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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re ABEL R. et al., Persons Coming Under the Juvenile Court Law.	B278588 (Los Angeles County Super. Ct. No. DK19084)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. VALERIE R., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Terry Truong, Juvenile Court Referee. Jurisdiction finding affirmed, disposition order reversed and remanded with directions.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jeannette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Valerie R. appeals from the juvenile court's jurisdiction findings declaring her three children dependents of the juvenile court and from the court's disposition order removing them from her physical custody and placing them with their father, Abel R. Valerie argues substantial evidence does not support the court's findings and order, the court failed to consider whether there were reasonable means to protect her children other than removal, and the court failed to state the facts supporting its decision to remove the children. Because substantial evidence supported the juvenile court's jurisdiction findings, we affirm the court's findings. In its disposition order, however, the court erred in failing to consider whether there were reasonable means less drastic than removal to protect the children and failing to state the facts on which its removal order was based. Because these errors were not harmless, we reverse the disposition order and remand for a new disposition hearing.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petition and Detention*

The Los Angeles County Department of Children and Family Services received a referral stating Valerie's mother had taken Valerie's 12-year-old son, Abel, to the hospital because he said he "wanted to die and kill himself." The Department investigated the conditions that led to Abel's behavior and filed a petition pursuant to Welfare and Institutions Code section 300,[1] alleging Abel, his 10-year-old brother Noah, and his nine-year-old

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

sister Milani, came within the jurisdiction of the juvenile court under section 300, subdivisions (a), (b), and (j). With respect to section 300, subdivision (b), the Department alleged the history of domestic violence between Valerie and the children's father, Abel R., endangered the children. The petition described multiple incidents of physical and verbal altercations between the couple, at times in the presence of the children. The Department also alleged Valerie endangered the children by renting out rooms in her house to tenants who used drugs.

In its detention report, the Department summarized the findings of its investigation. Valerie and Abel R. were divorced approximately four years ago. Both parents had joint legal custody, but Valerie had primary physical custody and Abel R. had visitation rights. For the past two years, the children resided in the home of Valerie's mother during the weekdays; on the weekends they alternated living with Valerie and Abel R.

Valerie acknowledged she had a "history of domestic violence in the home" with Abel R. in 2013 and 2014, and she and her children had stayed at various shelters. Milani recalled an incident where Abel R. hit Valerie on the head with a phone, and Valerie "hit him back" with a chair. Abel recalled incidents where Valerie chased Abel R., and Abel R. hit Valerie with a closed fist. The children also witnessed Valerie and her boyfriend Matthew having arguments in the home. Matthew confirmed he and Valerie argued but stated "it [was] never physical."

When a Department employee went to Valerie's home to arrange for mental health services for Abel and Noah, Valerie asked Abel R. for his permission to have the boys receive treatment. When Abel R. refused, Valerie cursed at him on the telephone, hit the wall, and went into the bedroom and slammed the door.

Abel R. reported that one night he woke up with an extension cord around his neck, which prompted him to leave the home "permanently." The day after they separated, Valerie tried to damage Abel R.'s car in the presence of Milani. The detention report also noted telephone calls Abel R. made to the 911 operator in 2013 claiming Valerie had chased him with a knife and in 2015 claiming Valerie had tried to run him over with her car.

Regarding Valerie's tenants, Valerie knew one of the tenants used methamphetamine and another tenant used marijuana and a "white" substance. The children knew the tenants used drugs. During the Department's investigation, Valerie attempted to evict her tenants and called the police to enforce the eviction notices. Valerie's tenants reported Valerie used drugs. Valerie and Matthew tested negative for drugs each time the Department asked them to take a drug test.

Valerie asked that Abel be admitted into the hospital in 2015, and he was placed on a "hold" under section 5150.[2] Abel was diagnosed with Attention Deficit Hyperactivity Disorder and "conduct disorder," and he received treatment sporadically. In Abel's most recent hospitalization, he was diagnosed with "explosive anger disorder" and referred to a therapist. Abel stated "the divorce [was] when he started feeling angry," he did not want to live "whenever he is angry but he doesn't mean it," and "if he isn't around yelling and cursing, he [is] able to get rid of his anger."

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[2] Section 5150, subdivision (a), provides: "When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, . . . [a] professional person . . . may, upon probable cause, take . . . the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention . . . ."

In the section of the detention report titled "Reasonable Efforts and/or Prior Intervention/Services Offered," the Department stated: "Reasonable Efforts were made to prevent or eliminate the need for the child(ren)'s removal from the home. The following Pre-placement Preventive Services were provided but were not effective in preventing or eliminating the need for removal of the child from the home. [¶] A safety plan was put into place . . . . The mother was able to fulfill the safety plan, however, further investigation findings place[ ] the children at risk of future harm and emotional damage if the children are left in the care of the mother."[3] The report did not state what services the Department had "provided" that were "not effective," nor did the report give any information regarding the "further investigation findings" that placed the children at risk of future harm.

In the section titled "Available Services/Referral Methods Which Could Prevent the Need for Further Detention," the Department listed "[i]ndividual [c]ounseling, [f]amily [c]ounseling, [a]nger [m]anagement, [m]ental [h]ealth [e]valuation, [p]arent [t]raining, [t]ransportation, [c]ase [m]anagement." The report did not state which of these services the Department actually provided, nor which ones it advised Valerie to complete on her own. The report recommended the juvenile court detain the children from Valerie and place them with Abel R.

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[3] Valerie signed a "safety plan" providing for the relocation of her children to her mother's home until Valerie evicted the tenants, Valerie and Matthew submitted to drug testing, and Valerie enrolled Abel in therapy. Valerie stated "she would do anything the Court orders her to do in order to get her children back" and asked the social worker for more information on how to parent her children.

At the detention hearing the juvenile court detained the children from Valerie and released them to Abel R. The court ordered Valerie to submit to random drug testing, and ordered the Department to "provide the parents with no/low cost referrals for appropriate services."

B. *Jurisdiction and Disposition*

For the jurisdiction and disposition hearing, the Department submitted a report that summarized the findings contained in the detention report. In a section titled "Reasonable Efforts," the Department stated: "The parents have been provided referrals for services. The mother's substance abuse counselor provided an enrollment letter. The parents are further participating in drug testing. Additionally a visitation schedule has been set up for the mother and children." The Department again recommended the children remain with Abel R.

At the hearing, Valerie contested the allegations in the petition and argued the court should return the children to her because the last domestic violence incident occurred several years ago, she had successfully evicted the tenants who used drugs in her home, and she had moved in with her mother. Abel R. confirmed there had been no recurrence of the past domestic violence between him and Valerie. Counsel for the children stated the children all wanted to live with Valerie, but counsel submitted on the Department's recommendation they stay with Abel R. "at this time." The court admitted into evidence a progress letter from Valerie's substance abuse treatment counselor, who stated Valerie had attended 35 group sessions, including anger management, life skills, parenting and relapse prevention, two individual therapy sessions, and four of 17 parenting classes. The counselor noted Valerie had a "positive attitude" and was "actively participating in treatment."

The juvenile court sustained counts b-2 and b-4 of the petition, found the children were persons described by section 300, subdivision (b), and struck the remaining allegations.[4] At disposition, the court found: "[T]here is a substantial danger if the children were returned home to their physical health, safety, protection, or physical or emotional well-being, and there are no reasonable means by which their physical health can be protected without removing them from their mother's physical custody. . . . Reasonable efforts were made to prevent and eliminate the need for the removal." The court removed the children from Valerie and placed them with Abel R., finding placement with Abel R.

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[4] The sustained amended b-2 allegation was: "The children['s] . . . mother, Valerie [R.] and father, Abel [R.], have a history of engaging in violent altercations in the presence of the children. On a prior occasion the father struck the mother on the head with a phone, the mother struck the father with a chair. On a prior occasion the mother wrapped an extension cord around the father's neck. On prior occasions the mother scratched the father's face, struck the father causing the father to sustain a bloody nose and tried to kill the father. On a prior occasion the mother brandished a knife and chased the father while holding the knife. The violent conduct by the parents endangers the children's physical health and safety, creates a detrimental home environment, and places the children at risk of harm." The sustained amended b-4 allegation was: "The children['s] . . . mother, Valerie [R.], created a detrimental and endangering home environment in that the mother allowed unrelated adults, to possess, use illicit drugs, and be under the influence of illicit drugs in the children's home and in the presence of the children. The mother allowed the unrelated adults to reside in the children's home and have unlimited access to the children. The detrimental and endangering home environment established for the children by the mother, endangers the children's physical health and safety, and places the children at risk of harm."

would not be detrimental to their safety, protection, or physical or emotional well-being. The court ordered Valerie to complete a 52-week domestic violence class, parenting education, and individual counseling, and to submit to drug testing. Valerie timely appealed.

DISCUSSION

A. *Applicable Law and Standard of Review*

The juvenile court may determine a child is a person described by section 300 if the court finds by a preponderance of the evidence "[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 a parent's failure to adequately supervise or protect the child. (§§ 300, subd. (b), 355, subd. (a); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248; *In re Dakota J.* (2015) 242 Cal.App.4th 619, 631; *In re T.V.* (2013) 217 Cal.App.4th 126, 132.) The juvenile court may not remove a child described by section 300 from the physical custody of the parent with whom the child resides "unless the juvenile court finds clear and convincing evidence" a "substantial danger" to the child's physical or emotional well-being if the child were returned home, and "there are no reasonable means" to protect the child other than by removal. (§ 361, subd. (c)(1); see *In re Cynthia D.*, at p. 248; *In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.)

Although different standards of proof apply at the jurisdiction phase and the disposition phase, we apply the substantial evidence standard of review for both phases (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216), noting the disposition order requires a higher level of proof. (See *In re Ashly F., supra,* 225 Cal.App.4th at p. 809 ["[o]n appeal from a dispositional order . . . we apply the substantial evidence

standard of review, keeping in mind that the trial court was required to make its order based on the higher standard of clear and convincing evidence"]; *In re Hailey T.* (2012) 212 Cal.App.4th 139, 146 [for review of a disposition order, the "substantial evidence test remains the appropriate standard of review, 'bearing in mind the heightened burden of proof'"].)

Under the substantial evidence test, "'[w]e 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.'" (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.) "'The term "substantial evidence" means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value.'" (*In re A.S.* (2011) 202 Cal.App.4th 237, 244; see *Los Angeles County Department of Children and Family Services v. Superior Court* (2013) 222 Cal.App.4th 149, 159.) "[S]ubstantial evidence 'is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [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."'" (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.)

B. *Substantial Evidence Supported the Juvenile Court's Jurisdiction Finding Based on Domestic Violence*

Valerie contends the juvenile court's jurisdiction findings were not supported by substantial evidence because, at the time of the jurisdiction hearing, "the parents had been divorced with no recent domestic violence incidents and [Valerie's] tenants were evicted and they no longer lived in her home." Valerie argues the

Department failed to show her past history of domestic violence and her tenants' drug use "caused [her children] serious physical harm or put them at risk of such physical harm." There was substantial evidence, however, to support the court's jurisdiction finding that Valerie's failure to protect her children from domestic violence put her children at a substantial risk of harm.

Under section 300, subdivision (b)(1), "sometimes referred to as the 'failure to protect' provision" (*In re R.T.* (2017) 3 Cal.5th 622, 626), the juvenile court may find a child is within the jurisdiction of the court if the 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 . . . ." "By its terms, the first clause [of section 300, subdivision (b)(1)] requires no more than the parent's 'failure or inability . . . to adequately supervise or protect the child.'" (*In re R.T.*, at p. 629.)

"Exposure to domestic violence may serve as the basis of a jurisdictional finding under section 300, subdivision (b)." (*In re R.C.* (2012) 210 Cal.App.4th 930, 941; see *In re M.M.* (2015) 240 Cal.App.4th 703, 720 ["many cases based on exposure to domestic violence are filed under section 300, subdivision (b)"].) "'[D]omestic violence in the same household where children are living . . . is a failure to protect [them] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.'" (*In re Jesus M.* (2015) 235 Cal.App.4th 104, 112; see *In re S.O.* (2002) 103 Cal.App.4th 453, 460-461.) "'Both common sense and expert opinion indicate spousal abuse is detrimental to children.'" (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.)

The record shows an extensive history of domestic violence between Valerie and Abel R. Sometimes Abel R. initiated the violence, and sometimes Valerie was the aggressor. All three

children were well aware of the physical and verbal mutual combat between their parents, some of which transpired in their presence. (See *In re T.V.*, *supra*, 217 Cal.App.4th at p. 134 [the child "was clearly aware of her parents' domestic violence; thus, she was at substantial risk of harm"].) By engaging in physical violence with Abel R., Valerie created a risk of physical harm for her children. (See *In re N.M.* (2011) 197 Cal.App.4th 159, 165 [juvenile court "need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child," the "court may consider past events in deciding whether a child presently needs the court's protection"]; see also *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216 ["[a] parent's "'[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue'"].)

In addition to the extensive history of domestic violence between Valerie and Abel R., the evidence showed the couples' separation in approximately 2012 did not end the domestic violence. In October 2013 Valerie brandished a knife in front of Abel R. and in 2015 she tried to hit him with her car. (See *In re T.V.*, *supra*, 217 Cal.App.4th at pp. 130, 134 ["lengthy history of domestic violence" and an "off and on" relationship between the parents placed the child at substantial risk of physical harm, even though the parents no longer lived together]; *In re R.C.*, *supra*, 210 Cal.App.4th at p. 944 [incidents of domestic violence after the parents' separation showed the separation did not diminish the risk to the children]; *In re E.B.*, *supra*, 184 Cal.App.4th at p. 576 [the father's past violent behavior and the mother's record of returning to him supported the juvenile court's finding that her conduct endangered the children].) Even during the Department's investigation, Valerie had difficulty managing her anger toward Abel R., and, even though Abel felt he could get rid of his anger and thoughts of suicide if he were not surrounded

by "cursing and yelling," Valerie and her boyfriend Matthew argued in his presence in the home.

In re Daisy H. (2011) 192 Cal.App.4th 713, 716-717, on which Valerie relies, is distinguishable. In that case the court reversed a jurisdiction finding based on one incident of domestic violence at least two years prior to the filing of the petition, and there was no evidence the children were present during the incident or that the violence continued after the parents' separation. (*Id.* at p. 717.) Here, there were multiple incidents of past domestic violence, one of which was an attempt by Valerie to kill Abel R., the violence continued beyond the parents' separation, and Valerie had ongoing anger management issues. Substantial evidence supported the juvenile court's jurisdiction finding.[5]

C. *Substantial Evidence Did Not Support the Juvenile Court's Removal Order*

Valerie argues there was no "clear and convincing evidence" the children faced a "substantial danger" to their

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[5] Because substantial evidence supported the jurisdiction finding based on domestic violence, we do not address whether substantial evidence supported the court's jurisdiction finding based on Valerie renting out rooms to tenants who used drugs and allowing them to associate with her children. "'When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.'" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

"physical or emotional well-being" if they returned to her home or "substantial evidence" removal was "essential to avert harm." Valerie further argues "no evidence showed the court made a determination as to whether reasonable efforts were made to prevent or to eliminate the need for the children's removal." We conclude the juvenile court erred in removing the children from Valerie's custody because substantial evidence did not support the juvenile court's finding there were no reasonable means to protect the children without removing them from Valerie.

Section 361, subdivision (c), provides, in pertinent part: "A dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides . . . unless the juvenile courts finds . . . (1) [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." "To aid the court in determining whether 'reasonable means' exist for protecting the children, short of removing them from their home, the California Rules of Court require [the Department] to submit a social study which 'must include' among other things: 'A discussion of the reasonable efforts made to prevent or eliminate removal.'" (*In re Ashly F.*, *supra*, 225 Cal.App.4th at p. 809, quoting Cal. Rules of Court, rule 5.690(a)(1)(B)(i).) In addition, the juvenile court must "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home," and the court "shall state the facts on which the decision to remove the minor is based." (§ 361, subd. (d).) As the court explained in *In re Ashly F.*, at p. 810, "The requirement for a discussion by the child welfare agency of its reasonable efforts to prevent or eliminate

removal [citation] and a statement by the court of the facts supporting removal [citation] play important roles . . . . Without those safeguards there is a danger the agency's declarations that there were 'no reasonable means' other than removal 'by which the [children's] physical or emotional health may be protected' and that 'reasonable efforts were made to prevent or to eliminate the need for removal' can become merely a hollow formula designed to achieve the result the agency seeks."

Here, both the Department and the juvenile court failed to comply with the statutory requirements and the California Rules of Court. (See *Ashly F.*, *supra*, 225 Cal.App.4th at p. 810; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.) The Department in its reports did not discuss the "'reasonable means' it had considered and rejected." (*In re Ashly F.*, at p. 809.) The detention report recited the language of California Rules of Court, rule 5.690, subdivision (a)(1)(B)(i), that "[r]easonable [e]fforts were made to prevent or eliminate the need for the child(ren)'s removal from the home," and included the prefatory sentence, "The following [p]re-placement [p]reventive [s]ervices were provided but were not effective in preventing or eliminating the need for removal of the child[ren] from the home." The remainder of this section of the report, however, did not discuss the services the Department had provided but concluded were ineffective. After acknowledging Valerie "was able to fulfill the safety plan," the Department did not identify any facts supporting the conclusion that "further investigation findings place[ ] the children at risk of future harm and emotional damage if the children are left in" her care. In the "Reasonable Efforts" section of the jurisdiction and disposition report, the Department asserted "[t]he parents have been provided referrals for services," but the Department did not specify which services it had offered Valerie or whether they had been effective.

Similarly, the juvenile court failed to state any facts supporting its decision to remove the children from Valerie's physical custody. Parroting the language of section 361, subdivision (c), the court stated "[r]easonable efforts were made to prevent and eliminate the need for the removal" and "there are no reasonable means by which [the children's] physical health can be protected without removing them from their mother's physical custody." But that was all. The Department does not dispute the juvenile court failed to state the facts to support the removal order, as required by section 361, subdivision (d).[6]

Finally, the juvenile court's error was not harmless. (See *In re Ashly F.*, *supra*, 225 Cal.App.4th at p. 811 [had the court inquired into the issue of whether there were no reasonable means to protect the children other than removal, there was a "reasonable probability" the court would not have found by clear and convincing evidence "there were no reasonable means of protecting the children except to remove them from their home"]; *In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1098-1099 [when the juvenile court violates a statutory mandate, reversal is justified only when it is reasonably probable the court would have reached a result more favorable to the appellant in the absence of the error].) There was evidence other means may have ensured the children's safety while still allowing Valerie to retain physical

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[6] Nor does the Department point to any facts in the record showing the juvenile court considered alternatives to removal or the Department made reasonable efforts to prevent removal. Instead, the Department attempts to distinguish *Ashly F.* by asserting Valerie "had not yet acknowledged and accepted responsibility for placing [the children] in harm's way." The Department, however, does not cite any facts in the record to support this assertion. To the contrary, as noted, Valerie had taken significant steps to address the issues.

custody. Valerie had taken responsibility for her mistakes, asked the social worker for a referral for parenting education, actively participated in all of her therapy groups and classes, and maintained a positive attitude. She evicted her tenants and moved in with her mother. She tested negative on all seven of the drug tests administered by her treatment facility, as well as the two drug tests requested by the Department. And, although Valerie and Matthew argued in the home, there was no evidence of physical violence. Moreover, it does not appear the juvenile court considered that Abel R. was also responsible for the incidents of domestic violence with Valerie.

At a minimum, the court should have considered "stringent conditions of supervision" by the Department, such as unannounced visits, public health nursing services (*In re Hailey T.*, *supra*, 212 Cal.App.4th at p. 148), and in-home counseling (*In re Ashly F.*, *supra*, 225 Cal.App.4th at p. 810), along with requiring the children to reside with Valerie's mother, which for several years had essentially been the children's home anyway during the weekdays. There is no indication in the record the court considered these or any other alternatives. (See *In re Ashly F.*, at p. 810 [failure to comply with section 361, subdivision (d), was prejudicial because "ample evidence existed of 'reasonable means' to protect [the children] in their home" given the mother's expression of remorse and enrollment in a parenting class]; see also *In re Henry V.* (2004) 119 Cal.App.4th 522, 529 [although the juvenile court checked a box reciting the findings required under section 361, subdivision (c)(1), the court "did not mention the existence of alternatives to out-of-home placement" and there was "ample evidence that appropriate services could have been provided . . . in the family home"]; cf. *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1137 [juvenile court's failure to state factual basis for removal was harmless because the mother had received

services for many years and still could not safely parent her children], disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; *In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1219 [juvenile court's failure to state facts supporting its removal order was harmless because the social worker's report considered and rejected alternatives to removal].)

Therefore, we reverse the disposition order and remand the matter for a new disposition hearing. On remand, the juvenile court is to make its decision based on the facts existing at the time of the new disposition hearing. (See *In re Ashly F.*, *supra*, 225 Cal.App.4th at p. 811.) The court should also consider that jurisdiction was based on acts of domestic violence by both parents, not just Valerie.

DISPOSITION

The jurisdiction findings are affirmed. The disposition order is reversed and remanded for a new disposition hearing in compliance with section 361 and the California Rules of Court.

SEGAL, J.

We concur:

PERLUSS, P. J. ZELON, J.