Filed 4/30/15 In re David P. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re DAVID P., a Person Coming Under the Juvenile Court Law.	B259286 (Los Angeles County Super. Ct. No. CK74972)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. TRACY S., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Tony L. Richardson, Judge. Affirmed.

Johanna R. Shargel, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

Minor David P. (born in July 2014) was adjudged a dependent of the juvenile court pursuant to a petition alleged under Welfare and Institutions Code section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling).[1] Tracy S. (Mother) appeals from the court's September 25 and 26, 2014 jurisdictional and dispositional orders, contending that substantial evidence did not support the court's findings under the allegations of paragraph b-2 of the petition that David was at substantial risk of serious physical harm due to Mother's neglectful conduct in failing to strap then one-month-old David into his stroller, resulting in his falling and sustaining bilateral skull fractures. Mother does not challenge the court's jurisdictional findings sustaining the allegations of paragraphs b-1 and j-1 of the petition that Mother's mental health condition, if left untreated, rendered her incapable of providing regular care for David.

Mother also contends that substantial evidence did not support the dispositional order removing David from Mother's care.[2] We conclude that the juvenile court's jurisdictional and dispositional orders were supported by substantial evidence and affirm.

BACKGROUND

The section 300 petitions

On August 15, 2014, the Department of Children and Family Services (DCFS) filed a nondetained section 300 petition with respect to David P. On September 18, 2014, DCFS filed the operative first amended petition. As amended and sustained, the first amended petition alleged in paragraphs b-1 and j-1 that Mother's mental health condition, if left untreated, rendered her incapable of providing regular care for David. At that time, sibling Shane I., Jr. (Shane Jr.) (born in 2008), had already received permanent placement services, and sibling Justin O. (born in 2013) was a dependent of the juvenile court due to Mother's mental health condition.[3] As amended and sustained, paragraph b-2 alleged

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

[2] Victor P. (Father) is not a party to this appeal.

[3] We note that Shane Jr. is sometimes referred to as Shawn in the record. Additionally, we note that the paragraph j-1 allegation varies slightly from the amended and sustained paragraph b-1 allegation, although the paragraph j-1 allegation refers the

that on August 23, 2014, due to Mother's failure to fasten David P. securely into his stroller, he fell onto concrete stairs and sustained skull fractures, for which Mother failed to obtain immediate medical treatment and had to be instructed to do so. As amended and sustained, paragraph b-3 alleged that Father had an unresolved history of substance abuse, including abuse of methamphetamine.

Events leading up to the jurisdictional and dispositional hearing

Removal of David's older siblings

DCFS made several reports to the juvenile court, which we now summarize. In October 2008, Shane Jr. was removed from Mother's home after DCFS received a referral that Mother and Shane I. (Shane Jr.'s father) neglected him. Mother had been unable to follow doctor's instructions with respect to Shane Jr.'s feeding and care. Mother stated that she wanted him removed because she was unable to "'handle him.'" Shane Jr. was declared a dependent of the juvenile court in February 2009 based on Mother's and Shane I.'s mental and emotional problems and Shane I.'s drug abuse. Mother and Shane I. failed to reunify with Shane Jr. and parental rights were terminated in September 2010. Shane Jr. was adopted by Mother's former foster mother, Valerie M., in January 2011.

In May 2013, Justin O. was removed from the care of Mother and his father, Antonio O., on the basis of general neglect and caretaker absence. When DCFS initially investigated the allegation of neglect, Mother denied having other children. Justin was declared a dependent of the court in April 2014 based on Mother's mental condition and failure to take her psychotropic medication, as well as Antonio's having mental and emotional problems and being required to register as a sex offender. Mother was receiving family reunification services with respect to Justin at the time dependency

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reader to the amended and sustained paragraph b-1 allegation. The paragraph j-1 allegation refers to Mother's "unresolved history of mental and emotional problems including a diagnosis of Bi-Polar Disorder, which renders the mother incapable of providing the child with regular care and supervision" and Mother's failure to participate regularly in court-ordered mental health counseling and treatment.

proceedings were initiated on David's behalf. She "only began visiting [Justin] after she became pregnant [with David]." Previously, she had shown no interest in him.

The referral involving David

The current dependency matter came to the attention of DCFS in July 2014, when it received a referral two days after Mother had given birth to David. A hospital social worker reported that Mother appeared to have developmental issues. Although Mother "appear[ed] to be a good mother and cares for the baby appropriately," there were concerns about her ability to care for him, as well as her failure to comply with court orders with respect to parenting classes for Justin. Mother claimed that a doctor had recently determined that Mother did not need medication for her mental health. She could not remember the doctor's name and did not have his telephone number. Mother then gave the name of a doctor, but could not remember what medication she was taking and why. At that time, Father was incarcerated for "drugs, theft, and police obstruction," after having been in and out of jail.

On July 31, 2014, at a team decision-making meeting, Mother agreed to a safety plan. Under the safety plan, DCFS filed the nondetained section 300 petition on August 15, 2014, and David continued to reside with Mother. Mother agreed to continue to attend parenting class, work with her service providers, meet with her mental health specialist, and follow medication recommendations.

At the initial court hearing on August 15, 2014, the juvenile court ordered that David remain released to Mother on the condition she reside with paternal grandparents and take her medication as prescribed. The court ordered DCFS to refer Mother to interactive parenting classes and to provide family maintenance services.

The ex parte application

On August 27, 2014, DCFS filed an ex parte application, requesting that the juvenile court vacate its order releasing David to Mother and order that David be detained. The application arose out of the following events.

On August 23, 2014, Mother brought David to the emergency room. David was found to have sustained bilateral skull fractures, which were not consistent with Mother's

explanation that he had merely bumped his head on a rail when she lost her footing at home while she carried him down the stairs in the stroller car seat. A CT scan showed left and right parietal fractures and intracranial bleeding. The doctor believed that the trauma was sustained "non-accidental[ly]."

Mother subsequently related inconsistent stories, claiming to one doctor that David had been injured while she had been climbing up the stairs, and to other staff that David was injured at the hospital when Mother brought him to see a friend at the hospital's birthing center. She claimed that David had not been strapped into his car seat on top of the stroller and "tumbled" down the steps at the birthing center. Staff at the birthing center had to instruct Mother to take David to the emergency room.

Mother told DCFS that she had started her parenting classes, but had not yet had a psychiatric evaluation. She said she was not taking psychotropic medication because she was breast-feeding, and her doctor had told her she could resume taking medication after David was about six months old.

On August 24, 2014, David's physician reiterated that David had sustained non-accidental trauma and Mother had given inconsistent stories on how David got injured. A public safety officer reported to DCFS that he saw Mother lift the stroller up three steps at the entrance to the birthing center, even though there was a ramp near the stairs. He did not see David fall or see a car seat. He came out of the office to assist Mother. She was holding David, who started to cry after about 15 seconds. The officer said a video of the incident would be provided to law enforcement. The video showed that David's injury did not result from an accident in the home as Mother first reported, but instead was the product of David's not having been strapped into his stroller when Mother climbed up the stairs at the birthing center.

On August 24, 2014, Valerie reported to DCFS that Mother had been diagnosed with bipolar disorder and ADHD, and had been on and off medication. Mother told Valerie that David had fallen when she had climbed up the stairs to see a friend at the birthing center and that he had not been strapped into his car seat.

On August 25, 2014, DCFS spoke to Lisa Roberts, Mother's life coach from an organization called ROADS, a private program for people diagnosed with mental health problems. Roberts had known Mother for about three to four months and saw her two to three times a month. Roberts reported that although Mother was diagnosed with major depressive disorder, she was not currently on medication. Mother told Roberts that David fell while at home.

The August 27, 2014 detention hearing and filing of the amended section 300 petition

At the detention hearing on August 27, 2014, the juvenile court ordered David detained from Mother's custody and that Mother's visits be supervised. After David was released from the hospital, he was placed in Valerie's home.

On September 18, 2014, DCFS filed the first amended section 300 petition.

Reports prior to the jurisdictional and dispositional hearings

DCFS prepared reports for the jurisdictional and dispositional hearings, which are summarized below.

On September 9, 2014, Mother was interviewed by DCFS. Valerie and Shane Jr. were present. Mother told DCFS that she had been diagnosed with PTSD and "'Anxiety,'" and that she was not taking medication because she was still breast-feeding. She recounted that once she had been involuntarily hospitalized when she was 18 years old and in a bad situation with her first boyfriend, who smoked marijuana and drank alcohol. She said that she had started attending counseling the previous week in order to reunify with Justin.

Mother stated that her doctor diagnosed her as bipolar only so that she could get services from a mental health clinic. She denied that Justin had been removed from her custody, and claimed that he had been removed from paternal grandmother because the grandmother did not take him to the doctor. Mother denied that Shane Jr. had been removed from her custody because of her mental health issues and maintained that she had done all she could for Shane Jr., but DCFS still took him away. She said she did not reunify with him because she "'didn't have a place to go.'" Mother stated that "her

thought process is slow and that she is easily frustrated." She denied that her mental health problems hindered her ability to care for her children.

Mother explained that she did not see the ramp leading up to the birthing center because she was "'prescribed prescription glasses.'" Valerie reminded Mother that the ramp was not visible to Mother from the direction she was approaching. Mother then stated, "'I didn't see the ramp.'" Mother's friend at the birthing center noticed "'the bumps'" on David's head and told her to take him to the emergency room. Mother said that she saw only one of the bumps and she did not immediately take David to the emergency room after he fell because "'she didn't know what to do.'" She said this was the "'first time having my kids long enough so that's why I asked what I should do. I asked for help.'"

She explained that she had given different accounts about how David was injured because "'I was scared because I had a history of neglect with [Shane Jr.]'" Mother stated that sometimes she felt a bit overwhelmed and did not like David with her "'all the time.'" Mother reported that she took care of David all by herself during the day because paternal grandparents worked outside of the home. She sometimes did not like taking him to her mental health appointments because she was fearful of the other patients. She stated that she needed childcare assistance.

Mother "became frustrated and began whining in a childlike manner" when asked why she did not fasten David into his stroller. Mother asked, "'Why does everyone keep saying this?'" and said she felt bad enough and did not need to keep hearing "these things."

Mother reported that Father was incarcerated for petty theft, burglary, and possession of narcotics. Methamphetamine was Father's drug of choice. Mother claimed that Father was not violent when under the influence of methamphetamine, but she became frustrated when DCFS asked her detailed questions about Father's drug use. She was concerned that Father would leave her if she did not reunify with the baby or if he found out about David's skull fractures. She stated that Father would stop using drugs if he got a job and got "on his feet." DCFS reported that Father had prior arrests for drug-

related offenses, including possession of narcotics and transportation of narcotics, and he was "currently on an Immigration Hold."

Mother's demeanor was reported to be "very childlike" and she whined and became easily frustrated if DCFS did not understand her or if she did not understand a question. Mother exhibited difficulty with memory, comprehension, and conveying some of her thoughts. DCFS was concerned that Mother was cognitively impaired and her impairment, along with her mental health issues, "severely hinder[ed] her ability to appropriately care for any child."

During the interview, Mother became frustrated with Shane Jr. when he asked questions, stood too close to her, or wanted to hold David. Mother cried and pouted, saying that Shane Jr. was hurting her feelings and that it was "'her time with'" David. Mother tried to breast-feed David multiple times during the interview, even when he was not displaying signs of hunger.

Justin's caregiver reported that when Mother visited Justin, she did not pay attention to him. She focused all her attention on David and would continually attempt to breast-feed him, waking him if he was sleeping. Mother insisted that David needed to eat more, even in the face of advice that David needed to sleep.

Valerie told DCFS that Mother previously had been diagnosed with "Bipolar, ADHD, ODD, Anxiety Disorder and PTSD." Valerie believed that Mother was codependent. Valerie was concerned that if Father continued to take drugs after he was released, Mother would lose David just as she had lost Shane Jr. Valerie stated that Mother had told her that a nurse who came to Mother's home had instructed her not to fasten David into his seat when he started getting fussy in order easily to take him out and feed him.

On September 25, 2014, DCFS reported that law enforcement and doctors had viewed the hospital security video documenting David's fall and concluded that his injuries were accidental, consistent with Mother's explanation that David fell out of the stroller because he was not strapped in when Mother was going up the hospital steps. A pediatric child protection consultation report stated that David's two skull fractures likely

resulted from the fall from the stroller and that Mother exhibited poor judgment in not strapping David into the stroller and was neglectful in failing to take him to the emergency room until instructed to do so by the nurses.

The jurisdictional and dispositional hearing

The adjudication hearing took place on September 25 and 26, 2014. The juvenile court took judicial notice of previously sustained petitions, case plans, and minute orders. DCFS stated, and the court confirmed that the parties had agreed to amend the allegations of paragraphs b-1 and j-1 in the section 300 petition. Mother's counsel indicated that Mother intended to submit on the paragraphs b-1 and j-1 allegations.

Mother testified that on August 21, 2014, she went to the hospital to show David to her friend, who was a medical professional and worked at the birthing center. She did not see a ramp near the stairs because she was nearsighted and it was not visible from the direction from which she was approaching the stairs. She did not remember if she was wearing her glasses that day. She had not asked anyone if there was a ramp available. She tried to lift the stroller up the stairs, lifted it up "wrong," and David fell out of the car seat onto the ground. She had not strapped David into his car seat because a nurse had told her to feed David as soon as possible after he started getting fussy and she had unfastened him just as she was about to get off the train. She stated it was "the only one time that I had him unstrapped." Mother then contradicted her testimony and stated she did not unfasten him on the train, but unfastened him at the post office, which was located at the "First Street Station," more than 10 blocks from the hospital. Then she said he was strapped in between the post office and the hospital. Later she said he was not strapped in between the post office and the train station.

After David fell, Mother noticed a bump on his head. She noticed another bump after she brought David to her friend. Mother's friend told her to take him to the emergency room. Mother said that she went to see her friend first instead of going directly to the emergency room because she felt she could trust her friend, who would not judge her. She said she had problems in the past "where nobody trusted me." She said she went to the emergency room about 10 to 15 minutes after David had fallen.

Mother regretted not taking David out of the car seat before moving the stroller up the stairs. She had never dropped David before or since that episode, nor had she ever dropped Justin. She said that next time she had to take David up stairs she would look for a ramp or an elevator.

At closing arguments, DCFS observed that Mother had submitted on the allegations of paragraphs b-1 and j-1 and urged that the allegations of paragraph b-3 against Father and b-2 against Mother be sustained. David's counsel argued that the allegation of paragraph b-2 with respect to Mother's failure to seek immediate medical care should be struck.

David's counsel further argued that David's fall was a result of carelessness, but was a one-time incident rather than a pattern of neglectful behavior. As explained *post*, however, David's counsel did not recommend that David be returned to Mother's custody. Mother's counsel submitted on the paragraphs b-1 and j-1 allegations, but argued that there was no evidence supporting the allegations of paragraph b-2.

After hearing argument of all counsel, the juvenile court sustained the amended section 300 petition. The court stated it was concerned about Mother's "pattern of carelessness" with respect to strapping David in the car seat and questioned whether Mother would have sought immediate medical attention for David if the incident had happened at Mother's home instead of the hospital. The court also noted that even though the incident occurred at a hospital, Mother did not go to the emergency room right away but sought out someone else, who had to advise her to take David to the emergency room. Furthermore, Mother was not honest about what had occurred when she sought medical attention for David.

At the dispositional hearing, a letter from Roberts, Mother's life coach, was introduced into evidence. The letter indicated that Mother appeared to be functioning well without medication. A letter from Parents Anonymous was also introduced into evidence. That letter indicated that Mother had attended nine group meetings of parenting education and anger management instruction, with 11 more meetings required to complete the program.

Valerie also testified at the dispositional hearing. She stated that she had become Mother's foster caretaker when Mother was seven years old and later became her legal guardian. Mother suffered from cognitive delays, but when she was in high school she had not qualified for regional center services. Mother was not currently prescribed medication, but would benefit from taking medication. Mother was capable of caring for David and could be trusted to be alone with Shane Jr. and David. Valerie did not recall telling DCFS that Mother could care for David only if she had the support of the paternal grandparents.

Mother testified that she did not like to take David out for long periods because of the heat. She denied telling DCFS that she did not like taking him with her "all the time." She did not recall telling DCFS that she was overwhelmed by David's birth and needed a break. She started seeing a psychiatrist prior to David's birth and currently had monthly appointments. She believed that she was more stable after David's birth than prior to his birth because she had "more support than I do with any other family members." Mother said that if she became upset, she had a telephone number to call to talk to someone or she could set up an appointment to see her psychiatrist or life coach. She said that she was not taking medication because she was breast-feeding, but would stop breast-feeding in order to take medication if that were necessary to keep David in her custody. Mother said her current diagnosis was "Bipolar Effective [*sic*] Disorder and Depressive." The medication she was taking prior to David's birth was helpful, but she did not recall the name of the medication.

DCFS argued that no family reunification services should be provided to Mother. DCFS stated that if the juvenile court decided to grant reunification services, DCFS wanted an Evidence Code section 730 evaluation, or a psychological and psychiatric evaluation, and parenting classes.[4]

David's counsel argued that reunification services should be provided to Mother. Significantly, she also argued that David should not be placed in Mother's custody

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[4] Evidence Code section 730 permits the court to appoint an expert to render a report.

because paternal grandparents worked during the day. She urged that Mother continue to have monitored visits and monitored overnight visits, and be allowed to continue to breast-feed under the supervision of a doctor and her psychiatrist. David's counsel also requested that Mother be provided with interactive or hands-on parenting classes.

Mother's counsel requested that the juvenile court release David to Mother's custody, arguing that Mother had been enrolled in the ROADS program since June 2013, had a life coach, had been seeing a psychiatrist regularly, had been functioning well without taking medication, and as a teenager had not qualified for regional center services. Mother's counsel argued that neither Roberts nor Valerie expressed doubts about Mother's ability to care for David. She requested that David be released to Mother's custody conditioned on Mother's continuing to live with the paternal grandparents. She also suggested other measures could be put in place, including staying the dispositional order until family preservation services "get in the home," and requiring Valerie to accompany Mother to appointments and baby-sit for her.

The juvenile court stated that DCFS's recommendation of no reunification services was "Draconian." On the other hand, the court voiced its serious concerns about releasing David to the care of Mother: "We are dealing with a child who is two months old as of today . . . and carelessness with a child of that age could be incredibly dangerous and upsetting."

The juvenile court agreed with David's counsel that reunification services were in order, but that David could not be returned to Mother's custody without Mother's participating in reunification services such as interactive hands-on parenting classes. The court also observed that until then "the court does not believe that there are sufficient conditions that could be put into place that would ameliorate [the court's above] concerns."

The juvenile court stated that it was considering the circumstances and history of the family in making its jurisdictional and dispositional findings. Although the court believed Mother appeared "highly functioning," the court found "there was a level of carelessness that is concerning," especially in light of the vulnerable nature of a two-

month-old child. The court declared David a dependent of the court and found by clear and convincing evidence that there was a substantial danger if he were returned home to Mother's custody, that there were no reasonable means by which his health could be protected without being removed, and that reasonable efforts had been made to prevent and eliminate the need for his removal.

The juvenile court ordered family reunification services for Mother, including an interactive hands-on parenting program, monitored visits, and monitored overnight visits in the home of paternal grandparents, with DCFS having discretion to liberalize overnight visits in Valerie's home. The court rejected DCFS's request for an Evidence Code section 730 evaluation, or a psychological or psychiatric evaluation. The court indicated that Mother could continue breast-feeding without taking medication as long as she remained under the supervision of a doctor and her psychiatrist. No reunification services were offered to Father. Mother appealed.

DISCUSSION

Standard of review

The juvenile court's jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of Court, rule 5.684(f).) "'"When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]"' [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]" (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.) "[W]e must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having

sufficient verity to be accepted by the trier of fact. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.)

Substantial evidence supported the juvenile court's jurisdictional findings

Substantial evidence supported the jurisdictional findings under paragraph b-2 of the section 300 petition

Mother claims that the juvenile court removed David from Mother based on David's fall from the stroller rather than based on Mother's mental health, and therefore she attacks only the court's finding of jurisdiction under the allegations of paragraph b-2.[5]

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 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. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness."

"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 child, 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).' [Citation.]" (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) "[T]he use of the disjunctive 'or' demonstrates that a showing of prior abuse and harm is sufficient,

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[5] Mother does not challenge the findings under paragraphs b-1 and j-1 of the section 300 petition. Although these findings alone would support the juvenile court's jurisdiction, we exercise our discretion to review the jurisdictional findings with respect to paragraph b-2 of the section 300 petition as challenged by Mother. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

standing alone, to establish dependency jurisdiction." (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1435, fn. omitted.) Thus, jurisdiction may be exercised "either based on a prior incident of harm or a current or future risk." (*Id*. at p. 1435, fn. 5.)

Viewing all conflicts in favor of the juvenile court's jurisdictional findings, and drawing all reasonable inferences in support of the judgment, as we must (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185), we conclude that substantial evidence supports the juvenile court's jurisdictional findings under section 300, subdivision (b).

There was substantial evidence that Mother's conduct was neglectful and caused serious physical harm to David. Mother failed to strap David into his car seat and rather than using a ramp, tried to lift his stroller up the stairs, causing him to fall. Additionally, after David fell and Mother noticed a bump on his head, she failed to seek immediate medical attention, instead proceeding to visit her friend at the birthing center. Mother had to be instructed to take David to the emergency room. David sustained bilateral skull fractures and bleeding in the brain as a result of the fall and Mother's carelessness. Charitably described, Mother also told inconsistent stories as to how the incident happened, reinforcing either Mother's lack of appreciation for her carelessness or failure to take responsibility for David's injury.

Nevertheless, Mother argues that David would not be exposed to a future substantial risk of serious physical harm because the incident was a "'single episode of endangering conduct,'" citing *In re John M.* (2013) 217 Cal.App.4th 410 and *In re J.N.* (2010) 181 Cal.App.4th 1010. Neither case supports her argument.

In re John M. states: "'In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident. The

nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances.' ([*In re J.N.*, *supra*, 181 Cal.App.4th at pp. 1025–1026.])" (*In re John M.*, *supra*, 217 Cal.App.4th at pp. 418–419.)

In *In re John M.*, we rejected the father's argument that a single episode of domestic violence between the father and the mother at which the minor was not present did not pose a current risk of harm to the minor. (*In re John M.*, *supra*, 217 Cal.App.4th at p. 419.) We took into consideration the father's incarceration for the incident, the father and mother's ongoing history of domestic violence, the frequency of the father's violent outbursts, and the fact that the father had engaged in reckless driving with the mother in the car, to determine that substantial evidence supported the juvenile court's assertion of jurisdiction. (*Ibid.*)

In *In re J.N.*, eight-year-old, four-year-old, and 14-month-old minors suffered injury when their father drove into another vehicle, then into a light pole, while under the influence of alcohol. (*In re J.N.*, *supra*, 181 Cal.App.4th at pp. 1015–1016.) The appellate court determined that this single episode of endangering conduct was not sufficient evidence that the minors would be at risk of future harm because, among other reasons, there had been no prior protective services referrals, the minors were healthy, both parents worked hard to provide the minors with a good life, the minors had been fastened into their car seats by the parents, and both parents were remorseful about the incident. (*Id.* at pp. 1019, 1023.) Significantly, there was no evidence that either parent had an ongoing substance abuse problem, the parents' parenting skills or judgment was materially deficient, or the endangering behavior would reoccur. (*Id.* at pp. 1023, 1026.)

Unlike the parents in *In re J.N.*, here there was evidence that Mother's general judgment was deficient. Mother had failed to reunify with Shane Jr. and Justin, who remained removed from her custody. Mother's explanation to DCFS why Shane Jr. and Justin were removed was not accurate, to say the least, indicating either an inability or unwillingness to understand the basis for their removal. Furthermore, David had been in Mother's care for only one month before he was injured, while the parents in *In re J.N.*

had raised the minors for eight years without incident. Mother here also had relationships with men who abused drugs or alcohol, or who were sex offenders. Mother's justification for Father's methamphetamine use—that he was not violent while on drugs and that he just needed a job in order to get off drugs—further underscored her poor judgment in evaluating risks to David.

Mother urges that it was not unreasonable for her to consult with her friend, a medical professional, before taking David to the emergency room within 15 minutes of his fall. As the juvenile court recognized, David, at one month of age, was particularly vulnerable to a fall onto concrete stairs resulting from not being strapped into a stroller that was being lifted up the stairs. The court was justly concerned that Mother did not take David directly to the emergency room after he fell on the concrete steps. Mother admitted that she did not know what to do and was fearful about being judged. She had to be prompted by her friend to take David to the emergency room and subsequently gave inconsistent stories regarding David's fall, supporting the conclusions that Mother failed to put David's welfare first and that he was at substantial risk of serious physical harm in the future.

Claiming that the injury to David was merely one episode of negligence, Mother argues that many parents drop their infants. This rationalization further demonstrates Mother's total lack of appreciation for the consequences of her carelessness to her infant son. Although Mother testified that she had failed to strap David into his car seat on only that one occasion, she was confused in her testimony regarding when she had unstrapped him. She claimed she had unstrapped him on the train, then that she unstrapped him at the post office after she had gotten off the train, and then that he was not strapped in between the post office and the hospital, which were more than 10 blocks apart. She also stated she had a habit of unstrapping him before breast-feeding, which she apparently attempted to do even when David was not hungry. Accordingly, the evidence supports the juvenile court's express or implicit finding that Mother was careless more than once in failing to secure David in his car seat.

Mother also argues that she recognized her past endangering conduct and that it was a mistake not to strap David into his car seat while climbing the stairs. She argues that next time, she would look for a ramp when going up stairs. She claims she realized she should have gone straight to the emergency room instead of to her friend. The juvenile court could have reasonably concluded that Mother's after-the-fact statement that she would do things differently was not credible or substantial evidence that Mother would avoid future dangerous conduct.

Mother also claims that any risk to David's safety and health was "negated" by her participation in parenting classes and supervision by a psychiatrist and life coach. Mother, however, was already under the supervision of a psychiatrist and life coach at the time the incident occurred. The jurisdictional and dispositional hearing took place roughly a month after the incident occurred, and the juvenile court could have reasonably concluded that Mother's participation in programs and support from the life coach and psychiatrist were too brief in duration to ensure she would not engage in similarly endangering conduct in the future. We also observe that the incident occurred after Mother had been provided services in accordance with the safety plan.

Although the juvenile court acknowledged that Mother appeared highly functioning, Mother's demeanor was reported to be very childlike and she was described as easily frustrated. Mother expressed that she was overwhelmed with caring for David, did not like him with her all time, and needed childcare assistance. She had difficulty with memory, comprehension, and conveying some of her thoughts; she admitted that her thought process was slow.

In sum, substantial evidence supported the court's findings that this was not merely a one-time episode incapable of repetition, and that Mother's emotional and mental deficits, as well as the circumstances surrounding the incident, supported a finding that there was a substantial risk of harm to David's physical safety. We conclude that sufficient evidence supported the juvenile court's jurisdictional findings under section 300, subdivision (b).

Substantial evidence supported the juvenile court's order removing David from Mother's care

Mother contends that the juvenile court abused its discretion in removing David from her care because there was insufficient evidence that David could not be protected with a lesser alternative than removal.

After the juvenile court adjudges a minor a dependent of the court, "it 'may limit the control to be exercised over the dependent child by any parent' and shall clearly specify those limitations in its orders. (§ 361, subd. (a).)" (*In re Damonte A.* (1997) 57 Cal.App.4th 894, 898.) A minor may not be removed from the physical custody of the parents unless "[t]here 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." (§ 361, subd. (c)(1).) Section 361, subdivision (d) provides that 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 the home" and the court "shall state the facts on which the decision to remove the minor is based."

On review of a removal order, the appellate court determines whether there is substantial evidence, contradicted or not, that supports the conclusion of the trier of fact. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) All conflicts are resolved in favor of the judgment. (*Ibid.*)

Mother first contends there was not substantial evidence that David was in substantial danger in Mother's custody to justify removal. Mother again argues that David's fall from the stroller was an isolated incident that was unlikely to reoccur. As detailed *ante*, the reasons supporting the finding that the accident was not an isolated incident and that David was in substantial danger in Mother's custody apply with equal force here.

The cases cited by Mother do not assist her either because they are readily distinguishable. (*In re A.E.* (2014) 228 Cal.App.4th 820, 827 [one incident of hitting

child with belt not substantial evidence of risk where minor was happy and healthy and there was no evidence of domestic violence, substance abuse, or mental health conditions regarding parents whom DCFS had acknowledged were good parents]; *In re Henry V.* (2004) 119 Cal.App.4th 522, 530 [removal of minor based on single occurrence of suspicious burn was not substantial evidence of risk where the record did not reveal that the juvenile court appreciated that dispositional findings had to be based on clear and convincing evidence].)

We also disagree with Mother's contention that the juvenile court's finding that there were no reasonable means to prevent David's removal was not supported by substantial evidence. Mother's citation to *In re Ashly F*. (2014) 225 Cal.App.4th 803 is of no avail.

In that case, we concluded that the evidence did not support the juvenile court's removal findings where the father was a nonoffending parent. Unbeknownst to the father, the mother had used hangers and extension cords to discipline the minors. The DCFS report did not mention any reasonable alternatives to removal that had been tried and failed, or that had been considered and rejected. At the combined jurisdictional and dispositional hearing, neither DCFS nor the juvenile court identified any reasonable means to prevent removal, or inquire into the availability of services. (*In re Ashly F.*, *supra*, 225 Cal.App.4th at pp. 807, 809.) We concluded that a reasonable alternative would have been removal of the offending parent and observed that after detention, the mother had removed herself temporarily from the family home. Accordingly, we held that DCFS and the court failed to follow the mandated procedures regarding removal, and that ample evidence existed that there were reasonable means to protect the minors by leaving them in the home in the custody of the father while removing the mother.

In contrast, here DCFS and the juvenile court explored alternatives to removal. DCFS initially filed a nondetained petition and developed a safety plan under which David was placed in the custody of Mother under DCFS supervision, Mother continued to receive mental health care, and Mother was provided with family maintenance services. In accordance with that plan, the juvenile court ordered David released to

Mother's care under the conditions that she live with paternal grandparents, receive mental health treatment, and take prescribed medication. Thus, efforts were previously made to prevent David's removal, which efforts failed to prevent David's subsequent severe injuries while in Mother's care.

Mother suggests that removal could have been prevented by conditioning David's release to Mother on her continuing to reside with parental grandparents and DCFS conducting unannounced visits. Mother, however, had been residing with paternal grandparents when David was injured and that condition had not prevented David from being harmed. As David's counsel argued at the dispositional hearing, release to Mother under the condition she reside with paternal grandparents would be an inadequate alternative because paternal grandparents worked outside the home during the day. Further, unannounced visits to the home by DCFS would not protect David from being harmed outside the home while under Mother's care.

For all these reasons, we conclude that the juvenile court's findings that there would be a substantial danger to David if he were returned home to the custody of Mother and that there were no reasonable means by which his physical health could be protected without removal were supported by substantial evidence.

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED.

BENDIX, J.*

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.

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* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.