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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re E.A., a Person Coming Under  
the Juvenile Court Law.

B278207

(Los Angeles County  
Super. Ct. No. CK57469)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County, Robert S. Draper, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant  
County Counsel, and Stephen D. Watson, Deputy County Counsel,  
for Plaintiff and Respondent.

V.C. (Mother) appeals from the juvenile court's jurisdiction and disposition orders made after the juvenile court adjudged her children E.A. (born in 2010) and M.A. (born in 2013) dependents under Welfare and Institutions Code<sup>1</sup> section 300. Mother contends that the evidence did not support the jurisdictional findings or the disposition orders. We disagree. As we shall explain, sufficient evidence supported the court's finding that a substantial risk of harm existed to the children because of Mother's abuse of drugs and alcohol and that the children would not be protected without their removal from her custody. Accordingly, we affirm.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. The Family**

The family consists of Mother, minors E.A., M.A., and the children's father.<sup>2</sup> The parents met about eight years ago in an inpatient substance abuse program.

### **B. Prior Dependency Proceedings**

Mother has a long history with the Department of Children and Family Services (DCFS). Between 2000 and 2013, DCFS received 12 referrals regarding Mother and her six other children. The referrals included allegations of neglect, drug and alcohol abuse, physical and emotional abuse and domestic violence. Mother failed to complete various rehabilitation programs and because she was unable to resolve her substance abuse issues, she lost custody of her six children.

Between 1997 and 2008, Mother was arrested half a dozen times for theft, burglary, possession of controlled substances, possession of controlled substances for sale, and possession of

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<sup>1</sup> All statutory references shall be to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> The children's father is not a party to this appeal.

controlled substance paraphernalia. She served over six months in jail and was on probation for three years as a result of a 2007 conviction for possession of a controlled substance.

### **C. Current Proceedings**

On July 26, 2016 DCFS received a referral due to Mother's overdosing on cocaine and consequent hospitalization. Mother told the social worker she abused cocaine in her twenties but had not used it for three or four years prior to her recent overdose; she claimed that her prior drug use only involved cocaine and crack cocaine. Mother explained that she relapsed because she felt depressed after having learned her adult daughter was pregnant and might suffer complications during the pregnancy. She also admitted that about once a month, she would drink a 12-pack of beer over the course of one day. Mother told the social worker she would enroll in a drug treatment program, and the social worker provided her with a referral packet. After Mother did not contact any of the facilities in the referral packet, the social worker gave Mother more referrals.

The children's father told the social worker that he never saw Mother use cocaine or any other drug. Although he was aware that Mother failed to reunify with her other children because of her drug abuse, he did not know that she had used cocaine during their relationship; he believed that Mother had not used drugs since meeting him and he claimed she never displayed symptoms of being under the influence. The children's father said Mother only drank alcohol a couple of times a year, but he also reported two recent incidents when Mother drank alcohol and stayed out all night. He expressed no concerns about Mother caring for the children while he was at work even after he learned of her recent drug use.

DCFS filed a petition pursuant to section 300, subdivision (b) and (j) alleging the children were at risk of harm as a result of

Mother's alcohol and drug abuse.<sup>3</sup> On August 18, 2016, the juvenile court detained the children from Mother, released them to their father, granted mother monitored visits, and ordered family maintenance services.

When re-interviewed for the jurisdiction/disposition report, Mother told the social worker that although she had a history of occasionally using cocaine and crack cocaine, she never used drugs around her children. She admitted attending some rehabilitation classes in the past without ever completing any program. Recounting her recent overdose, Mother now claimed she had used methamphetamine. Mother said her recent drug use was just a relapse and she had no desire to continue using. As to her alcohol use, Mother claimed she only drank a couple beers on a few occasions, but said she never drank to the point of being drunk. Mother provided documentation indicating that she had

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<sup>3</sup> As sustained the petition alleged: "b-1 [¶] [Mother] has a history of substance abuse and is a current abuser of cocaine and alcohol, which renders the mother incapable of providing regular care of the children. The children are of such a young age requiring constant care and supervision and the mother's substance abuse interferes with providing regular care and supervision of the children. On 07/26/16, the mother was hospitalized for an overdose on cocaine. On prior occasions, the mother was under the influence of alcohol while the children were present in the children's home. The children's siblings . . . are prior dependents of the Juvenile Court due to mother's substance abuse and received permanent placement services. The children's father . . . failed to protect the children in that the father allowed the mother to reside in the children's home and have unlimited access to the children. Such substance abuse by the mother and the father's failure to protect the children endangers the children's physical health and safety and creates a detrimental home environment for the children, placing the children at risk of serious physical harm, damage, danger and failure to protect."

enrolled in an individual counseling program, and was scheduled to participate in its 24-week substance abuse program and a 10-week parenting program. On September 15, 2016, DCFS reported Mother had tested negative for drugs and alcohol on August 31 and September 13, 2016.

DCFS recommended the juvenile court sustain the allegations in the section 300 petition, remove the children from Mother's custody, grant her monitored visits, and order services. On September 20, 2016, the juvenile court held a combined jurisdiction/disposition hearing. Counsel for DCFS and the children asked the court to sustain the section 300 petition and remove the children from Mother's custody. Counsel for Mother asked the court to dismiss the petition for lack of nexus between Mother's conduct and risk of harm. The court sustained the petition, declared the children dependents, finding a substantial danger to them in her care. The court removed the children from Mother's custody, placed them with their father, and granted Mother monitored visits. Mother was ordered to participate in a drug and alcohol treatment program, drug and alcohol testing, and individual counseling. The court ordered the children's father to attend substance abuse awareness classes and directed that he could monitor Mother's visits outside the home after he had completed five classes.

Mother filed a timely notice of appeal.

## DISCUSSION

### I. Sufficient Evidence Supports the Dependency Court's Exercise of Jurisdiction

“ ‘In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible.’ [Citation.] ‘ ‘If the evidence so viewed is sufficient as a matter of law, the judgment must be affirmed. . . .’ ’ [Citations.]” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820; accord, *In re James R.* (2009) 176 Cal.App.4th 129, 134–135.) The appellant has the burden to show that substantial evidence does not support the finding or the order. (*In re Liam L.* (2015) 240 Cal.App.4th 1068, 1087.)

A juvenile court may determine a child is subject to the court's jurisdiction if it finds by a preponderance of the evidence that “[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 . . . to adequately supervise or protect the child . . . [or a parent's inability to] provide regular care for the child due to the parent's . . . substance abuse.” (§ 300, subd. (b)(1).) “ ‘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 . . . .” [Citation.]’ [Citation.]

Jurisdiction may be exercised ‘based on . . . a current or future risk.’” (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1452.)

Jurisdiction under section 300, subdivision (b) is properly based on a finding that a parent’s substance abuse, as opposed to mere use, places a minor child at substantial risk of future harm based on the parent’s “compromised ability” to care for and supervise the child. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.)

Mother contends substantial evidence does not support the court’s jurisdiction because there is no evidence that Mother’s recent “situational” use of substances placed the children at a substantial risk of harm within the meaning of the statute. Mother points out that DCFS did not present evidence that she had a diagnosis of substance abuse or that her use had life-impacting effects, and that without such evidence the court could not find that she had a substance abuse problem justifying the exercise of dependency jurisdiction. We are not persuaded.

Although a finding of substance abuse may be based on a medical diagnosis or evidence that substance abuse had life-impacting effects on the parent—evidence the parent has a current substance abuse problem as defined in the DSM-IV-TR—a juvenile court may make a substance abuse finding without reference to the DSM-IV-TR or a medical diagnosis. Indeed, courts have also found substance abuse for the purpose of section 300, subdivision (b) based on a totality of evidence demonstrating a parent’s habitual drug abuse, including the parent’s current use, prior consistent use of substances, failure to participate in treatment and drug testing as well as deception or secrecy surrounding abuse of substances. (See e.g., *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1218-1219 [rejecting the mother’s argument that “only someone who has been diagnosed by a medical professional or who falls within one of the specific DSM–IV–TR categories can be found to be a current

substance abuser” and concluding that the mother’s use of cocaine during her pregnancy, her history of drug use, and her failure to consistently drug test and enroll in a substance abuse program justified the court’s findings under section 300, subdivision (b) of drug abuse]; *In re R.R.*, *supra*, 187 Cal.App.4th at p 1284.)

In *R.R.* for example, the court rejected the father’s challenge to the jurisdictional finding based on his substance abuse, even though no evidence existed that the father had been diagnosed as a substance abuser or suffered from a current substance abuse problem as defined in the DSM-IV-TR. (*In re R.R.*, *supra*, 187 Cal.App.4th at p. 1284.) In affirming, the Court of Appeal explained that the juvenile court reasonably could have concluded the father’s history abuse of methamphetamine, which had recently led to his hospitalization, and his pattern of lying about his addiction, raised an inference the father had a compromised ability to parent his child “thus justifying the assumption of jurisdiction” under section 300, subdivision (b). (*Ibid.*)

Similarly here, substantial evidence in the record demonstrates that Mother has an unresolved substance abuse problem. Notwithstanding her prior participation in inpatient and Alcoholics Anonymous (AA) rehabilitation programs, it appears that Mother relies on substances—both alcohol and drugs—to cope with her life struggles. Mother was recently hospitalized because she overdosed on drugs. And shortly before she overdosed, Mother had stayed out all night on two occasions because she drank too much alcohol. Also, her recent abuse of drugs was done in secret—the children’s father was apparently unaware that she had continued to abuse drugs after they met. Moreover, Mother did not enroll immediately in a drug treatment program, even though DCFS provided her referrals. Finally, her abuse of substances played a role in her losing custody of all of her other children, and resulted in her arrest and incarceration.



The juvenile court reasonably could conclude based on all of this evidence that Mother had a substance abuse problem. And because the minors are young, Mother's substance abuse was prima facie evidence of her inability to care for the children. A finding of substance abuse by a parent of a child under six years old is prima facie proof of that parent's inability to provide regular care resulting in a substantial risk of harm to the child. (See *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383-1385 [jurisdiction is proper when a child is of "such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] health and safety" ].) The focus of dependency proceedings is the protection of minor children. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.) The juvenile court need not wait until a child is seriously injured to assume jurisdiction and take steps necessary to protect the child. (*In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1383; *In re N.M.* (2011) 197 Cal.App.4th 159, 165.) We accordingly affirm the juvenile court's jurisdiction findings.

## **II. No Basis Exists to Reverse the Juvenile Court's Disposition Orders Removing the Children from Mother's Custody and Requiring Monitored Visitation for Mother**

Mother argues the court erred in removing the children from her parental custody and ordering monitored visitation with her children. Neither contention has merit.

### **A. Removal Order**

As relevant here, section 361, subdivision (c)(1), provides that "[a] dependent child shall not be taken from the physical custody of his or her parents . . . unless the juvenile court finds clear and convincing evidence" that "[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 . . . physical custody." "The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances. [Citation.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) "In making its disposition orders the court has broad discretion to resolve issues regarding the custody and control of the child." (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346.)

The same evidence that supports the juvenile court's jurisdiction findings also supports the juvenile court's decision to remove the children from Mother's custody. (*In re R.V.* (2012) 208 Cal.App.4th 837, 849 ["The jurisdictional findings are prima facie evidence the child cannot safely remain in the home. [Citation.] The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate."].) Also, the children's father's lack of insight into Mother's problems indicates that the children would not be safe in Mother's care while their father was at work. The record also demonstrates that DCFS made reasonable efforts to prevent removal—DCFS twice provided Mother with referrals to seek treatment, but Mother did not enroll in programs until court intervention was imminent.

## **B. Visitation Order**

"The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. [Citations.] We cannot reverse the court's determination in this regard absent a clear abuse of discretion. [Citation.]" (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 454; accord, *In re R.R.*, *supra*, 187 Cal.App.4th

at p. 1284.) The dependency court defines the rights of the parties to visitation by balancing the rights of the parent with the best interests of the child. (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.)

Mother claims the order for monitored visitation and the order that the children's father could monitor visits only in a location outside the home are an abuse of discretion. As noted elsewhere, the children's father was unaware of the extent of Mother's drug use, could not identify the symptoms of her intoxication, and expressed no concern about her supervising the children even after he learned Mother had overdosed on cocaine. Under these circumstances, the court did not abuse its discretion in ordering monitored visits for Mother.

#### **DISPOSITION**

The orders are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.