the judgment is rendered or the order is made, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order"].)

## **2. Jurisdiction**

The first issue we address is Mother's claim that the juvenile court erred in sustaining the section 300 petition.

### **a. Applicable Law**

We review the juvenile court's jurisdictional findings for substantial evidence. "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 Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if "[t]he 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, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

Thus, as the parties correctly agree, a "jurisdictional finding under section 300, subdivision (b) requires:

'“(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.”

[Citation.]’ [Citations.] The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g.,

evidence showing a substantial risk that past physical harm will reoccur.’ ” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

“Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citation.] The court may consider past events in deciding whether a child presently needs the court’s protection. [Citation.] 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 Christopher R., supra*, 225 Cal.App.4th at pp. 1215–1216.)

Section 300, subdivision (b) jurisdiction “is proper when a 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 Christopher R., supra*, 225 Cal.App.4th at p. 1216.)

**b. Sufficiency of the Evidence**

We conclude substantial evidence supports the juvenile court’s jurisdictional finding.

Mother argues that the juvenile court may neither exercise dependency jurisdiction based solely on a parent’s mental illness nor speculate as to how a parent’s mental illness might place a child at risk. While those are valid points, the juvenile court here did neither. First, the evidence revealed not only Mother’s mental illness, but also the undisputed fact that, when Mother was not taking her prescribed medication, she was unable to care for her young children. It was also undisputed that, prior to her most recent hospitalization, Mother had a history of stopping her medication when she decided she felt better.

Second, although there was no evidence that the children suffered any actual physical harm as a result of Mother's mental illness, the juvenile court did not need to speculate as to a perceived risk of harm here. Courts have found dependency jurisdiction when a parent is unable to supervise and care for children of "tender years." "[T]he absence of adequate supervision and care [of children of tender years] poses an inherent risk to their physical health and safety." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824; see also *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1220.) Throughout the proceedings below, Mother's children were of "tender years"—her daughter was six years old and her son was four years old. (See *id.* at p. 1219 [noting children six years old or younger were of tender years].) This coupled with Mother's history of stopping her medication and her inability to care for the children when off her medication amply supports the juvenile court's jurisdictional finding.

Thus, although by all accounts at the time of the jurisdiction hearing in April 2016 Mother had been taking her medication and was doing well, the juvenile court nonetheless was presented with a parent who was not only mentally ill, but who also indisputably was unable to care for her children of tender years when she was not taking her prescribed medication and who had a history of stopping her medication when she felt better. We conclude this to be substantial evidence supporting the court's jurisdictional finding.

Mother relies heavily on this division's decision in *In re A.G.* (2013) 220 Cal.App.4th 675. Although factually similar to the instant case, *In re A.G.* is different in an important respect. In that case, as here, the mother had a history of mental illness

that greatly impeded her ability to care for her children. The mother there had been hospitalized multiple times as a result of her mental illness, had been prescribed medication, and had stopped taking her medication. (*Id.* at pp. 677–680.) Also similar to the instant case, the father in *In re A.G.* dutifully and appropriately cared for the children, who had suffered no physical harm as a result of their mother’s mental illness. (*Ibid.*) Unlike the instant case, however, at the time the dependency petition was filed in *In re A.G.*, the parents were involved in divorce proceedings before the family court. (*Id.* at p. 678.)

The juvenile court in *In re A.G.* exercised dependency jurisdiction over the children and entered an order removing them from their mother and granting their father sole physical and legal custody. (*In re A.G.*, *supra*, 220 Cal.App.4th at pp. 681–682.) The court stated, “I now find by clear and convincing evidence substantial danger exists to the [minors], and there is no reasonable means to protect them without removing them from [Mother’s] custody.” (*Id.* at p. 682.) The juvenile court terminated its jurisdiction because there was no evidence the minors were at risk in their father’s custody. (*Ibid.*) The final custody order was filed in family court. (*Ibid.*)

Just as here, the mother in *In re A.G.* appealed the juvenile court’s jurisdictional finding and dispositional orders. This division reversed, stating: “We conclude that the court erred in sustaining a petition that alleged only that Mother is mentally ill and is unable to care for the minors where Father has always been, and is, capable of properly caring for them. [¶] . . . Although the evidence supported the finding that Mother was unable to provide regular care for the minors due to her mental illness, Father has shown remarkable dedication to the minors

and that he is able to protect them from any harm from Mother's mental illness. Father ensured that there was adult supervision, other than Mother, of the minors at all times. Father or the nanny was the minors' primary caregiver, while Mother usually stayed in her room. As stated, Mother had been left alone with the minors on one occasion, and no harm to them had been reported. Father slept in the bedroom with the minors and kept the door locked pursuant to the advice of the in-home counselor and temporarily moved out of the house with the minors to protect them from Mother." (*In re A.G.*, *supra*, 220 Cal.App.4th at pp. 683–684.) In the end, this division remanded the matter to the family court, explaining that "matters such as this one belong in family court, where it ultimately ended up after the juvenile court determined the minors were not at risk in Father's custody and awarded Father custody and Mother monitored visitation." (*Id.* at p. 686.)

In contrast, here, there was no family court matter proceeding simultaneously with the juvenile court proceedings. Thus, as the Department points out in its brief, unlike in *In re A.G.*, Father could not utilize any pending family court proceedings to seek full custody of the children here. Rather, the juvenile court—with its mandate to protect the best interests of the children—was the only court addressing this particular case. We conclude this procedural difference brings the instant case outside the ambit of *In re A.G.*

### **3. Removal**

We next address Mother's claim that the juvenile court erred in ordering her children removed from her custody.

**a. Statutory Interpretation**

With respect to the juvenile court's removal order, Mother first argues the court acted in excess of its jurisdiction when it removed the children from her care. Our recent decision in *In re Michael S.* (2016) 3 Cal.App.5th 977 forecloses Mother's argument. There, in affirming the juvenile court's order removing the minor from his father's physical custody, we rejected the same argument Mother makes here. Specifically, we held the juvenile court was not statutorily precluded from removing the minor "from just one 'custodial parent.'" (*Id.* at p. 980.)<sup>2</sup> For the same reasons stated in *In re Michael S.*, we are not persuaded by Mother's statutory interpretation argument here.

**b. Sufficiency of the Evidence**

In addition to her statutory interpretation argument, Mother also argues we must reverse the juvenile court's removal order because it is not supported by substantial evidence. As with the juvenile court's jurisdictional findings, we review the juvenile court's dispositional removal order under the substantial evidence standard of review. (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.)

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<sup>2</sup> Mother did not and could not discuss *In re Michael S.* in her opening brief on appeal because that decision was filed one month after she filed her brief. Mother addressed the decision in her reply brief, however, where she appears to concede its applicability here. Nonetheless, Mother argues her position is not foreclosed because, unlike the appellant in *In re Michael S.*, she also challenges the sufficiency of the evidence to support the juvenile court's removal order, which we discuss in the following section.



Section 361, subdivision (c)(1) permits the juvenile court to order a minor removed from his or her parent if the court finds by clear and convincing evidence that the minor is, or would be, at substantial risk of harm if returned home and there are no reasonable means by which the minor can be protected without removal. The court’s “ ‘jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. [Citation.]” [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.” ’ ” (*In re A.F.* (2016) 3 Cal.App.5th 283, 292.)

The whole of Mother’s substantial evidence argument is that “by the time of the dispositional hearing in March [*sic*] 2016, [Mother] presented no risk to the minors as she was not living in the family home and had stabilized her mental health symptoms.” These are two of the same points Mother makes in support of her jurisdiction argument, which we rejected above. For the same reasons we conclude substantial evidence supported the court’s jurisdictional finding, we conclude substantial evidence supports the court’s removal order.

**DISPOSITION**

The orders are affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.