Filed 5/9/12 In re Amanda H. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re AMANDA H., a Person Coming Under the Juvenile Court Law.	B234371
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. BARRY H. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. CK87854)

APPEAL from an order of the Superior Court of Los Angeles County. Robert L. Stevenson, Referee. Reversed.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and Appellant Ava T.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant Barry H.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Peter Ferrera, Senior Deputy County Counsel, for Plaintiff and Respondent.

Ava T. (mother) and Barry H. (father) appeal from a juvenile court order asserting dependency jurisdiction over their daughter, Amanda H. Mother and father contend there was insufficient evidence to support the court's jurisdictional findings. We reverse the trial court order.

FACTUAL AND PROCEDURAL BACKGROUND

On Friday, April 29, 2011, the Los Angeles County Department of Children and Family Services (DCFS) received a referral regarding then 15-year-old Amanda H.[1] According to the reporting party, Amanda had missed six weeks of school due to bronchitis. The reporting party called Amanda's home and heard Amanda coughing in the background. Mother admitted to the reporting party that she smoked cigarettes inside the family's apartment. The same day, a DCFS social worker visited the home. The apartment was "full of bins, shelves, and bicycles as one might imagine a garage to appear." Mother told the social worker Amanda had been to the doctor on three occasions since falling ill in mid-March. The social worker saw notes from the doctor from two of the visits. Mother and father admitted they smoked cigarettes inside the apartment, but stated they did not smoke in Amanda's bedroom. The social worker reported: "Mother insisted that Amanda's chronic bronchitis/cough is not from the indoor smoking, rather it is from not receiving the right medication and that is why she is returning to the Dr. on Monday, 5/2/2011."

Father also denied that Amanda's cough was a result of his and mother's smoking inside the apartment. He said they ventilated the apartment by keeping windows open and a fan on in Amanda's room. He also told the social worker Amanda had another

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[1] The family had prior history with DCFS. In 2009, DCFS received a referral indicating Amanda attended school in dirty, smelly clothes. The school counselor noticed the "smell of filth from [Amanda's] clothes and body" and the odor of cigarette smoke. The reporting party also noted that Amanda's hair was "matted and unkempt." Amanda had missed 11 days of school, and 15 days of school the previous semester. The DCFS investigation was closed as inconclusive. DCFS offered the family voluntary services, but the family refused. Mother eventually signed a "safety plan," including conditions that Amanda would shower daily, attend school, and wear clean clothing.

scheduled doctor's appointment the upcoming Monday, May 2, but suggested, "Kids are kids, maybe she doesn't want to go to school for a reason we don't know." Father told the social worker he had paranoid schizophrenia. He explained that he had not received mental health treatment in the past three years, but he had found hobbies that helped him manage the illness.[2] Father admitted he once slapped mother, six years earlier. He told the social worker he would only discuss his mental condition with a psychiatrist; he did not want to participate in an "Upfront Assessment"; and he was not willing to smoke only outside of the apartment. He declined to attend a team decision meeting.

Amanda also met with the social worker. She coughed frequently, said she was not feeling well, and had been sick for over six weeks. Amanda indicated her parents did not smoke in front of her, and she habitually left her bedroom door shut with the window open and a fan on. When asked if she felt her parents' smoking was contributing to her "not getting better," Amanda replied: "It is kind of contributing because it is an irritant." Amanda said she was "of course" safe at home. She reported she had not showered for three days.

The following Monday, May 2, the social worker spoke with Amanda's academic counselor. According to the counselor, Amanda "reeked" of cigarette smoke, had poor hygiene, looked unclean, and smelled. The counselor said Amanda's hair and clothes looked unwashed, and she "always" wore the same pair of "oversized jeans." The counselor reported that Amanda was in a magnet program at her school. Although Amanda did well academically the previous year, in the last semester she had poor and failing grades. When the counselor spoke with Amanda to discuss her failure to attend school, Amanda told the counselor her doctor had prescribed antibiotics but they had not worked, and the doctor would not prescribe another course of antibiotics.

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[2] At a subsequent visit, father told a social worker he had stopped taking medication five years earlier.

On May 4, DCFS received another referral regarding Amanda. The reporting party asserted mother and father screamed and used profanity at each other and in Amanda's presence, mother spoke harshly to Amanda, the parents did not allow her to have friends or engage in activities, and Amanda functioned as a caretaker for mother and father. According to the reporting party, Amanda always seemed to wear dirty clothes, her clothes were too large for her, and the parents were "hoarders." The reporting party told the social worker that although she was a smoker, she was "overwhelmed by the amount of cigarette smoke in [the family's] apartment." The reporting party also asserted that father "blames Amanda for not going to school and tells her that she's not really sick and that she is 'bullshitting.'" According to the reporting party, father's comments had "resulted with Amanda being withdrawn and filled with anxiety and she has accepted her father's statements about her failing in school." The reporting party opined that Amanda did not appear aware "that she is being Abused and Neglected by her parents."

DCFS subsequently received and reviewed medical records regarding Amanda's illness. The records indicated Amanda was seen at the USC Family Health Center on April 1, 2011, April 14, 2011, and May 2, 2011. At the first visit, she was diagnosed with bronchitis. The plan was "prescribed Robitussin, good hand washing, increase fluids, and exercise." DCFS quoted notes from the second visit as follows: "Dx-1) Bronchitis (persistent). 2) Tobacco secondary hand exposure (dad advised at smoke cessation). Plan-child to take Z-pack and albuterol inhaler." Quotes from the medical notes from the third visit included: "Today same history. + smoke exposure. P.E.-redness in throat and nasal mucosal. Child had minimal expiratory wheezes w/cough. Dx-1) Allergic reaction to tobacco exposure? Pt. already treated w/Z-pack and Albuterol inhaler. May try adding Claritin to treatment. Will repeat chest x-ray (father refused). 2) Tobacco exposure secondhand exposure secondary to dad. 3) PPD(TB) placement."

On Friday, May 6, DCFS social workers again visited the family, along with a public health nurse (PHN). As before, the home was cluttered and smelled of cigarette smoke, which the PHN reported caused her nasal and eye irritation.[3] Mother showed the social workers Amanda's medications. The social workers spoke with Amanda and noted she "cough[ed] several times." Amanda reported she was doing better and would return to school on Monday. She rejected the reporting party's observations and characterizations of her home life. She confirmed that her parents yelled and cursed in the home, but described them as fighting "like any other parents." Amanda denied that she ever got up to prepare coffee for mother in the middle of the night, as the reporting party alleged. She denied that mother ever told her to shut up when she asked the parents to stop fighting; she also denied that mother "told her that she 'didn't want to hear it' in response to Amanda asking her not to smoke in the home." Amanda reported her parents did not prevent her from engaging in activities, and explained that she preferred having a small group of friends. She denied father told her she would fail in school. She said she wore oversize clothing because it made her comfortable, she wore her clothes several times per week without washing them, and she usually showered two or three times a week. Amanda indicated she understood the social worker's suggestion that sometimes children are dishonest to protect their parents, but she did not think she was being dishonest.

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[3] In the detention report, the social worker noted that at the initial visit, mother explained that the family had moved to their apartment in October 2010 and had not yet completely unpacked. "[Mother] stated that her home is not 'dirty' and wiped her hand on the furniture to show that it would not leave dirt/debris on her hand." The report did not dispute mother's characterization. However, at the May 6 visit, the social worker noted there were "[four] bicycles parked in the center of the living room, large plastic storage bins on top of a table, several plastic trash cans in the corner of the living room, tall metal storage racks w/ small containers and items on the [shelves] in the dining area and other small items and boxes scattered throughout the floor. PHN observed the kitchen w/ pot and pans on top of the kitchen counter."

Mother told the social workers she often yelled because father had a hearing problem. Mother denied telling Amanda to "shut up," and also denied that she or father forced Amanda to care for them. Father refused to speak with the social workers regarding the allegations of emotional abuse. At one point, he opined that second-hand smoke is "bogus" and "not as dangerous as people make it out to be." He explained that he did not allow Amanda to have an X-ray at the May 2 doctor's visit because, "She had one in March. She didn't need another one. There's no point for her to have another one. You're only supposed to have one per year." When the social worker told father the doctor's notes indicated Amanda was wheezing, he said, "That's normal. My daughter is not sick." Mother and father indicated they would not participate in services. The social worker noted father smoked "several" cigarettes inside the home while DCFS was there, and mother reported she had smoked 16 cigarettes the day before, and 24 cigarettes the day before that.

The social worker also spoke with Amanda's primary physician's supervisor. The social worker requested a "statement in regards to risks to the child's health if the child continues to reside in a home in which both parents smoke cigarettes, consistently exposing the child to second hand smoke and the consequences for her health." The supervising doctor provided the statement: "it will certainly take longer for the child's bronchial infection to improve." He also indicated he did not know father had refused a chest X-ray for Amanda on May 2, and, had he known, he would have called in a referral to the Child Protection Hotline. The supervising doctor "stated that he is concerned about Father's ability to make decisions in regards to Amanda's care in that he is mentally ill and displays poor judgment. [The supervising doctor] stated there is a conflict between what's best for the child and what Father is doing." Amanda's primary physician sent the social worker a letter in which he stated: "From a medical point of view, the exposure to second hand smoke can exacerbate and/or prolong a respiratory disease such as asthma[4] or bronchitis. [¶] Per patient history, her father has a diagnosis

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4 There is no evidence in the record that Amanda was ever diagnosed with asthma.

of Schizophrenia. This condition may impair the decision-making capacity in regarding to his child's medical treatment plan. In the last clinic visit from May 02, 2011, [father] refused the physician's recommendation that [Amanda] have a repeat chest X-ray. [¶] I will attempt to schedule [Amanda] for a follow-up appointment on Monday May 29, 2011, and will refer her for a chest X-ray at that time."

On May 10, the juvenile court issued a removal order for Amanda. DCFS noted that at the time of the removal, Amanda had dirt "caked onto" her elbows and unwashed hair. Following a May 17 detention hearing, Amanda was placed in foster care.

DCFS filed a petition alleging the court should assert dependency jurisdiction under Welfare and Institutions Code section 300, subdivisions (a), (b), and (c).[5] The petition alleged mother and father had engaged in a violent altercation in which father slapped mother, and such violent conduct endangered Amanda's physical health and safety. The petition also alleged the parents placed Amanda in a "detrimental and endangering situation" because she suffered from a chronic cough and bronchitis for six weeks. The petition stated: "The parents continued to smoke and continue to expose and smoke in the home despite medical recommendations that the child required a smoke free environment." In addition, the petition alleged father had mental and emotional problems which rendered him unable to provide regular care for Amanda. Under section 300, subdivision (c), the petition alleged mother and father emotionally abused Amanda by cursing and yelling at her on a daily basis. The petition further alleged Amanda exhibited severe anxiety and was extremely withdrawn due to the parents' emotional abuse.

In a June 2011 jurisdiction and disposition report, DCFS reported the parents' and Amanda's responses to the petition's allegations. Amanda and mother denied that father had ever slapped mother. In response to the second-hand smoke and bronchitis allegation, Amanda reported her doctor said the bronchitis was prolonged because of her

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[5] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

allergies and not because of her parents' smoking. Mother said it was difficult for her to smoke outside because of medical conditions that greatly inhibited her mobility. Mother and father showed the social workers fans they kept in each room, and air purifiers in Amanda's room. According to DCFS, mother "[did] not see the . . . connection between smoking and respiratory problems."

Amanda said she knew father had schizophrenia, but he was able to take care of her. Amanda reported that father cooked, cleaned, and took her out when she needed things. She said father's condition made him talk to himself, but "[i]t affects me not really. It's a bit annoying. He's a bit more protective, that's all." Amanda described father as a big help to the family. Mother said father had not seen a doctor in five years. She believed father was more functional when not using medication. She reported that father was sometimes "a little obsessive," but she denied that his mental health issues negatively affected Amanda's safety.

Amanda denied father having aggressive behavior. She said her parents yelled, but not in a violent or angry way; she attributed the yelling to mother's impaired mobility. She said the parents never cursed or yelled at her. Amanda recounted that father suggested that she might fail in school, but he also suggested she should try night school; she understood his statements as giving her another option and his comments did not bother her. She said her parents were not to blame for her being withdrawn. She said she had often been teased at school. Mother also said that she and father spoke in raised voices because it was hard for mother to move around the house because of cerebral palsy and arthritis. She also explained that she and father were from New York where people tend to speak loudly.

DCFS reported that Amanda's health seemed to be much better, and she was not coughing or having difficulty breathing. DCFS did not have the results of Amanda's recent medical appointments. At a June 1 interview, Amanda's hair "did not appear clean" and she said she had not showered in the past three days. The parents spoke with Amanda every day by telephone. DCFS recommended that Amanda be returned to her parents' home because her medical issues were resolved. DCFS acknowledged that

father's mental illness had not presented any safety issues in the five years that he had not received treatment, and that the parents' use of loud voices did not appear to be aggressive or threatening. However, DCFS concluded:

> "While it appears that the child would not be in imminent danger in the home of the parents, it does appear that the family needs assistance as the child is having academic issues, has a history of not having appropriate hygiene and self reports feeling withdrawn due to difficulties in the social setting. It is also necessary for DCFS to monitor the family to ensure that the medical issue which brought the family to the attention of DCFS does not resurface and cause further family disruption. Due to the parents' unwillingness to participate in voluntary services it appears necessary that the family be ordered to participate in Court ordered Family Maintenance Services in order to ensure the child's ongoing safety."

The juvenile court set a date for a contested jurisdiction and disposition hearing, but returned Amanda to her parents' home. The court ordered the parents not to smoke in the home.

At the jurisdiction and disposition hearing, the juvenile court dismissed the petition's allegations under section 300, subdivisions (a) and (c), and the subdivision (b) allegation relating to father slapping mother. The trial court sustained the allegations under section 300, subdivision (b) based on Amanda's bronchitis and father's mental illness, and asserted dependency jurisdiction over Amanda. The court ordered the parents not to smoke inside their apartment; DCFS was to make referrals "to the parents to help them with their smoking; at least, get it down somewhat." The court also ordered the parents to go to individual counseling, and ordered father to be reassessed "for his diagnosis." If father was prescribed psychotropic medication, the court ordered father "to take [such] medication." The court ordered DCFS to provide Amanda with individual counseling, and to ensure she was seen "consistently" by a pulmonary specialist and that she had "periodic x rays that are a safe interval between the x rays, according to the doctor."

The parents' appeals followed.

DISCUSSION

I. Substantial Evidence Did Not Support the Jurisdictional Findings

A. Applicable Legal Principles

" 'We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.] We 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. [Citation.]' [Citation.] ' " 'The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' [Citation.]" [Citation.]' [Citation.]" (*In re V.M.* (2010) 191 Cal.App.4th 245, 252 (*V.M.*).)

"Substantial evidence does not mean *any* evidence; it must be ' " 'substantial' proof of the essentials which the law requires." ' [Citation.] 'To be sufficient to sustain a juvenile dependency petition, the evidence must be " 'reasonable, credible, and of solid value' " such that the court reasonably could find the child to be a dependent of the court by clear and convincing evidence.' [Citation.] A mere 'scintilla' of evidence is not enough. [Citation.]" (*In re B.T.* (2011) 193 Cal.App.4th 685, 691 (*B.T.*).)

Under section 300, subdivision (b), the juvenile court may assert jurisdiction over a child when "[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 willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, 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."

"The three elements for jurisdiction under section 300, subdivision (b) are: ' "(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.]" (*B.T.*, *supra*, 193 Cal.App.4th at p. 692.)

There is a split of authority as to whether a single incident of parental conduct that caused serious harm can support jurisdiction under section 300, subdivision (b), or whether a current or future risk of harm is required. (Compare *In re J.K.* (2009) 174 Cal.App.4th 1426, 1435-1436 (*J.K.*) [prior serious harm, standing alone, is sufficient to establish jurisdiction under § 300, subd. (b)] and *In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261 (*Adam D.*), with *In re Maria R.* (2010) 185 Cal.App.4th 48, 60 [in considering whether child would be at risk from parental neglect, court considers the circumstances at the time of the jurisdictional hearing]; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1023-1024 [a single incident of past harm by itself does not authorize dependency court jurisdiction in absence of current risk]; *In re Carlos T.* (2009) 174 Cal.App.4th 795, 803 [dependency jurisdiction not warranted under subdivision (b) if, at the time of the jurisdiction hearing, there no longer is a substantial risk that the child will suffer harm].) We need not take a position on this issue. Under either interpretation of section 300, subdivision (b), there was insufficient evidence to support the juvenile court's jurisdictional findings.

B. Insufficient Evidence of Serious Physical Harm or Illness as a Result of Parental Neglect

The record lacked substantial evidence that Amanda suffered serious physical harm or illness as the result of her parents' neglectful conduct, or as the result of father's untreated mental illness, or that she was at risk of suffering such harm in the future. The only serious physical harm or illness ever at issue in the case was Amanda's bronchitis. There was no evidence that the parents' actions or omissions caused the onset of the bronchitis. There was no evidence that Amanda had experienced similar bouts of illness before, and she was 15 years old when the proceedings began. There was no evidence that Amanda had a chronic respiratory condition, or any other susceptibility to illness. Although Amanda's doctors suggested Amanda's exposure to second-hand smoke prolonged her recovery, by the time of the jurisdiction hearing, the bronchitis was

completely resolved. No evidence indicated Amanda was at risk of imminently contracting another illness that her parents' smoking would cause or prolong. (*In re David M.* (2005) 134 Cal.App.4th 822, 829 (*David M.*) [mother had continuing substance abuse problem, but no evidence of a specific, defined risk of harm from mother's substance abuse].)

Moreover, there was no evidence that Amanda's parents failed to seek appropriate medical care for her. Even before DCFS got involved, the parents had taken Amanda to the doctor at least twice, and they had already scheduled another appointment. Amanda's prescriptions were filled and there was no evidence the parents failed to ensure that Amanda took the prescribed medicine. Amanda's father rejected a recommendation that Amanda have a second chest X-ray. However, father had permitted an X-ray two months earlier. Although Amanda's doctor recommended a second X-ray, there was no evidence that father's refusal caused Amanda harm. Indeed, there was no evidence that Amanda ever had a second X-ray, even after she was removed from her parents' home, or that she had an X-ray and it changed the course of the treatment she was receiving. In addition, there was no evidence that father had a history of refusing medical treatment or procedures for Amanda, and no basis to conclude he would unreasonably do so in the future. Under these circumstances, father's refusal of a second chest X-ray for Amanda was not substantial evidence that she was at risk of suffering serious physical harm or illness due to the parents' conduct.

Similarly, although father had an untreated mental illness, there was no evidence that his condition prevented him from providing adequate care for Amanda, or that his condition placed her at risk of serious physical harm or illness. (*In re R.M.* (2009) 175 Cal.App.4th 986, 990.) DCFS conceded that in the five years that father had not been treated, his illness had not presented any safety issues. It is well established that a parent's mental illness alone is not sufficient to establish a basis for dependency jurisdiction. In *David M., supra*, 134 Cal.App.4th at page 830, the court explained there must be evidence of a specific, defined risk of harm to the child resulting from the parent's mental illness. Harm may not be presumed from the mere fact of a parent's

mental illness. (*Ibid.*) In *David M.*, the court concluded there was no basis for jurisdiction where there was no evidence the parents' mental health problems presented such a specific, defined risk of harm. Respondent points out that in *David M.*, the evidence established the child was "healthy, well cared for, and loved, and that mother and father were raising him in a clean, tidy home." (*Ibid.*) We acknowledge that here there was evidence the family's home was cluttered and Amanda's personal hygiene was generally inadequate. This situation was not ideal. But even assuming that these circumstances were related to father's schizophrenia, there was still a marked absence of evidence that this less-than-ideal situation caused 15-year-old Amanda serious physical harm or illness, or placed her at risk of future serious physical harm or illness. (*In re James R., Jr.* (2009) 176 Cal.App.4th 129, 136 [no basis for jurisdiction where causal link between parent's mental instability and future harm was speculative].)

Respondent also notes that father was unable to control his behavior in the courtroom and had to be escorted out. Father's outburst, or his inability to control outbursts, at one court hearing, neither indicates that his mental illness rendered him incapable of providing adequate care for Amanda, nor demonstrates that Amanda was at risk of serious physical harm or illness because of his condition.

This case significantly differs from *In re Petra B.* (1989) 216 Cal.App.3d 1163 (*Petra B.*), upon which respondent relies. In *Petra B.*, the child was accidentally burned on her face, neck, and upper chest. Burns covered four percent of her body. (*Id.* at p. 1167.) The parents did not believe the burns were serious and treated them with herbal medicines. The burns became infected. Eight days after the accident, a social worker contacted the family and the child was taken to a doctor. A burn specialist concluded the wounds were not healing and it was unlikely the infection would have improved absent the medical intervention. (*Ibid.*) By the time of the jurisdiction hearing, the wounds had apparently healed. (*Id.* at p. 1169.) The Court of Appeal found substantial evidence supported the juvenile court's assertion of jurisdiction. The court indicated the parents were not willing to exercise proper medical care; they knew their herbal remedy was ineffective but they did not take the child to a doctor; mother did not take the child's

temperature with a thermometer; and they were simply waiting to see if the wounds would worsen. At the time of the jurisdiction hearing, the parents continued to believe the herbal treatment was adequate despite their recognition that it had not worked and the now-known risks of infection. (*Id.* at p. 1170.)

In contrast, in this case, Amanda's parents promptly took her to the doctor after she fell ill, and they repeatedly sought medical treatment for her. Amanda's doctor prescribed medical treatment which her parents accepted. There was no evidence of a medical opinion that Amanda would not recover until her parents stopped smoking in their apartment.[6] This is unlike the situation in *Petra B.*, where a doctor opined the child's infection was unlikely to have resolved, *at all*, without a medical intervention the parents had deliberately failed to pursue. Although father in this case made various statements that, standing alone, suggested he did not believe Amanda was very sick, he and mother repeatedly sought appropriate medical care and treatment for her in response to her persistent symptoms.

K.C. v. Superior Court (2010) 182 Cal.App.4th 1388 (*K.C.*) also fails to support respondent's position. In *K.C.*, the mother's nicotine addiction was a factor in the case. But *K.C.* concerned a denial of reunification services and setting of a hearing for termination of parental rights. The Court of Appeal in *K.C.* was not called upon to determine whether substantial evidence supported the juvenile court's jurisdictional findings. In addition, there was a significant case history that involved the minor's siblings, all of which is only minimally summarized in *K.C.* But the case is not helpful here for other reasons. The *K.C.* court summarized the circumstances in that case as follows: "In this case, the problems which led to removal of the half siblings were severe neglect resulting from petitioner's lack of concern about their welfare and characterized by petitioner's extreme dependence upon nicotine which she pursued to the exclusion of

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6 Indeed, the record did not establish what exactly Amanda's doctors told the parents about the need for them to stop smoking in order to help Amanda recover. The doctor's notes indicate that at the second doctor's visit, father was advised about smoking cessation. The specifics of this advisement were not included in the record.

caring for the half siblings' needs. . . . [¶] Overall, her efforts to address the issues which caused her to neglect the half siblings were, at best, lackadaisical. In short, the issues which led to the prior removal remained and had actually worsened due to her relationship with the minor's father and her inability to recognize the risk he posed to the minor [as a felon convicted for committing a lewd or lascivious act on a five-year-old]." (*Id.* at pp. 1390, 1394.)

There was no evidence in this case that Amanda's parents' smoking caused them severely neglect her, or that they pursued their cigarette habit to the exclusion of caring for her. In addition, the child in *K.C.* was an infant. (*K.C.*, *supra*, 182 Cal.App.4th at p. 1390.) Amanda was 15 years old when the dependency proceedings began, and there was no evidence she suffered from chronic respiratory illness or other particular sensitivity or vulnerability to cigarette smoke. The effect of parents' smoking on Amanda was not comparable to that of the mother in *K.C.*, who smoked while pregnant with the minor, and left her infant child unattended so that she could smoke outside. (*Id.* at p. 1391.) Further, there was evidence in *K.C.* that mother generally lacked commitment to her children. There was no evidence that the parents here similarly lacked commitment to Amanda. There was also no evidence that their parenting failures (i.e., not ensuring that teenaged Amanda always bathed or wore clean clothes, having a cluttered house, suggesting Amanda was not seriously ill) were related to the parents' nicotine addiction, or, more importantly, that they placed her at risk of serious physical harm or illness. (See *In re Janet T.* (2001) 93 Cal.App.4th 377, 390 [no evidence of serious physical harm or illness, including presence of head lice which was a temporary problem that was cured].)

Finally, even if we followed the approach allowing that a single incident of past conduct causing serious harm is sufficient to establish section 300, subdivision (b) jurisdiction, we would still conclude there was insufficient evidence in this case. The two reported cases that have followed this approach provide a helpful contrast. In *J.K.*, father raped and sexually abused the child on one occasion, and on another occasion he struck her and dislocated her shoulder. (*J.K.*, *supra*, 174 Cal.App.4th at p. 1433.) The

court concluded this showing of prior physical and sexual abuse that resulted in serious harm and was sufficient to support the exercise of jurisdiction. (*Id.* at p. 1439.) In *Adam D.*, the parents neglected their infant by failing to adequately feed her. At the time she was detained, she was underweight, had minimal control of her head, her ribs were pronounced and the skin on her legs was loose and wrinkled. There was evidence that although the infant "was seriously underweight and developmentally delayed, mother and father refused to acknowledge [her] medical condition or their responsibility for it." (*Adam D., supra,* 183 Cal.App.4th at p. 1262.) There was substantial evidence that the parents' neglect caused her serious physical harm. The Court of Appeal concluded jurisdiction was appropriately asserted even though the infant was thriving by the time the petition was sustained.

In the case at bar, there was no evidence that mother or father inflicted serious physical harm on Amanda in the form of physical or sexual abuse. Nor were there allegations or evidence that the parents engaged in neglectful conduct that caused Amanda serious harm, as in *Adam D.* In *Adam D.*, the parents failed to adequately feed their infant, ignored or did not recognize the signs of her being underweight, dehydrated, and developmentally delayed, and did not seek medical treatment for her. Her condition was discovered only at a routine appointment with a social services program. In this case, there was no evidence that parents caused Amanda's illness. The parents sought medical treatment when Amanda got sick. They continued taking her to the doctor when she did not get better. At most there was evidence that their failure to stop smoking cigarettes inside their apartment kept Amanda from getting better faster from a nonlife-threatening illness, and there was no evidence that the parents' smoking had caused Amanda to be sick in the past. This is not the same as a parent's violent sexual and physical abuse, or a parent's inability or refusal to recognize a life-threatening failure to thrive. Jurisdiction in this case could not be based only on the parents' past actions in failing to stop smoking in their apartment.

We do not discount the negative health effects of second-hand smoke (see Health & Saf. Code, § 104350, subd. (a)(5) [legislative finding that involuntary smoking is a cause of disease in healthy nonsmokers]; *Boeken v. Philip Morris Inc.* (2005) 127 Cal.App.4th 1640, 1693 [citing 1993 Environmental Protection Agency report conclusion that second-hand smoke kills 3,000 nonsmoking Americans each year]), or the potential dangers of untreated mental illness. But abstractions are not enough in a dependency case. There must be substantial evidence that a parent's conduct has caused the child serious physical harm or illness, or places the child at risk of serious physical harm or illness. (*V.M.*, *supra*, 191 Cal.App.4th at pp. 252-253.) Under the circumstances of this case, the evidence did not support a finding that the parents' acts or omissions caused Amanda to suffer serious physical harm or illness, or placed her at substantial risk of future harm.

DISPOSITION

The juvenile court order is reversed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.