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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B275899  
(Los Angeles County  
Super. Ct. No. DK15244)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KELLY M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los  
Angeles County, Marguerite D. Downing, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal,  
for Defendant and Appellant.

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

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On appeal, mother challenges the juvenile court’s jurisdictional and dispositional order. (Father is not a party to this appeal.) Mother argues that she had rectified all of the concerns underlying the Welfare and Institutions Code section 300 petition prior to the jurisdictional hearing.<sup>1</sup> She also argues that the juvenile court should not have removed her three children from her custody or ordered her to take 10 random drug tests. We find no error and affirm.

### **BACKGROUND**

“The basic question under section 300 is whether circumstances at the time of the [jurisdictional] hearing subject the minor to the defined risk of harm.’” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022; but see *In re J.K.* (2009) 174 Cal.App.4th 1426, 1435.) We review the juvenile court’s finding to determine if they are supported by substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Mother’s challenge to jurisdiction is based principally on her claim that she rectified any risk to her children prior to the jurisdictional hearing. We therefore summarize mother’s attempts to ameliorate the circumstances underlying the juvenile court’s assumption of jurisdiction.

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<sup>1</sup> Undesignated statutory citations are to the Welfare and Institutions Code.

## **1. Jurisdiction**

On January 22, 2016, the Los Angeles County Department of Children and Family Services (DCFS) filed a section 300 petition seeking juvenile court jurisdiction over mother and father's three children, J.M. (age 4); K.M. (age 3) and Jn.M. (age 1). The juvenile court subsequently sustained the following allegations: Parents created an endangering home by possessing 100 marijuana plants, a loaded handgun, and ammunition. Father used marijuana, rendering him incapable of caring for the children and mother knew of father's drug use.

On January 19, 2016, deputy sheriffs raided the family home and found marijuana plants in a back shed as well as an ounce of marijuana inside the bedroom shared by parents and children and easily accessible to the children. Deputy sheriffs also found a handgun and ammunition easily accessible to the children. (Father stated that the handgun was accessible only because he had thought that the deputy sheriffs were attempting to rob him.) The shed, located in the back of parents' house, had nonconforming electric wires posing a fire hazard. Father's other businesses were described as "fronts" to launder money earned by selling marijuana. Father was cultivating marijuana in additional locations with over 350 marijuana plants in three locations. Deputy sheriffs seized over \$4,000 from the family home.

According to the deputy sheriffs, the children were exposed to numerous dangers. Mother and father illegally cultivated marijuana; there was an increased risk of an electrical fire; the home was at risk of being robbed by other drug dealers; a gun and bullets were found in a location accessible to the children; and marijuana was found in a location accessible to the children.

Deputy sheriffs reported that Southern California Edison was the victim of substantial electrical theft at one of the residences associated with father's marijuana cultivation.

Mother and father were arrested for child cruelty.

A social worker who visited mother and father's home, noticed a strong odor of marijuana throughout the home and extending to the driveway. Mother reported that father abused marijuana and that he had used marijuana when he was responsible for the children. Both mother and father believed that their "marijuana business" was legal. Mother denied any recent marijuana use.

Father acknowledged using marijuana medicinally, but denied being responsible for the children when he used marijuana. Father told a deputy sheriff that he smoked at least an ounce of marijuana daily and also ate edibles made from marijuana. Father reported that the marijuana in the shed (about 100 plants) was all for his and mother's personal use.

Both mother and father had physicians' statements indicating that marijuana was used as treatment for a medical condition. Mother tested negatively for cannabinoids two times, and father tested negative once.

## **2. Mother's Efforts to Ameliorate the Circumstances Leading to Jurisdiction**

When she was first interviewed by DCFS, mother was willing to relocate in order to protect her children. Mother also appeared willing to stop growing marijuana. In the jurisdictional report, DCFS indicated that the children had family support and were bonded with their parents.

DCFS reported that mother and father visited the children daily, and that there were no concerns with the visits. Mother

completed a parenting program and attended individual counseling. She enrolled in a 10-week couples education program. By February 15, 2016, mother completed 10 hours of parenting classes and eight hours of individual psychotherapy.

A March 8, 2016 report of the multidisciplinary assessment team indicated that mother and father found a new family home. Mother and father acknowledged that they used poor judgment. Mother and father reported that they had “taken all necessary steps to correct the issue.” While mother and father identified the biggest challenge as being apart from their children, the assessor identified the pending criminal charges as an ongoing challenge.

### **3. Hearing and Order**

Neither mother nor father testified at the March 22, 2016 jurisdictional hearing. Mother’s counsel argued that mother believed the marijuana cultivation was legal. Counsel argued the children were closely supervised and did not enter the shed containing the marijuana plants. Counsel argued that mother home-schooled the children and made sure that all of their needs were met. Counsel pointed out that mother had secured a new residence for the children and that mother was a wonderful parent. Counsel emphasized that mother enrolled in individual counseling and completed a parenting class.

The court took jurisdiction over the children. The court indicated it was not considering the legality of the marijuana cultivation but the risk to the children. The court concluded that possession of a firearm, selling marijuana, and the nonconforming wiring all posed a risk to the children. The court indicated that mother and father have stopped growing marijuana because law enforcement intervened, “but I have not

seen any growth from the people that got arrested two months ago. And the people that are sitting here before me and going to some parenting classes . . . [r]ight now is not really enough for this court.”

The court removed the children from parents, ordered both parents to randomly drug test 10 times, and ordered mother and father to attend a 24-week parenting class. The court granted DCFS discretion whether to credit mother for the 10 parenting classes already taken. The court ordered individual counseling and a substance abuse awareness program.

On October 4, 2016, the court returned the children to the parents’ home. The court found both mother and father were in compliance with the case plan.

## **DISCUSSION**

### **1. Jurisdiction**

Mother argues that “[w]hile the parents had made a big mistake by cultivating marijuana on the same property where they lived with their children, the parents immediately realized their error and found a new residence. By the time of the trial, the risk to the children had evaporated . . . .”

Cultivating marijuana on the property with their family home, having marijuana accessible to the children, using faulty wiring to grow the marijuana plants, and having a firearm accessible to the children all posed a substantial danger to the children. That evidence is well supported.

The juvenile court was not required to credit mother’s statement that she and father had taken all necessary steps to correct the issue. First, the record does not explain what they considered “the issue” when they reported that they had taken all necessary steps. Although mother enrolled in a parenting class

and individual counseling prior to the jurisdictional hearing, there was no evidence of what mother learned from these pursuits. She did not testify at the hearing or otherwise provide evidence of growth. The abundant evidence of a close bond between mother and her children did not show that mother would protect her children from the consequences of marijuana production or father's abuse of marijuana.

In her reply brief, mother argues there was no evidence father abused marijuana. But the record shows otherwise. Mother reported that "father is an abuser of marijuana and uses frequently." Mother also reported that "father does watch the children while he is under the influence of marijuana." Applying the substantial evidence standard of review, the evidence supported the juvenile court's jurisdictional finding. (*In re D.C.* (2015) 243 Cal.App.4th 41, 51 [" "[W]e review the record in the light most favorable to the court's determinations . . . ' ' ' " ].)

## **2. Disposition**

Mother argues that the dispositional order removing the children from her care was an abuse of discretion. She argues "[t]he court's order removing these children from Mother's custody was not supported by substantial evidence and must be reversed. Accordingly, custody must be returned to Mother." As custody has already been returned to mother, this issue is moot. There is no effectual relief this court can grant mother even if the juvenile court erred in removing the children from her care. (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 120; *In re Jesse C.* (1989) 215 Cal.App.3d 1384, 1388.) Mother has been awarded custody, and the removal of the children from her care is not the basis of any order adverse to her. (*In re N.S.* (2016) 245 Cal.App.4th 53, 60.) Mother's argument that the removal

continues to affect her rights is not persuasive because she fails to provide any support for it or to show how it could affect the outcome in a future dependency proceeding.

Mother also argues the court's dispositional order was an abuse of discretion because it ordered her to submit to random drug testing. We disagree.

“The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.) “At disposition, the juvenile court is not limited to the content of the sustained petition when it considers what dispositional orders would be in the best interests of the children.” (*Ibid.*) The court may consider all of the evidence. (*Ibid.*)

Father reported that the 100 marijuana plants were for his and mother's personal use. In light of the evidence of mother's marijuana use and her cavalier attitude of allowing father to care for the children while under the influence, the 10 random tests were within the juvenile court's discretion. Mother fails to show the juvenile court abused its discretion in requiring her to submit to 10 random drug tests.<sup>2</sup> (See *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008.)

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<sup>2</sup> Respondent's motion to dismiss the entire appeal on the ground that it is moot is denied. An order dated April 4, 2017, of which we take judicial notice, indicates that the juvenile court has terminated jurisdiction. Nevertheless, the jurisdictional order challenged on appeal could have consequences in future family law or dependency proceedings. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716; but see *In re N.S.*, *supra*, 245 Cal.App.4th at pp. 60-63.) Additionally, if the jurisdictional order were



**DISPOSITION**

The jurisdictional and dispositional order is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

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reversed, the dispositional and all subsequent orders would be moot. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 392.)