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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re I.D. et al., Persons Coming Under the
Juvenile Court Law.

B242289
(Los Angeles County
Super. Ct. No. CK55173)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Timothy R. Saito, Judge. Reversed.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Father R.C. appeals from a juvenile court order asserting dependency jurisdiction over his and mother M.J.'s children. Father contends there was insufficient evidence to support the juvenile court order. We reverse the juvenile court's order asserting jurisdiction over the children.

FACTUAL AND PROCEDURAL BACKGROUND

This case was initiated in 2011 and concerned seven of mother's children: I.D. (then 15 years old), J.J. (12), Mt.C. (10), M.C. (8), O.C. (6), R.C., Jr. (4), and J.C. (2). Appellant R.C. is the father of all of the children except I.D. Between 1999 and 2010, the Los Angeles County Department of Children and Family Services (DCFS) received 18 referrals regarding the family. DCFS closed 15 of the referrals as inconclusive or unfounded. Two referrals were substantiated. According to one DCFS report, between April 2004 and July 2006, the family had a "family maintenance court case . . . for allegations of general neglect and lack of basic necessities." Another report indicated the previous period of dependency jurisdiction was "due to the sexual abuse of [I.D.] and [J.J.] by half-sibling [L.J.]"¹

In October 2011, DCFS received a referral alleging general neglect from an agency that had been providing services to the family since July 2011. Upon investigating, a DCFS social worker learned I.D. had a positive tuberculosis skin test in February 2011. I.D.'s pediatrician told mother I.D. needed a chest X-ray. Mother did not have an X-ray taken. I.D. was unable to enroll in school without a medical clearance, and had not been to school since June 2011. Mother told the DCFS social worker she had been unable to get an appointment for the chest X-ray; I.D. was not sick; and she thought I.D.'s school was too dangerous. Mother reported having several health problems, including breast cancer.

O.C. (6 years old) had a condition known as "trigger thumb," which limited mobility in her fingers. The reporting party alleged the parents had failed to secure appropriate medical care for this condition. The reporting party further alleged the family's home was

¹ A referral in June 2005 was "evaluated out." (Boldface omitted.) The referral came from a school nurse who reported mother and three of the children were dirty and smelled. Mother sought medical attention from the school nurse after she purportedly tripped and fell over an extension cord that was plugged in at a neighbor's home.

infested with roaches, fleas, and bedbugs. I.D. told the DCFS social worker the home had recently been fumigated.

DCFS filed a dependency petition alleging the children were persons described by Welfare and Institutions Code section 300, subdivisions (b) and (j),² as a result of mother's failure to obtain a chest X-ray for I.D., and the parents' failure to obtain medical treatment for O.C.'s trigger thumb.

1. January 2012 Jurisdiction/Disposition Report

In January 2012, DCFS filed a jurisdiction and disposition report. In DCFS interviews with the family in December 2011, the children appeared clean, except for the youngest, J.C., who "appeared dirty with traces of chocolate around his mouth and face and fingers." The report noted the children appeared happy together and playing with each other. The children all denied physical abuse. Mother and I.D. informed DCFS that I.D. had received an X-ray since DCFS became involved in October, and she was now to take medication as a prophylactic measure for nine months. Father denied the parents were previously told I.D. needed an X-ray. Father said O.C. was born with a problem with her fingers, but a doctor told the parents she could not have surgery until she was 10 or 12 years old. Father and mother denied receiving any medical advice to seek treatment for O.C.'s condition in the interim. I.D.'s doctor told DCFS he gave her a referral in February 2011 and in October 2011 for a chest X-ray. O.C. had received a medical examination in June 2011, and the other six children had medical examinations in February 2011. The report noted Mt.C. and J.C. did not have scheduled immunizations in March and April 2011.

All of the children received medical examinations at a "HUB" clinic in November 2011. Mt.C., M.C., and O.C. had lice and needed dental care for cavities. R.C., Jr., had bumps on his skin identified as probable insect bites; J.J. had scars from healed insect bites. The HUB doctor advised mother to return to O.C.'s primary care doctor to seek a referral for an orthopedic specialist for the trigger thumb condition. The doctor also advised that

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

mother should seek services from O.C.'s school to address her speech delay. As of the writing of the jurisdiction report in January 2012, mother had not yet sought services from the school.

The report indicated the family's house was dirty and had a foul odor. There were dirty dishes in the kitchen. The house did not have running water or electricity. The family secured electricity and water from a neighbor. Although mother was receiving some government assistance, she was ineligible for certain programs because she is undocumented.

The report concluded the children were not in physical danger while in their parents' care. However, DCFS opined there was a substantial risk the children would suffer serious harm as a result "of the parents' repeated medical neglect in that they have failed to seek treatment for their children's serious ailments on several occasions. The home has also been observed by all service providers and DCFS staff to be . . . dirty and infested with roaches and the older children have also been observed to be extremely parentified. [¶] . . . [¶] An overall assessment of this family is that mother and father lack resources and insight as to the neglect that they have perpetrated on their children. Parents blame the health care providers for the medical neglect of the children and do not take responsibility for their inaction." Mother and father were willing to receive family maintenance services.

2. February 2012 Jurisdiction Hearing

At a February 2, 2012 jurisdiction hearing, following a mediation, mother pled no contest to an amended petition that contained only one allegation regarding her failure to obtain a chest X-ray for I.D. Father submitted on the amended petition. The juvenile court sustained the amended petition and found the children were persons described by section 300. However, pursuant to section 360, subdivision (b), the court did not declare the children dependents and instead set a six-month hearing. DCFS was to supervise the family. Under the mediation agreement, the parents agreed to cooperate with family preservation services, follow up on all medical appointments for the children, ensure that I.D. continued taking medication as prescribed, and participate in individual and family counseling.

3. March 2012 Section 360, Subdivision (c) Petition and Detention Report

On March 1, 2012, DCFS filed another dependency petition under section 360, subdivision (c). The petition alleged mother failed to ensure I.D. continued taking her medication; the parents failed to obtain treatment for the children's lice; and the parents had not "follow[ed] up on the children's medical and dental needs." The petition also alleged the parents had not complied with family preservation services.

In a detention report filed the same day, DCFS reported father was not present during the social worker's visits and had not made himself available to the family preservation services social worker. The report asserted mother was not ensuring I.D. was taking her medication because the parents made I.D. responsible for administering the medication to herself, and mother could not confirm I.D. had taken it as prescribed. Mother also did not take four of the younger children to a doctor's appointment scheduled for February 21. Despite recommendations from the November 2011 medical examinations, the parents had not yet taken the children to the dentist, or had a follow up appointment for lice. The parents also had not requested services from O.C.'s school to address her speech delay, or returned to O.C.'s primary care physician for an orthopedic referral.

In the detention report, the social worker opined "the children are unsafe in the home due to the unsanitary conditions of the home." According to the report, the family's home was dirty and smelled of urine. There were dirty dishes on the kitchen floor and counter. A social worker noticed mother left out dairy products and eggs for "days at a time," without putting them in the refrigerator. Mother reported the home had bedbugs and would be fumigated during the weekend of February 18. However, on February 21, mother indicated no one had come to fumigate and she was unsure why. Blankets the children used were "covered with a film of dirt." The report indicated that the family preservation services social worker asked mother to wash the blankets but she had not.

The house did not have electricity or running water. The family's electricity and water came from neighbors. The social worker reported the children told her they showered only once a week because they did not want to waste water. The report indicated that the family had a large outstanding utility bill, which the parents claimed was from previous

tenants. Although a social worker accompanied father to the utility office, father did not have the required information to access the account. Social workers had helped mother partially complete an application for “Section 8” housing, but mother had not returned the completed application to the social worker.³

The detention report additionally noted mother claimed to suffer from various ailments but she would not confirm she was receiving treatment, and in some cases the social workers questioned the truth of mother’s claims. DCFS asserted mother’s failure to seek medical attention for herself caused the children emotional stress, and mother and the children said her ailments prevented her from completing household chores.

On February 27, a DCFS social worker informed mother DCFS was preparing to ask the court to remove the children from the parents’ custody. Mother threatened to leave for Mexico with the children. As a result, DCFS immediately removed the children from the home and placed them in foster homes.

4. March 2012 Detention Hearing

At a subsequent hearing at the beginning of March 2012, father objected that the children could not be detained under section 360, subdivision (c). The court deemed the detention report to be a petition under section 385 and concluded there were sufficient grounds to detain the children under section 360, subdivision (c), and California Rules of Court, rule 5.676.

5. March 2012 Section 342 Petition and Jurisdiction/Disposition Report

On March 23, DCFS filed a dependency petition under section 342. The petition alleged the children were persons described by section 300, subdivisions (b) and (j) because

³ The report also recounted a telephone contact with a “PSA” counselor, although the report did not provide a date for the conversation. The counselor “shared that she was concerned with the amount of unexcused absences the children have. [The counselor] has visited the home and is concerned because of the unsanitary condition of the home as well as the children’s hygiene. She is also concerned with the children[’s] constant head lice infestation. According to [the counselor], the Health Department even went out to the home the summer of 2011 to teach mother how to properly treat for lice, but the children continue to have lice as documented in the HUB results dated 11/8/11.”

the family's home was filthy, permeated by the smell of urine, infested with bedbugs, and had no electricity or water; I.D. suffered from tuberculosis and mother failed to ensure I.D. took her medication as prescribed;⁴ O.C., M.C., and Mt.C. suffered from chronic head lice and the parents failed to provide necessary medical care, or necessary dental care; and O.C. suffered from trigger thumb and the parents failed to obtain medical treatment. In an accompanying detention report, DCFS opined there was a substantial danger to the children's physical health and no reasonable means to prevent the danger without removal.

On March 26, DCFS filed a new jurisdiction and disposition report. DCFS interviewed the children in connection with the report. I.D. said she felt capable of taking her medication on her own. She reported she took the medicine every morning when she woke up, and mother always reminded her. Mother put the medicine in a cabinet out of reach of the younger children. I.D. also informed the social worker she and her brother cleaned the house, but her little brothers did not clean up after themselves and made a mess. Although the house did not have water or electricity, the family was getting both from a neighbor. I.D. acknowledged the family could not wash dishes at night because of the lack of running water in the house, but she said her parents washed dishes in the morning after getting water from the neighbor. I.D. asserted the children took baths four to five times each week, and she showered every day. She told the social worker the family had two dogs and they urinated outside the home, so that may have been the source of any urine smell. According to I.D., an exterminator fumigated the house for bedbugs the day DCFS detained the children.

The younger children capable of providing an interview denied that the house was dirty and said they bathed five to six times each week. O.C. said the children helped mother clean the house, but when they went to school they did not have time to clean.

Mother denied failing to follow up on the children's medical appointments. She asserted there was a mistake with one appointment, and she could not take the children to

⁴ There was no evidence that I.D. actually had tuberculosis. Instead, as explained in the January 2012 jurisdiction/disposition report, the positive skin test indicated only that she had been exposed to, or carried, the bacteria that causes tuberculosis disease.

the next appointment because DCFS had removed them. Mother said she made sure I.D. took her medication every day. Mother also asserted she was using a lice treatment lotion on the younger girls. Mother further reported that the parents had been cleaning the house and had it painted. She indicated the house no longer had bedbugs after an exterminator came, and she had recovered from her previous ailments.

Father denied the parents failed to comply with court orders, noting they had enrolled in parenting education courses at the Mexican consulate. Father said he was working on several occasions when the family preservation services social worker was at the house. Twice he was home but the worker did not acknowledge his presence. Father admitted the house did not have water or electricity, but explained that the family paid a neighbor for a share of her electricity and water. He reported that the utility company wanted the family to pay an outstanding balance of \$5,000 accrued by a previous tenant. Father was unable to work out an arrangement with the company.

DCFS recounted the social workers' undated observations that the family's home smelled of urine; the home was unsanitary; a dependency investigator saw spoiled food in plates and pans on the kitchen counters and floor, "as well as sharp knives and other utensils that are dangerous for children within access of the children"; and the children were dirty and had body odor. The report further asserted DCFS had unsuccessfully tried to help father with the utility company; mother did not comply with the workers' attempts to help her complete a Section 8 application; mother had been unable to confirm whether I.D. "continued to consistently take the medication" on days the social workers visited; mother had not taken O.C. to her primary care doctor for an orthopedic referral; and mother had cancelled two scheduled counseling sessions. Yet, DCFS noted father said the parents had completed the Section 8 housing application. The report also noted that on a recent visit, the social worker observed the family's home had been painted and "repaired." Blankets in one room looked dirty, but those in two other rooms seemed clean. The kitchen cabinets had been painted, new tile was laid, and the dining room table was covered by a clean cloth. The front yard was also clean. Mother had discarded most of the family's furniture, except

mattresses that had been fumigated. The home still did not have working electricity or running water.

DCFS concluded that although the parents had cleaned the home, social workers remained concerned that the parents did not understand the importance of hygiene and would “continue with neglecting the children.” DCFS recommended the children remain placed out of the home until “the parents are able to demonstrate that they can maintain a home environment that does not pose a health risk on their children and are able to learn skills that will enable them to meet their children’s needs.”

6. March-May 2012 Contested Jurisdiction Hearing

At the next court proceeding, the court indicated it was “operating under the 342 petition” and was “deferring dispo on the underlying petition . . . pending the outcome of a 342 petition.” A contested hearing took place over the next several weeks.

I.D. testified she took her medication every morning and, before DCFS placed I.D. in foster care, mother kept the medicine in her closet. Mother gave her a pill every day before breakfast. I.D. testified she saw mother using medication to treat her little sisters’ lice. The day DCFS removed the children from the home an exterminator came to treat the house for bedbugs. I.D. said she had chores around the house, including cleaning the kitchen. The family washed their bedding at a laundromat every week. I.D. testified that they had electricity from extension cords plugged in at a neighbor’s house. She did not pay attention to the number of extension cords, but the family had lights in all rooms.

According to I.D., the family had not had running water since before Thanksgiving of 2011. They kept a bucket of water by the toilet. They flushed the toilet after each use. They purchased water to drink and used that water to brush their teeth. The children bathed five days a week. They washed dishes with water coming from a hose through a window. I.D. said she washed dishes every two days. She denied ever smelling an odor of urine in the home, but testified the family had a puppy that sometimes ran inside and urinated in the house.

A DCFS social worker testified she had been to the family’s home 10 times and the condition was always the same. When she first visited the family’s home in December

2011, she observed: “There was no electric. No running water. The children appeared to be -- their clothes were a little bit unclean. The home seemed unclean. There was dishes on the count[er] top, on the floor. The bedroom, the sheets on the bed were -- appeared to have a film of dirt. The family reported that they had [bedbugs] in the home. Mother’s health was a big concern for the department.” When the social worker visited the home in February 2012, she noticed “a foul smell of urine, dirty clothes. The kitchen appeared the same as it usually was. It was dirty. Dishes on the floor and the countertop.” “The beds had the same blankets with the film over them.” “. . . I guess the film on it was so thick that it took over the color of the blankets.” “There was food on the counter.” “It was mainly eggs. Front yard was cluttered.” The worker testified DCFS detained the children because mother threatened to take them to Mexico to avoid a DCFS removal.

The social worker testified that Mt.C. reported showering only once a week. The two oldest children said they showered every day. The worker reported the parents said they had no utilities because the company was charging them for the bills of previous tenants, and the bill was so high the parents were unable to pay it. She further testified that although the family preservation services social worker accompanied the parents to the utility company, they were unable to access the account “due to the lack of I.D. and apparently there was another person on the account that they were unable to identify.” The family preservation services social worker testified that at the utility company office, they could do little because father did not have valid California identification and did not know his social security number.⁵

The social worker said she had not attempted to address DCFS’s concerns with father. The family preservation services social worker recalled that at her first meeting with the family, she saw dirty dishes piled on the kitchen floor and sink. The blankets appeared

⁵ The family preservation services social worker testified she and father agreed to return to the office at a later date and she “encouraged Dad to be prepared with his I.D., social security the following time -- the following visit.” But it is not clear that either parent had these forms of identification. The record indicates both parents are undocumented. Mother told the social worker that father returned on his own to the office but was unable to resolve the outstanding charges and get service turned on.

to have black stains. She was concerned at the lack of running water and electricity. The family had water jugs that were refilled every three days. The condition of the house remained the same each time the worker visited. She testified that she once tried talking with father about steps to make the house safe because she saw a knife on the kitchen counter and a closed medicine bottle outside the house. According to the family preservation services social worker, father was not cooperative. She discussed the condition of the house on each of her eight visits to the family. Mother said she was unable to clean on a regular basis due to her illness.

A dependency investigator testified that when she visited the family's home in December 2011, the house was "kind of messy," there were dirty dishes in the kitchen, and there was "some kind of foul odor, like a bad smell." When she visited in March 2012, the house was completely changed, although there was still "a little bit of the bad smell." The house was painted and the floor remodeled. The investigator did not see any sanitation problems. She saw drinking water in the house and big tanks for storing water, but the tanks were empty during her visit. According to the investigator, the parents completed the Section 8 housing application. The family's home was in foreclosure, but the parents believed it would not be sold for some time.

Father testified the family bathed with water his brother brought to the house every other day. The family bought drinking water. The family had electricity from an extension cord running from a neighbor's home. He asserted no social worker had ever told him what the DCFS concerns were.

The juvenile court dismissed all but one count of the section 342 petition. The court amended the remaining count to read: "On 2-27-12[,] the [children's] home was found to be in a filthy and unsanitary condition, [consisting of] an odor of urine emanating from the home. The kitchen contained dirty dishes on the floor and counter. The home had inadequate electricity and water services, contributing to a detrimental home environment established by [mother and father], and concerning the children's physical health and safety believes a detrimental home environment for the children places the children at risk of physical harm and damage in this case." The court found the amended count true. The

court expressed particular concern about the lack of water and electricity in the house. The court questioned how the family got through the winter months without hot water or electricity, and expressed concern that having to use a bucket of water to make the toilet flush posed an unsanitary risk, particularly given the young age of several of the children. The court further expressed concern at the potential safety hazard created by having a extension cord from a neighboring house as the source of electricity, especially when there is rain, leading to a risk of electrical shock and fire hazards.

7. June 2012 Disposition Hearing

Prior to the disposition hearing, DCFS filed two last minute information notices. The first informed the court that the parents had secured water and electricity for their home.⁶ The second notice informed the court that the family's home was no longer a safety threat to the children. All food was adequately stored and the utilities were in working condition. Although DCFS had returned the children home, the house was still clean. The children were well groomed and showered daily. DCFS recommended the children be released to the parents under court supervision.

The juvenile court declared the children dependents under section 300 and found court supervision was necessary. The court ordered the children to be placed in the parents' home, and established a case plan consisting of conjoint and individual counseling, an order that the parents maintain an "appropriate" home, and an order that DCFS provide referrals for housing assistance and family preservation services.

Father timely appealed.

DISCUSSION

On appeal, father contends substantial evidence did not support the juvenile court's jurisdictional findings made under the second dependency petition.

⁶ The parents still owed a large balance on their account, but they secured services under someone else's name.

1. The Jurisdictional Findings Made Pursuant to the Section 342 Petition Are at Issue

Although the juvenile court referenced section 360, subdivision (c) when detaining the children, all of the proceedings that followed concerned the second petition DCFS filed under sections 342 and 300. Under section 360, subdivision (b), after the court finds a child is a person described by section 300, it may “without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child’s parent . . . under the supervision of the social worker for a time period consistent with Section 301.” Under section 360, subdivision (c), if the family is subsequently unwilling or unable to cooperate with the provided services, “the social worker may file a petition with the juvenile court . . . alleging that a previous petition has been sustained and that disposition pursuant to subdivision (b) has been ineffective in ameliorating the situation requiring the child welfare services. Upon hearing the petition, the court shall order either that the petition shall be dismissed or that a new disposition hearing shall be held pursuant to subdivision (d).”

Section 342 provides that in “any case in which a minor 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. This section does not apply if the jurisdiction of the juvenile court has been terminated prior to the new allegations. [¶] All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section.”

The juvenile court detained the children in connection with the section 360, subdivision (c) petition. However, after DCFS filed the “section 342/section 300” petition alleging a different basis for dependency jurisdiction than the original petition, the proceedings focused only on the second petition. Although the section 342 petition included allegations relating to the parents’ failure to remedy the problems identified in the original section 300 petition, the juvenile court struck those allegations. The juvenile court made no findings pursuant to section 360, subdivision (c). Thus, we need not consider the parties’

arguments as to whether substantial evidence supported a section 360, subdivision (c) petition.

2. Applicable Legal Standard

“‘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 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.” (§ 300, subd. (b); see also *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1002 (*Destiny S.*).)

“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.” [Citations.]” (*B.T., supra*, 193 Cal.App.4th at p. 692.)

3. Substantial Evidence Did Not Support the Jurisdictional Findings

The juvenile court asserted jurisdiction in this case based on the risk of harm posed to the children by the state of the family's home. We agree that the record lacked substantial evidence to support the jurisdictional order. The record contained no evidence establishing the family's living conditions had caused the children serious physical harm or illness, or created a substantial risk of such harm or illness in the future.

DCFS social workers consistently described the home as filthy and unsanitary. Yet, even at the contested jurisdictional hearing the only details the social workers provided to describe the "filth" were a bad smell of urine, dirty dishes in the kitchen, dirty blankets, eggs left on a counter, and a "cluttered" front yard where a social worker once saw a closed medicine bottle. DCFS also asserted the family had a history of living in unsanitary conditions, based in part on referrals that were found inconclusive or unsubstantiated. Even assuming these referrals could be valid evidence in a juvenile case, they suggest only that the family has chronic poor housekeeping habits, and have struggled to maintain a stable and adequate residence. (See *Destiny S.*, *supra*, 210 Cal.App.4th at p. 1004 [closed past referral not evidence of current risk].) There is no indication that the children have suffered harm, despite the persistence of these problems for many years. In *In re Paul E.* (1995) 39 Cal.App.4th 996, 1005 (*Paul E.*), the juvenile court concluded that absent unsanitary conditions or resulting illness or accident, chronic messiness is not clear and convincing evidence of the substantial risk of harm required for removal. This reasoning similarly applies here, in the context of jurisdictional findings. While the family house was characterized as dirty, DCFS offered no substantial evidence that the *children* were routinely dirty, seriously or unusually ill, underfed, or otherwise neglected.

The family's home did not have running water, and they could only flush their toilet by manually adding water. But there was no evidence that the family's bathroom area was unsanitary as a result, or even that it was the source of the foul odor in the home. While the juvenile court expressed concern about the family not having hot water, in fact there was no evidence on whether the family had any means to heat water, and no evidence indicating that the lack of hot bathing water posed any risk of serious harm to the children. Ten-year-

old Mt.C. said the children only showered once a week so as not to waste water; the other children said they bathed multiple times a week. Yet, there was only one reference to the children appearing dirty or having body odor in the 2012 reports. None of the DCFS social workers testified that the children were dirty or smelled.

The record also did not include evidence suggesting the family's lack of electricity placed the children at risk of serious physical harm. Although the house did not have electricity, the family paid a neighbor to share electricity, which they received by plugging an extension cord in at the neighbor's home. There was no evidence offered or elicited about the kind of extension cord used. The court expressed concern about the safety hazards posed by using an extension cord for power, including the risk of electrical shortage or fire danger if the cord was out in the rain. But there was no evidence as to whether the extension cord was left out in the rain, whether it was a heavy-duty outside extension cord or one meant only for indoor use, to what extent the cord was outside, and no evidence any of the children were harmed in the many months the family had used this strategy for getting electricity.⁷ The only evidence of anyone suffering harm came from a 2003 referral in which the reporting party said mother indicated she had tripped over an extension cord and a lamp fell on her ear. The reporting party did not actually believe mother's account. The referral was closed as unfounded. (See *In re James R., Jr.* (2009) 176 Cal.App.4th 129, 137 [perceptions of risk, rather than actual risk, are not substantial evidence].)

There was evidence that the three younger girls had lice for several months. Yet there was undisputed evidence that mother had been treating the children for lice. We note that nearly one month after they were removed from the family's home and placed in foster care, Mt.C. and O.C. still had lice. (See *In re Janet T.* (2001) 93 Cal.App.4th 377, 390 [noting head lice "are a common affliction of children everywhere, including those attending only the most prestigious day camps and private schools"].) Moreover, the

⁷ When asked where the power from the neighbor connected to the family's home, father testified: "Since the garages are together, they're right next to each other, that's the area through where it connects." We have found no other evidence in the record describing the location of the extension cord or cords.

juvenile court *dismissed* an allegation in the petition that the children's chronic head lice and the parents' failure to secure appropriate medical care placed the children at risk of harm.

Similarly, mother reported there were bedbugs in the home, but there was undisputed evidence that the house had been fumigated once before in 2011 for fleas, mother planned to have an exterminator treat the house on February 21, 2012, and an exterminator came less than one week after the scheduled date. Mother also indicated she discarded much of the family's furniture. Despite the report of bedbugs, there was only one report, from November 2011, that J.J. and R.C., Jr., had insect bites. DCFS did not include any observations after that date that any of the children had new or more insect bites. In the March 26 jurisdiction and disposition report, the social worker noted the bedbugs had been eliminated.

This was the entirety of the evidence regarding the family's living conditions and the effect on the children. We do not minimize the undesirability of the family's living situation. Having only provisional or borrowed water and electricity for a lengthy period of time, a foul-smelling, dirty home, and pests such as lice or bedbugs, are not necessarily "trivial" conditions, as father asserts on appeal. However, the record fails to provide any substantial evidence to support a finding that the family's living situation had caused the children *serious* physical harm, or placed them at *substantial risk* of serious physical harm. There was no evidence suggesting the family's living conditions were symptomatic of other serious problems, such as parental substance abuse, or mental illness. Instead, the only reasonable inferences created by the evidence were that the parents are inadequate housekeepers and the family has limited economic resources. As the court noted in *Paul E.*, "[t]he absence of ill effects is a way of distinguishing a loving-but-dirty-home case from a case of real neglect." (*Paul E.*, *supra*, 39 Cal.App.4th at p. 1005, fn. 8.)

Making all reasonable inferences from the evidence to support the juvenile court's orders, we are still unable to find substantial evidence that the children had suffered harm or there was a substantial risk they would suffer serious physical harm or illness due to the family's living conditions -- the only sustained basis for jurisdiction. "Subdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300,

subdivision (b), there must be evidence indicating that the child is exposed to a *substantial* risk of *serious physical* harm or illness.’ [Citation.]” (V.M., *supra*, 191 Cal.App.4th at pp. 252-253.) Such evidence was missing in this case to support the sole sustained basis for dependency jurisdiction. Because we conclude the jurisdictional findings must be reversed, the dispositional orders must also be reversed. (*Ibid.*)

DISPOSITION

The juvenile court’s May and June 2012 jurisdictional and dispositional orders are reversed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.