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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.A., et al.,

Defendants and Appellants.

B277430

(Los Angeles County  
Super. Ct. No. CK55529)

APPEAL from an order of the Superior Court of Los Angeles County, Margaret Henry, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant R.A.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant A.I.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

Defendants and appellants R.A. (Father) and A.I. (Mother) are the parents of a son Ryan, the child who is the subject of this appeal. Father is also the parent of Ryan's half-brother Kody, and Father had custody of both boys at the time the Los Angeles County Department of Children and Family Services (the Department) instituted dependency proceedings in this case. The juvenile court sustained allegations that Ryan was a child described by Welfare and Institutions Code section 300,<sup>1</sup> finding (1) Father failed to obtain medical care for Ryan, placing his health and safety in jeopardy; and (2) Father failed to protect Ryan from a risk of serious harm by repeatedly allowing Mother, who had longstanding substance abuse problems, to supervise Ryan (and Kody) in violation of a juvenile court custody order. In a prior opinion, we affirmed the juvenile court's finding that Kody was a child described by section 300, holding substantial evidence supported the juvenile court's determination that Father failed to protect Kody from harm by entrusting his otherwise unmonitored care to Mother. (*In re K.A.* (Jun. 22, 2017, B277442) [nonpub. opn.]) We reach essentially the same result here with respect to Mother and Father's challenge to the juvenile court's jurisdiction finding regarding Ryan.

## I. BACKGROUND

### A. *Prior Dependency Proceedings*

Ryan, Mother, and Father have all been involved in prior dependency proceedings. In 2004, the Department filed a petition alleging Mother had a history of substance abuse and

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<sup>1</sup> Statutory references that follow are to the Welfare and Institutions Code.

was a then-current user of methamphetamine, which resulted in the birth of a daughter who had a positive toxicology screening test for methamphetamine. Mother failed to reunify with her daughter, and she was subsequently adopted by relatives.

Also in 2004, a juvenile court assumed dependency jurisdiction over Ryan's brother Kody on the basis of allegations that Kody's mother (who is not the mother of Ryan—the boys have separate mothers) had a history of substance abuse and was then a methamphetamine user. The juvenile court granted Father unmonitored visitation with Kody during the dependency proceedings, and Kody was ultimately returned home to Father and his mother when the juvenile court terminated jurisdiction in 2006.

Approximately five years later, in 2011, the Department petitioned the juvenile court to assume jurisdiction over then-newborn Ryan, who had a positive toxicology screen for alcohol and methamphetamine at birth. Mother also tested positive for methamphetamine use at the time of Ryan's birth, as well as on two prior occasions during her pregnancy. The Department's 2011 petition alleged jurisdiction over Ryan was appropriate in light of Mother's long history of substance abuse and because Father reasonably should have known of Mother's substance abuse. The juvenile court assumed jurisdiction over Ryan, with no reunification services for Mother, and closed the case in 2012 with a family law order granting Father sole physical and legal custody of Ryan. Importantly for our purposes, the order closing the case in 2012 granted Mother only monitored visitation with Ryan.

*B. The Department Receives Another Referral  
Concerning Ryan and Kody*

Five years after the commencement of the 2011 proceedings involving Ryan, the Department received a referral raising concerns about the well-being of both boys. According to the referral, Father permitted multiple methamphetamine users to stay in his home with Ryan and Kody. Father's home was also reportedly in disarray and was littered with trash and piles of clothing. The referring party further alleged Mother was also living in the home and she often yelled at the children "after coming off methamphetamine."

The Department investigated in response to the referral. The assigned social worker spoke to Father by phone and asked to schedule an in-person meeting with him and the two boys. Father told the social worker that Ryan was staying with Mother in Santa Clarita for three or four days, but Father and Kody could meet the following day.

In the meantime, the assigned social worker contacted another social worker who had recently investigated a referral alleging Mother physically abused Kody. The other social worker said Father and Mother were living together and Kody had reported Mother threw a bicycle helmet at him which hit him in the head. According to the other social worker, Mother admitted she threw the helmet at Kody after he first threw it at her, but she said she had not "mean[t] to hit him."

When the assigned social worker went to Father's home to interview him and Kody, she observed the home "appeared to be in a very dirty[,] cluttered condition . . . [with] piles of clothing and items in every room in the house that were at least four to

five feet tall.”<sup>2</sup> The kitchen was also infested with roaches. Father denied Mother lived in the home but admitted she “visits the home for about three or four days at a time.” Father also told the social worker that Mother would watch Ryan while Father was working. When the social worker responded that Mother’s unrestricted access to Ryan was in violation of the prior juvenile court order prohibiting unmonitored visits between Mother and Ryan, Father replied that he believed the court order allowed him to grant “[M]other unmonitored visits at his discretion.” The social worker asked Father if he had any concerns about Mother’s drug use, and Father claimed to know Mother was sober based on “her behavior.”

The social worker visited the home again five days later and interviewed Mother. Mother reported she lived in Santa Clarita but stayed at Father’s home “about twice per week” when she visited Ryan. Mother also acknowledged she would take Ryan with her to Santa Clarita when Father was working, and when the social worker mentioned the juvenile court order prohibiting unmonitored visitation between her and Ryan, Mother said “the judge told [F]ather . . . he could allow unmonitored visitation at [h]is discretion.” Regarding Ryan’s medical condition, Mother was aware he suffered from eczema, allergies, and asthma. After the social worker expressed concern that the dirty, cluttered condition of the home might affect Ryan’s health, Mother said “Ryan is up to date with his medical care at this time and there are no concerns.” Mother denied she was

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<sup>2</sup> Father told the social worker he had just lost his storage unit and that was why there was so much clutter in the home.

using drugs or alcohol and agreed to submit to an on-demand drug test.

The social worker next met with Ryan, who was then almost five years old. Ryan did not respond to the social worker's questions with easily understandable answers, and the social worker noticed his left eye did not focus correctly.

As part of her initial investigation, the assigned social worker also spoke to a medical assistant at a community clinic that provided medical care services to Ryan. The medical assistant stated Ryan was last seen at the clinic in August 2015 when he was observed to have asthma, anemia, and strabismus (or "lazy eye"). According to the medical assistant, the physician who treated Ryan in August 2015 had prescribed a three-month supply of Albuterol (a drug used to treat asthma symptoms), but this supply "should have run out" and the assistant "[did] not know where the family would get medication for [Ryan]." The medical assistant also told the social worker that Ryan's treating physician had ordered an "allergy panel" and requested the parents follow up by taking the child for lab testing, but the parents "did not follow through with this" and had also failed to follow through on a referral to an ophthalmologist to treat Ryan's strabismus. The staff member explained asthma patients should be seen about once per month and expressed concern that Ryan had not been seen at the clinic since August 2015 (some nine months earlier).

### *C. The Department Initiates Dependency Proceedings*

On May 17, 2016, the Department filed a five-count petition pursuant to section 300, subdivisions (a), (b), and (j) alleging Ryan came within the jurisdiction of juvenile court.

Count a-1, which was later dismissed by the juvenile court, alleged Mother physically abused Kody by throwing the bicycle helmet at him, which was conduct that also endangered Ryan's physical health and safety. Count b-1, also later dismissed, alleged the unsanitary environment at Father's home endangered Ryan.

Counts b-2 and b-3 alleged there was a substantial risk Ryan would suffer serious physical harm or illness as a result of Mother and Father's failure to adequately supervise or protect Ryan. Specifically, count b-2 stated Ryan had been diagnosed with asthma and strabismus and alleged Mother and Father failed to obtain recommended medical care for Ryan, and that this "medical neglect of the child" placed him "at risk of serious physical harm, damage, and danger." Count b-3, as later amended by the juvenile court, alleged Mother and Father violated court orders when Father left Ryan and Kody alone with Mother, which in one instance "resulted in Kody . . . being struck by [Mother] with a helmet."

Count j-1, in language identical to count a-1, alleged the helmet-throwing incident involving Kody placed Ryan at substantial risk of abuse or neglect. It, too, was later dismissed by the juvenile court.

At the initial detention hearing, the juvenile court found Father was Ryan's presumed father and ordered Ryan to remain released into Father's custody pending adjudication of the section 300 petition. The court granted Mother visits with Ryan twice a week, but ordered the visits could not take place in Father's home and had to be monitored by someone, not Father, who met with the Department's approval.



In the weeks following the detention hearing, a Department social worker conducted further interviews with Father and Mother in connection with preparing a jurisdiction/disposition report for the juvenile court. As relevant here, the interviews touched on the incident in which Mother cut Kody's lip by throwing a bicycle helmet at him and the parents' difficulties in ensuring Ryan was receiving proper medical care.

According to the jurisdiction report, when Father was asked about the bicycle helmet incident, he stated he "was in the kitchen and heard arguing and when he walked out to stop Kody and [Mother], she had already thrown the helmet at the child." Father reported he told Mother what she did was wrong "and that he would not allow her to do that to [Kody] regardless of his behavior."

Mother admitted she threw the helmet at Kody but said she did so "because [he] threw it at her first." When asked if Kody's actions excused her own behavior, Mother initially responded that Kody is "too disrespectful and is out of control" before acknowledging what she did was wrong.

Regarding the topic of obtaining medical care for Ryan, Father stated he tried to make an ophthalmology appointment for Ryan after receiving an initial referral from the medical clinic. Father claimed he was not able to make the appointment because the referral he was given included incorrect contact information.<sup>3</sup>

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<sup>3</sup> Mother asserted she called Ryan's healthcare provider about the ophthalmology referral and the provider had agreed to send a new referral. However, when later contacted by the Department, a representative of the healthcare provider reported there was no record of such a call in the provider's records, which "would have been documented."

Father reported Ryan had recently been seen by his medical provider and was scheduled to have an allergy screening test performed. A Department investigator called Ryan's medical provider the next day and talked with a staff member who reported Father was a "no show" for a scheduled appointment. Father stated he was unaware of that appointment, but he had taken Ryan to have his allergy testing done at another medical testing facility.<sup>4</sup>

*D. The Jurisdiction and Disposition Hearing*

The juvenile court continued the first scheduled date for the jurisdiction hearing to research the status of prior court juvenile court orders entered as to both Ryan and Kody, including the aforementioned order giving custody of Ryan to Father with only monitored visitation for Mother. The Department filed a last minute information report for the court prior to the jurisdiction hearing. While noting Father had submitted to two drug tests and the results were "clean," the report stated he had failed to appear for the drug tests on the dates requested by the Department and had waited four days or more to test.

When the jurisdiction hearing commenced, the juvenile court received several Department reports in evidence and took judicial notice of the order entered during the prior dependency proceeding that gave custody of Ryan to Father and provided Mother with only monitored visitation rights. During the hearing, Father also opted to testify.

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<sup>4</sup> The Department also contacted Kody's medical provider and learned Kody had been a "no show" for his two most recent appointments.

Father admitted he knew the prior custody order prohibited unmonitored visits between Mother and Ryan (but Father claimed his attorney in the prior dependency case advised him he nonetheless had discretion to permit such visits). Father also conceded he knew Mother had not completed any substance abuse treatment programs since the juvenile court entered the custody order to close the prior dependency case that alleged he failed to protect Ryan from a risk of harm arising from her methamphetamine use. Nevertheless, Father testified Mother “would probably stay [at his home] about one or two days out of the week” and he would put Mother “in charge of both kids” (i.e., Ryan and Kody) when he had to go work or school. According to Father, the incident in which Mother hit Kody with the helmet did not occur on one of the occasions while he left her with the boys on her own; Father explained he was at home with Mother at the time, albeit in another room so he was not watching when it happened.

After Father completed his testimony, and after hearing argument from counsel, the juvenile court sustained counts b-2 (risk to Ryan from neglect in obtaining medical care) and b-3 (as amended, risk to Ryan from leaving Mother alone with him and Kody in violation of court order). The court dismissed the other a-1, b-1, and j-1 allegations. The juvenile court noted the b-3 count was its “primary concern” and explained Father’s testimony during the hearing revealed “he’s been leaving [Mother] alone with the children as his babysitter.” The court further observed that the incident where Kody was injured by the thrown helmet was “symptomatic” of a larger issue: “[T]hat is an example of what happens when you violate court orders with respect to somebody having monitored visits . . . [who has] not

done programs in the meantime. But the real offense is violating the court orders that somebody needs to be monitored. It's not safe when the social worker and the court have said, don't do it. There's a reason."

The court found Ryan was a child described by section 300 but opted not to declare him a dependent child. Instead, the court ordered the Department to provide services to keep the family together and placed the children and parents under the supervision of the social worker for six months pursuant to section 360, subdivision (b).<sup>5</sup>

## II. DISCUSSION

Mother and Father contend the juvenile court's jurisdictional findings should be reversed because the trial court had no basis to conclude there was a substantial risk, at the time of the jurisdiction hearing, that Ryan would suffer serious physical harm as a result of their failure to adequately supervise or protect him. We hold to the contrary. Substantial evidence supports the juvenile court's decision to find count b-3 of the dependency petition true, including evidence that both parents repeatedly violated a juvenile court order when Mother would babysit Ryan (and Kody) with no other adult present. Father's

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<sup>5</sup> At the conclusion of the disposition hearing, the juvenile court scheduled a further hearing at which it would dismiss the petition "if everything has gone well." A subsequently issued minute order, of which we have taken judicial notice at Father's request, indicates everything has not since gone well. Ryan was declared a dependent of the juvenile court and was placed under juvenile court jurisdiction. We accordingly reach the merits of the parents' contentions on appeal.

decision to leave Ryan in the care of Mother, who he knew to have substance abuse problems that had not been fully treated, exposed Ryan to a substantial risk of suffering serious physical harm—as the helmet throwing incident involving his brother Kody illustrates. Because we hold substantial evidence supports one of the alleged bases for juvenile court jurisdiction, we will affirm the juvenile court’s order without discussion of the other findings that supported the jurisdiction determination. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

A. *Standard of Review*

“In reviewing a challenge to the sufficiency of the evidence supporting the [juvenile court’s] jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the [juvenile] court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193[ ].) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the [juvenile] court. [Citations.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” [Citation.]’ (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321[ ].)” (*In re I.J., supra*, 56 Cal.4th at p. 773.) Mother and Father, as the parties challenging the juvenile court’s findings and orders, bear the burden to show

there was no evidence of a sufficiently substantial nature. (*In re D.C.* (2015) 243 Cal.App.4th 41, 52.)

*B. Substantial Evidence Supports the Juvenile Court's Decision to Sustain Count b-3*

A juvenile court may assert jurisdiction over a child pursuant to section 300, subdivision (b)(1) where “[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 the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left . . . .” (§ 300, subd. (b)(1).) “When the jurisdictional allegations are based solely on risk to the child, that risk must be shown to exist at the time of the jurisdiction finding.” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993.) “Although ‘the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm’ [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court’s protection. [Citations.] A parent’s past conduct is a good predictor of future behavior.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133; see also *In re F.S.* (2016) 243 Cal.App.4th 799, 814-815.)

Mother and Father cite *In re David M.* (2005) 134 Cal.App.4th 822 (*David M.*) and similar cases in arguing the Department did not identify, and the juvenile court therefore could not find, a current risk of physical harm to Ryan (or Kody) based on the decision to allow Mother to have unmonitored contact with the children. In *David M.*, the Court of Appeal

reversed a juvenile court jurisdiction finding where the appellate record contained insufficient evidence to demonstrate the mother's mental and substance abuse problems and the father's mental problems were tied to any actual harm or a substantial risk of serious harm to the minors who were the subject of that appeal. (*Id.* at pp. 829-830.)

Here, and in contrast to the situation in *David M.*, the record contains substantial evidence of a nexus between Mother and Father's conduct and a current risk of serious harm to Ryan. Father created a substantial risk to Ryan's physical health and safety by entrusting his care to Mother, who had a long history of substance abuse and who was for that reason subject to a court order prohibiting unmonitored visitation. Mother was, of course, equally aware of the terms of the prior family law order that allowed her only monitored visitation, but nevertheless accepted the caretaking assignment.<sup>6</sup> Father's testimony during the jurisdiction hearing and the argument presented by his attorney

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<sup>6</sup> Mother has not argued she unknowingly disobeyed the prior court order because Father misled her as to whether he had discretion to allow her to have unmonitored visits with the children—and for good reason. According to Mother, “the judge” told Father he could allow unmonitored visitation at his discretion. That was not Father's story. He claimed it was his attorney that told him he could permit unmonitored visitation despite the court order.

Even if it were true that Mother did not knowingly violate the terms of the court order, that would not alter our disposition of this appeal. The jurisdictional finding against Father would stand, and Ryan would remain a dependent child. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773; *In re H.R.* (2016) 245 Cal.App.4th 1277, 1285-1286; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.)

indicated Mother continued to supervise Ryan and his brother alone—with Father’s knowledge and consent—even after initiation of the current dependency proceedings and despite the fact that Kody had been actually harmed by Mother when she threw a bicycle helmet that hit him in the face. Mother and Father’s disregard of the terms of the prior custody order, their concomitant decision to place Ryan and Kody in a situation where the only caretaker was someone with a substance abuse problem that had not been fully treated, and the actual harm Kody suffered at Mother’s hand when she had unmonitored contact with the boys are facts that, taken together, constitute substantial evidence supporting the juvenile court’s finding that Ryan was a child described by section 300, subdivision (b)(1).

#### DISPOSITION

The juvenile court’s order is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.\*

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\* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.