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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re GABRIELA A., et al.,

Persons Coming Under the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.L.,

Defendant and Appellant.

B260947

(Los Angeles County
Super. Ct. No. CK96223)

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

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and
Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County
Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

M.L. (mother) appeals from a judgment declaring her children to be dependents of the court based on the jurisdictional findings that her drug abuse and involvement in violent domestic relationships placed the children at substantial risk of serious physical harm under Welfare and Institutions Code¹ section 300, subdivisions (a) and (b), and from an order under section 361, subdivision (c)(1), removing them from her custody. Mother contends there is insufficient evidence to support the jurisdictional findings or dispositional order. We affirm.

BACKGROUND

Mother has five children: Gabriela A. (born Sept. 2002); Cesar D. (born Sept. 2005); Guillermo Q. (born Dec. 2007); Vincent Q. (born March 2012); and Dana Q. (born June 2013).² For purposes relevant here, the family came to the attention of respondent Department of Children and Family Services (DCFS) in August 2012, when mother sought mental health services from DCFS for herself and the children, due to her history of domestic violence with father.³

¹ Statutory references are to the Welfare and Institutions Code.

² Bryan Q. (father), the presumed father of Guillermo, Vincent and Dana, is not a party to this appeal and, unless relevant to an issue on appeal, we will not mention matters relating to him. The alleged fathers of Gabriela and Cesar have not been involved in these proceedings. References to the “parents” are to mother and Bryan Q.

³ DCFS had a prior history of involvement with the family. In October 2008, allegations of domestic violence were substantiated and the parents agreed to participate in family preservation services with domestic violence counseling and parenting education. Mother successfully completed the family maintenance plan, and the case was closed in August 2009 after the parents separated and mother and the children moved out. DCFS received referrals for parental neglect and/or substance abuse in 2003, 2004, 2010 and 2011. The referrals were closed after the allegations were deemed unfounded,

Initial Proceedings

A section 300 petition was filed in October 2012, after mother and father admitted engaging in mutual domestic violence while the children were in the home, and father admitted he needed help with his alcoholism. Mother agreed to submit to a drug test, but was unable to test in October. By the time the detention hearing was conducted on October 30, 2012, mother had moved the children into shelter care. In connection with the detention hearing, DCFS reported mother's claim that father had been physically and/or emotionally abusive and controlling since her pregnancy with Guillermo in 2007, but she had been afraid to seek help. The court ordered the children detained from father who was ordered to stay away from mother and the children, except during monitored visits. The children were released to mother's care.

The Children Are Detained From Mother

In November 2012, the court ordered the children placed in foster care after a children's social worker (CSW) learned mother had let father spend the night with the family in the room she rented for herself and the children after leaving the shelter. Mother said she wanted to be with father, and they were expecting a child in June 2013. DCFS filed a section 385 application formally seeking to have the children detained from mother's care. The court granted that application on November 27, 2012, and ordered father not to reside with mother. The parents were given separate monitored visitation. A few days later mother told DCFS she and father planned to live together and wanted to pursue counseling and other services.

inconclusive or DCFS was unable to reach the family. Father's criminal history includes a 2008 conviction for spousal battery and a 2009 conviction for violating a protective order.

At the jurisdictional hearing on December 3, 2012, the trial court sustained the section 300 petition, found the allegations of the section 385 application true and removed the children from mother's care. The parents were given monitored visitation and reunification services. Father was ordered to participate in a drug and alcohol treatment program with random testing, parenting education and individual counseling to address case issues, including domestic violence for offenders. Mother was ordered to participate in Al-Anon meetings for family members of alcoholics, and individual counseling to address case issues, including domestic violence for victims. The court ordered counseling for Gabriela, Cesar and Guillermo, and set progress and review hearings for January 16 and June 3, 2013, respectively. In December 2012 Guillermo was diagnosed with Fetal Alcohol Spectrum Disorder, and referred for a Regional Center evaluation.

In a mid-January 2013 interim report, DCFS informed the court the parents were living together again and willing to undergo couple's therapy. Mother had enrolled in parenting and anger management/domestic violence programs and undergone some individual counseling. The children were placed with maternal relatives in January 2013, but told DCFS they loved their parents and wanted to return home.

For the six-month review hearing in June 2013 DCFS reported that mother had moved in with the children's maternal grandmother the month before because she wanted the children returned to her care, and was afraid her unborn child would be detained at birth. The children were doing well and had made steady progress, academically and behaviorally, since being placed with relatives. According to a maternal aunt, although Guillermo previously had been prone to tantrums and physical assaults on his siblings and mother, his behavior improved after he began receiving therapy and wraparound services in May 2013.

The parents attended six couple's counseling sessions before May 2013, when their therapist told DCFS they would be better served by undergoing individual therapy before returning to couple's therapy. Both parents were complying with the case plan, maintained regular visitation and were affectionate with the children. In April 2013, DCFS recommended that father be given overnight weekend visits.

The Children Are Returned to Mother's Care

On June 3, 2013, the trial court adopted DCFS' recommendation and ordered the children returned to mother's care with family maintenance services, so long as she continued residing in a DCFS-approved residence and not with father. Dana was born in June 2013.

DCFS learned that in August 2013, father was reportedly yelling outside mother's apartment late one evening. Mother confirmed the incident, and said father was drunk and belligerent, and she was unable to get him to leave. The children had not been at home. Afterwards, mother obtained a restraining order but did not voluntarily disclose the incident to DCFS because she was afraid of father and also afraid the children would be removed again. Father was arrested in early October 2013 for being under the influence of a controlled substance.

Mother was having difficulty finding a job and was struggling to support the children, but purportedly was complying with the case plan, and the children were happy in her care. Guillermo had experienced problems at school, and had been diagnosed with a learning disorder. He continued to receive wraparound services with which mother was compliant. Mother completed parenting and domestic violence programs, but had not participated in individual counseling (due to a claimed inability to pay); DCFS provided assistance. At mother's request, the juvenile court continued its jurisdiction and the family's services.

Jurisdiction and services were continued again after a review hearing in mid-May 2014. At that hearing DCFS reported that mother and father had secretly maintained their relationship until February 2014. In March 2014 mother and the children moved to Palmdale to live with mother's boyfriend of three months, "Jonny." Mother told the CSW that Jonny was a "good guy" who, despite his "machismo" beliefs, did not disrespect her (unlike father). He took care of her family and told mother that, even if he and she split up, she and the children could stay in the apartment as he would not "put them out on the street." The CSW counseled mother to start addressing her "co-dependent" behaviors. Although DCFS had given mother various resources to enable her to begin individual counseling, mother still had not done so as of mid-May 2014, due to a claimed lack of funds and/or childcare. DCFS provided additional resources after mother moved to Palmdale.

In April 2014, after DCFS confronted mother regarding a referral alleging she was a drug user, mother acknowledged that she smoked marijuana, but claimed she smoked only outside on her balcony when her children were at school. After being reminded that two of the children were too young to attend school, mother revised her claim and said she smoked when they napped,⁴ although never inside the home. Mother also claimed she did not smoke marijuana to "get high," but only because it "relaxes her" and enabled her to "focus on cleaning the home and preparing dinner." She agreed to stop using marijuana and undergo drug tests. She tested positive for marijuana in late April and in early May 2014, but claimed to have stopped smoking altogether by mid-May 2014 after learning she was pregnant again. Based on mother's disclosure that she had used drugs in the home while the children were in her

⁴ Mother later contradicted this statement and claimed she smoked marijuana only once while caring for Dana.

sole care and supervision, DCFS categorized the family as “high risk,” and recommended that the case remain open two more months to ensure that mother continued to produce clean drug tests.

The children told DCFS Jonny was a “nice guy” who was good to mother. She made them breakfast and dinner every day, and they loved her “very much.” The children were “very protective” of their parents. Gabriela and Cesar told the CSW they knew what drugs were and knew they were “bad,” but denied seeing mother use them. Announced and unannounced visits by DCFS revealed a home that was consistently neat and in order. However, Guillermo had begun to regress in his wraparound services ever since moving to Jonny’s; that regression continued for some time.

The Children Are Re-Detained From Mother

On August 19, 2014 DCFS filed a section 300 petition as to Dana, alleging she was at risk due to the parent’s history of domestic violence and substance abuse.

(§ 300, subds. (a), (b).) DCFS also filed a section 342⁵ petition as to the other children, alleging they were at renewed risk because mother’s historical and current substance abuse rendered her unable to provide adequate care and supervision.

(§ 300, subd. (b).) The children were detained, and mother was given monitored visitation. Both petitions were superseded by amended petitions filed September 22,

⁵ That statute provides that in any case in which a child “has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition. . . . [¶] All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section.” (§ 342.)

2014, containing essentially the same allegations, plus additional allegations of risk due to violent altercations between mother and Jonny in the children's presence.

The events leading to DCFS' filing of the amended petitions began in late May 2014, when the CSW received a frantic call from mother saying Jonny had kicked her and the children out of his apartment. She said Jonny became angry after seeing a collage Cesar prepared for school containing photos of father. He was mad that mother kept "pictures of [Father] in 'his' home," and tore up the collage in front of the children. He and mother argued and he kicked the family out. The CSW arranged for mother and the children to stay with the maternal grandmother.

Soon afterwards mother became involved with father again. In June 2014, father was arrested for being drunk in public, and mother used the children's funds from CalWorks to bail him out. Father promised to re-pay her, but later refused to do so. In mid-July 2014 mother moved in with friends while the children remained with maternal relatives. She told DCFS she wanted to move with the children back to Jonny's apartment (he would stay elsewhere). The CSW discouraged her from doing so, reminding mother that Jonny was volatile, a drug user and had evicted her once before. Mother said Jonny no longer used drugs, and had apologized and wanted to work things out. Noting the existence of some "red flags" indicting a domestic violence relationship, the CSW warned mother she seemed to be embarking on such a cycle. Although mother had previously acknowledged that Jonny was jealous, possessive and controlling—to the point of not permitting her to walk certain places or talk to specific individuals—she remained adamant that her relationship with Jonny was not headed toward violence. She also claimed she had nowhere else to go and was tired of having the children move from house to house.

In early August, father complained to DCFS that mother had refused his weekend visit with Dana and Guillermo, claiming Dana was sick. He questioned her

veracity, noting that her on-line postings showed she was out with Jonny the night before when Dana was supposedly sick. The CSW spoke with mother after viewing a photo she posted in which she appeared to be under the influence, and containing the comment: “Were blown mom lol” Mother confirmed she had been out with Jonny, but said she had had just one glass of wine, denied any drug use and agreed to take a drug test, which was positive for marijuana. Confronted with that positive test result, mother admitted she had consumed an “edible” (food item laced with marijuana) which she did not believe would show up on the drug test. Mother also retracted a statement she made earlier that day claiming she was nine weeks pregnant. She claimed she was not pregnant and could “function” when using marijuana.

The CSW met with mother later the same day. They discussed another picture from a social media site depicting mother holding a bottle of tequila, with the accompanying comment: “Taken shots with my love. Fucken Fuck ya.” Mother confirmed that she had been pregnant when the photo was taken, admitted she was still pregnant and admitted having smoked marijuana twice in the past three weeks. Her August 8, 2014 drug test was positive for cannabinoids. Mother repeated that she used marijuana, not to get high, but to help her cope and focus, and said the children were not home when she smoked. Noting that every picture of Jonny that was posted involved alcohol, the CSW counseled mother about the danger posed by substance use while caring for children (especially the two youngest who required her constant attention and supervision), the fact that drug use could exacerbate her feelings of depression, her history of unhealthy relationships with men and red flags indicating the potential for domestic violence in her relationship with Jonny. Again, mother denied that her relationship with Jonny involved or would lead to domestic violence, and said she loved him and intended to continue their relationship. Mother gave

DCFS written consent to detain the children from her care; they were placed with maternal relatives.

When interviewed by DCFS in September 2014, mother said she did not smoke marijuana if her children were present, and usually smoked outside when they were at school or staying elsewhere, or when she was “out partying.” She admitted having smoked once in the house while Dana slept, but said the drug’s effects wore off before the baby woke up. Mother had smoked marijuana since she was 15 years old to help her function, and to help her with migraines and cooking.

Mother terminated her pregnancy in late August 2014. She said she had tried to commit suicide after the children were detained and was placed on an involuntary 72-hour psychiatric hold. She later backtracked, saying she had not tried to kill herself, but had taken several sleeping pills before she became afraid and stopped.

Mother denied any current drug or alcohol use and said she had not used marijuana since early August 2014. She did not plan to use marijuana again because she wanted her children back. She claimed she was not addicted to marijuana. She was living with Jonny, who had also quit smoking marijuana. Mother had smoked when she was with father because of the domestic violence and other problems in their relationship, and attributed her recent marijuana use to boredom. She was unemployed, not attending school and had “nothing to do,” but was now making it a priority to enroll in school, work and keep busy.

Father reported that the children had told him mother and Jonny used drugs (“smoked ‘funny cigars’”), and had found marijuana on the table. He also knew, based on mother’s phone calls to him the night before she moved out, that Jonny used methamphetamines, and got violent and hit mother. Mother had used marijuana since father had known her, including during her pregnancies. They argued about her drug use, but she claimed it helped her to function and focus.

The children gave varying accounts to DCFS. Gabriela denied knowing why she had been detained, denied knowing what marijuana or other drugs were or that mother drank alcohol. She denied having seen mother look or act differently, said mother took care of her, that everything had been fine when she lived with mother and that Jonny was nice to them all. Cesar said mother explained that the children were detained because of her positive drug test. He had not seen her smoke in the home, and denied knowing whether mother used drugs or which drugs she used. He said Jonny was not mean, but screamed in a playful way. Guillermo explained that the children were detained because father told DCFS that mother and Jonny did “bad stuff,” i.e., they were smoking and Jonny hit mother “because they are talking to each other and yell at each other and be rude to my mom.” Guillermo did not know what drugs Jonny used, but described them as the “white things that are straight and you burn it with a lighter and smoke it in the back.” Guillermo had seen Jonny and his father smoke this “white stuff,” but not mother. When asked if he had heard Jonny be rude to mother, Guillermo said, “No I go sleep They scream in the night, but in the night we go to sleep.” Guillermo had continued to participate in special education classes and to receive wraparound services. The wraparound services were inconsistent because of mother’s instability, and Guillermo regressed significantly after the move to Palmdale. Dana was referred for a Regional Center evaluation for a speech delay.

On August 29, 2014, mother tested positive for marijuana. She was not participating in any programs, but hoped to enroll in a substance abuse program. Mother told DCFS that, although at first she had been afraid and viewed the children’s detention as a negative thing, she now viewed it “as if they are on vacation” and she had “to work on me, stop smoking and get a job.” DCFS opined that mother had minimized the impact of her 11-year history of marijuana use, had been untruthful

when she denied using marijuana while caring for Vincent and Dana, and needed therapy to address issues underlying her drug use. In addition, although mother denied domestic violence in her relationship with Jonny, Guillermo had reported that Jonny hit mother before kicking her out of his house.

A supplemental DCFS report revealed that mother tested positive for marijuana on September 19, failed to show for a drug test on September 30 and tested negative on October 1 and October 10, 2014. She had enrolled in a substance abuse program on September 23. However, as of October 23, 2014, mother had attended only two sessions of the program which met twice weekly. Mother claimed she was unable to attend because she had to go out of town for a family emergency. The CSW opined that mother needed individual therapy and a stricter program and referred her for an assessment at another treatment program. Mother did not show up for the appointment.

Meanwhile, Guillermo had shown improvement in his wraparound services after being placed with his maternal grandmother. Father had been proactive in setting up and attending wraparound meetings; mother participated in one meeting. By December 2014, father had completed several programs, progressed in his individual counseling. DCFS recommended that Guillermo, Vincent and Dana be returned to his custody.

The Jurisdictional and Dispositional Hearing

The adjudication/dispositional hearing was conducted on December 8, 2014. At the conclusion of the jurisdictional portion of the hearing, the juvenile court found the allegations of the amended section 342 petition true. With respect to the amended section 300 petition, the court dismissed the allegations regarding domestic violence between mother and father, and father's history of substance abuse. The court found

true allegations regarding mother's substance abuse and domestic violence in her relationship with Jonny.

Proceeding to disposition, the court found its previous disposition ineffective in protecting the older children, and removed all five children from mother's physical custody. Guillermo, Vincent and Dana were placed in father's custody, and Cesar was placed in father's care for an extended holiday visit. Mother appeals.

DISCUSSION

1. *The Jurisdictional Findings Are Supported by Substantial Evidence*

Mother maintains the record lacks sufficient evidence to support the jurisdictional findings as to the section 342 or section 300 petitions.

We review the juvenile court's findings for substantial evidence, contradicted or not. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574-575.) We resolve evidentiary conflicts in favor of the findings and indulge all legitimate inferences to uphold the judgment. (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 84.) If a dependency petition enumerates multiple statutory bases on which a child is alleged to fall within the court's jurisdiction, we may affirm a finding that jurisdiction exists if any one of those statutory bases is supported by substantial evidence; in such a case, we need not consider whether other alleged jurisdictional grounds also enjoy substantial evidentiary support. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*); *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127 [juvenile court jurisdiction may rest on a single ground].)

In jurisdictional proceedings, courts examine whether children are subject to two distinct types of physical harm: (1) a specific hazard in the child's life, such as an abusive adult, and (2) the absence of adequate supervision or care that poses an inherent risk to the physical health and safety of a child of tender years. (*In re Rocco*

M. (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*.) Here, the court found all five children subject to both types of harm. Mother maintains there is insufficient evidence to support the juvenile court's findings that she and Jonny engaged in any violent altercations in the children's presence, or that Jonny's violent conduct and mother's failure to protect the children from that conduct placed her children at risk of harm. Mother also insists the evidence is insufficient to support the court's jurisdictional finding that her historical or continued use of marijuana endangered the children, placed them at risk of harm or rendered her incapable of providing care or supervision. We turn first to the sustained jurisdictional allegations based on mother's drug use.

A judicial finding that a parent is a substance abuser serves as prima facie evidence "of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm." (*Drake M., supra*, 211 Cal.App.4th at p. 767.) A current risk of harm may be shown by evidence of past conduct, where the court has reason to believe the conduct will recur. (*Rocco M., supra*, 1 Cal.App.4th at p. 824.) If a child is deemed to be at risk, the court need not wait to assume jurisdiction until he or she suffers actual harm. (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1002-1003.)

Absent evidence that drug use has caused a child serious physical harm or illness or put the child at substantial risk of incurring such harm, mere use of marijuana or other drugs by a parent constitutes an insufficient evidentiary basis to support juvenile court jurisdiction. (*Drake M., supra*, 211 Cal.App.4th at p. 769; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453; *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003 (*Destiny S.*.)

Mother's drug use indicates a risk of harm to her children that is sufficient to satisfy the juvenile court's jurisdictional findings. "The provision of a home environment free from the negative effects of substance abuse is a necessary condition

for the safety, protection and physical and emotional well-being of the child.”

(§ 300.2.) An unresolved drug problem can compromise a parent’s “ability to care for [her] child, thus justifying the assumption of jurisdiction” (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.) Although mother makes no age-related distinctions among her children regarding harms posed by her drug use, this rule is particularly true with respect to Vincent and Dana, the youngest children. For “children of such tender years . . . the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (*Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.)

Mother has regularly used marijuana since she was 15 years old. Since DCFS began investigating allegations of mother’s drug use, only two of nine drug tests have been negative (she had six positive tests and one “no show”). Mother admitted smoking at home while her one-and two-year olds slept, contradicting her previous claim never to have smoked marijuana if any child was home. Two such young children require virtually constant care and attention, and a lapse in a caregiver’s ability due to being under the influence of marijuana places them at risk of harm. (See *Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) Thus, for such very young children, a finding of substance abuse establishes a *prima facie* case that the children are at risk under section 300. (*Drake M.*, *supra*, 211 Cal.App.4th at p. 767.) Mother claims she does not smoke to get high, and smoked only when the children were napping. But she could not ensure they would not wake up or that she would not be too intoxicated to provide the level of care and supervision required by children too young to fend for themselves and completely reliant on her to meet their needs.

Although mother refused to acknowledge that her drug use posed a risk to her children and claimed she was not addicted, she repeatedly told father and DCFS that she used marijuana to cope with life. She needed it to deal with domestic violence during her relationship with father, to relax, focus and stave off boredom, and to

perform daily tasks like housecleaning and preparing meals for her family. She also used marijuana to self-medicate for migraines. Even when she faced the loss of custody of her children, mother chose to maintain her historical reliance on marijuana to cope with the stresses of daily life and dysfunctional domestic relationships, rather than to pursue treatment for the underlying problems through court-ordered therapeutic services.

Finally, mother herself disproved her claim that she could quit using marijuana. After DCFS raised the issue of drug use with mother, and warned her of the risks it posed to the children and her ability to maintain custody, mother continued using marijuana several more months. Even after the children had been detained, mother attended only two sessions of a substance abuse program before quitting, and failed to appear for an appointment DCFS set up to assess the possibility of her participation in a more stringent program. Mother further demonstrated the depth of her substance abuse problem and the risks it poses to her children by continuing to drink alcohol and use marijuana during her pregnancies. (See *In re Troy D.* (1989) 215 Cal.App.3d 889, 899 [mother's prenatal use of dangerous drugs is probative of future child neglect]; *In re Stephen W.* (1990) 221 Cal.App.3d 629, 639 [same].) She continued to engage in harmful conduct even after she knew similar conduct caused Guillermo to suffer fetal alcohol spectrum disorder and concomitant disabilities.

Mother's reliance on *Destiny S.*, *supra*, 210 Cal.App.4th 999, and *Drake M.*, *supra*, 211 Cal.App.4th 754 is misplaced. Because three of mother's children were six-years old or younger at the time of the jurisdiction hearing—children of “tender years” in the language of *Rocco M.*—a “finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm.” (*Drake M.*, *supra*, 211 Cal.App.4th at p. 767; accord, *Rocco M.*, *supra*, 1 Cal.App.4th at p. 824; *In re Christopher R.* (2014) 225

Cal.App.4th 1210, 1219 (*Christopher R.*.) This alone distinguishes this case from *Destiny S.*, in which the court found no substantial risk of harm to an 11-year-old due to her mother's drug use.

Unlike Dana, Vincent and (by virtue of his disabilities), arguably, Guillermo, the child in *Destiny S.* had long since passed the stage at which a child is completely reliant on a parent's care and requires constant care and attention. Further, the child in *Destiny S.* appeared well cared for and the mother's drug tests in the three months before the jurisdictional hearing were negative, indicating a reduced risk from the mother's drug use. (*Destiny S.*, *supra*, 210 Cal.App.4th at p. 1004.) Here, by contrast, mother had been receiving maintenance or reunification services and support since 2012, but continued using drugs (and lying about it). She did so at times when she was the sole caregiver for an infant and toddler. Further, just two of seven drug tests she took [or missed] between the children's final detention and the December 2014 jurisdictional hearing yielded a negative result. Mother's conduct also stands in contrast to that of the father in *Drake M.*, who never smoked if his child was home and made sure that at least four hours—or whatever greater amount of time was necessary to ensure he was not under the influence—passed between the time he smoked marijuana and his assumption of caregiving responsibilities. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 761, 767-769.)

The issue whether a parent's drug use qualifies as drug abuse is for the juvenile court to decide based on the facts of each case. (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219 [looking at the facts as a whole and not applying any strict

definitions when finding substantial evidence of drug abuse].)⁶ Here, jurisdiction is properly based on the findings of drug use sustained against mother.⁷

2. *Substantial Evidence Supports the Juvenile Court's Dispositional Findings*

The juvenile court sustained virtually identical allegations in the section 342 and section 300 petitions that mother's historical and current substance abuse, and her violent relationship with Jonny endangered the children's health and safety, and placed them at risk of physical harm and danger. At the dispositional phase of the December 2014 hearing, the court deemed it necessary to remove the children from mother's physical custody. Mother's primary argument as to the court's dispositional order is premised on her contention that the juvenile court's lack of jurisdiction rendered its dispositional orders moot. As explained above, we affirm the court's jurisdiction. Alternatively, mother insists that there is insufficient evidence to support the order removing the children from her physical custody.

We review an appeal from a juvenile court's dispositional order under the substantial evidence standard of review, bearing in mind that the court is required to

⁶ We disagree with *Drake M.*, *supra*, 211 Cal.App.4th at page 766, to the extent it concluded that a finding of substance abuse must be predicated on a medical professional's diagnosis of substance abuse, or evidence the parent meets the definition of substance abuse in the DSM-IV-TR. As explained in *Christopher R.*, *Drake M.*'s definition "is not a comprehensive, exclusive definition mandated by either the Legislature or the Supreme Court" (*Christopher R.*, *supra*, 255 Cal.App.4th at p. 1218.)

⁷ Having concluded that substantial evidence supports the juvenile court's jurisdictional findings based on mother's drug use we need not address mother's assertion that the jurisdictional findings lack sufficient evidentiary support as to the allegations of domestic violence. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 762-763.)

make its order based on a higher standard of clear and convincing evidence. (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367.) A child may not be removed from parental custody unless the juvenile court finds, by clear and convincing evidence, that there is a substantial danger to the child's physical health, safety, protection or physical or emotional well-being, and that reasonable efforts were made but "there are no reasonable means" to protect the children short of removal. (§ 361, subds. (c)(1), (d); *In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.) We do not pass on the credibility of witnesses, resolve evidentiary conflicts or evaluate the weight of the evidence. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250–251.) We draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and must affirm that order even though other evidence might support a contrary conclusion. (*Ibid.*) As appellant, mother has the burden to show the dispositional order is not supported by substantial evidence. (*Ibid.*) She has not carried her burden.

First as to the section 342 petition, the juvenile court permitted the children to return to mother's custody in June 2013 after she demonstrated partial compliance with her case plan by participating in programs to address domestic violence issues and agreed to remain apart from father. Later, however, the court concluded that its decision to allow the children to return to mother's physical custody ineffective in protecting them.

There is substantial evidence that mother has a serious, longstanding and unresolved drug problem and an inability to avoid abusive relationships. After two years of juvenile court jurisdiction and the children's return to her care, mother had still not completed her case plan and enrolled in individual counseling to address the issues driving her continued involvement in harmful relationships or those underlying her substance abuse. After finally splitting with father, mother almost immediately became involved in a relationship with Jonny characterized by similarly unhealthy

patterns of jealousy, possessiveness and control, that ultimately manifested in domestic violence affecting the children's stability. Further, rather than seek therapy to address the reasons leading her to engage in such destructive behavior, mother chose to continue using marijuana to enable her to cope with the tasks, stress and boredom of daily life, and used the drug even when caring for one- and two-year-old children. In addition, (then pregnant) mother continued to use marijuana for months after DCFS exposed the drug use and required her to drug test.

Mother was unwilling to participate in necessary programs and counseling when the children were in her care. As a result, it is no surprise that her children failed to thrive in her care. Guillermo regressed once Jonny came into the picture and continued to do so until restored to the care of maternal relatives. And, according to father, mother neglected to meet the children's basic needs for adequate shoes and clothing.

DCFS tried for months to work with mother to get her to address her substance abuse issues and to break free of abusive relationships before finally concluding the children's safety could not be ensured unless they were removed from her custody. Even after her children were detained, mother continued her relationship with Jonny and refused to fully participate in a substance abuse program. For these reasons, we find sufficient evidence to support the juvenile court's determination that the children were at substantial risk unless and until they were removed from mother's custody.

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DISPOSITION

The jurisdictional and dispositional orders appealed from are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.