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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re L.R. et al., Persons Coming  
Under the Juvenile Court Law.

B270127

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. DK12254)

Plaintiff and Respondent,

v.

JOCELYN C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County, Julie Fox Blackshaw, Judge. Affirmed.

Megan Turkat Schirn, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tyson B. Nelson, Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Jocelyn C., mother of daughter Jaylen R. (age 2) and son L.R. (age 4), appeals from the orders of the juvenile court sustaining a subsequent petition (Welf. & Inst. Code, § 342)<sup>1</sup> and removing the children from mother's custody (§ 361, subd. (c)(1)). We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

#### 1. *Legal History*

Jaylen and L. became dependents of the juvenile court under section 300 in September 2015 because of a history of physical altercations between father E.R.<sup>2</sup> and mother in front of the children, and mother's failure to protect the children. The juvenile court released Jaylen and L. to mother under the supervision of the Department of Children and Family Services (the Department) and ordered mother to undergo individual counseling to address case issues and domestic violence, to complete parenting education, and to arrange for L. to undergo speech therapy.

Just one month later, on or about October 26, 2015, the Department received a report that mother, who was residing with the children in the home of the maternal grandparents, had returned that afternoon from a party she had gone to the night

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Father is not a party to this appeal.

before. The maternal grandmother suspected that mother was under the influence of alcohol and drugs because mother arrived home “ ‘smelling like alcohol’ and was ‘tripping, bumping into things, and spinning in place.’ ” Also, while “ ‘verbal aggression is a common occurrence’ ” for mother, the grandmother observed her to be “ ‘more aggressive than normal.’ ” When the maternal grandfather attempted to put mother to bed, she became physically aggressive and “ ‘kicked the grandfather.’ ” After mother fell asleep, the grandmother took care of the children.

The following day, on October 27, 2015, a social worker made an unannounced visit and demanded mother submit to a drug test. When the grandmother began describing the events of the previous day, mother called the grandmother “ ‘a bitch’ and ‘stepped on the grandmother’s foot.’ ” The children cried when they heard mother “ ‘screaming at the grandmother.’ ” The social worker removed mother from the room to calm her down. Mother claimed she returned late from the evening out because she had gone to the hospital, but had no evidence to support this story. Mother tested for drugs on October 27 and the results were positive for amphetamine, methamphetamine, and cannabinoids.

The juvenile court ordered the children removed from mother’s house and the Department filed the subsequent petition at issue here. (§ 342.)

## *2. The Family’s Condition*

During a therapy appointment in mid 2015, mother was aggressive with Jaylen in front of the therapist, when the child was crying. L.’ foster mother reported that she had had an argument with mother and feared mother would physically harm her; the caregiver wanted L. removed from her home.

During a medical examination in August 2015, Jaylen had various bug bites on her arms and legs, had a reddened area below the right eye, soiled feet, peeling skin, no shoes, and her car seat was very soiled. L. had poor hygiene, soiled and worn clothing, and a loop mark on his left arm, which mark mother claimed never to have seen before. Mother was inattentive to L., allowing him to play with trash cans including the biohazard waste can.

L. is a client of the Regional Center and, as ordered by the juvenile court in September 2015, received speech therapy at his daycare. However, the children were absent from day care often enough that they actually attended only one or two days per week. Mother denied their absences and denied that she was frequently late to pick them up.

Mother claimed that her drug use was a one-time occurrence. She denied hitting the maternal grandmother, who is in a wheelchair, and kicking the maternal grandfather, but admitted being verbally aggressive with both grandparents. The maternal grandfather and aunt reported that they had not previously seen mother act the way she did on October 26th. Mother failed to appear at every other on-demand test between November 5, 2015 and January 8, 2016, ultimately missing four tests and testing negative on five occasions.

### *3. The Jurisdiction and Disposition Orders Based on the Subsequent Petition (§ 342)*

The juvenile court sustained the subsequent petition alleging the following two counts under section 300, subdivision (b): Count b-1 alleged that mother “is a current user of illicit drugs including methamphetamine, amphetamine and marijuana, which renders her incapable of providing regular care

and supervision of the children.” In October 2015, mother was under the influence of illicit drugs while the children were in her care and supervision and on October 27, 2015, mother produced a positive toxicology screen from methamphetamine, amphetamine and marijuana. The children are of a young age requiring constant care and supervision and mother’s drug use interferes with that care and supervision and endangers the children’s physical health and safety, and places them at risk of serious physical harm and damage.

Count b-2 alleged that mother “created a detrimental and endangering home environment for the children in that the mother became physically aggressive with the children’s maternal grandparents in the children’s presence. On or about 10/25/2015, the mother kicked the maternal grandfather . . . . On 10/26/2015, the mother stepped on the maternal grandmother[’s] foot.” Such a detrimental home environment endangers the children’s physical health and safety, and places them at risk of serious physical harm.

When sustaining these two counts, the juvenile court found that mother was under the influence as the result of a party on October 25. She was still tripping into things and appeared under the influence on October 26 and produced a positive toxicology screen the following day, i.e., October 27th. The court found either that mother repeatedly used drugs or that mother had a “very big binge on the 25th.” The court also noted that mother had missed drug tests. Mother was using illicit drugs and was physically abusive with her own parents and was heard screaming at the children. As a result, the children, who are of tender years, were not being cared for well or appropriately, the court found.

Turning to the disposition plan, the court removed the children from mother's custody (§ 361, subd. (c)(1)). The court added to mother's existing case plan the requirements that she address anger management issues in therapy, complete an anger management program, complete a full drug and alcohol program with aftercare, and undergo random or on-demand testing every other week. The court awarded mother monitored visits to be liberalized after eight consecutive clean test results and so long as she was compliant with her case plan. Mother's appeal followed.

### **CONTENTIONS**

Mother contends there is no evidence to support the jurisdiction findings and the removal order.

## DISCUSSION

1. *Substantial evidence supports the jurisdictional findings.*<sup>3</sup>

At the jurisdiction hearing, a finding that the children are described by section 300 must be supported by a preponderance of the evidence. (§ 355; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1432; § 342.) We review the juvenile court's finding for substantial evidence. (*In re J.K.*, at p. 1433.) "In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the

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<sup>3</sup> We are mindful that the children will remain dependents of the juvenile court regardless of whether we affirm the juvenile court's finding that the allegations in the subsequent petition (§ 342) are true because neither parent has challenged the jurisdictional order sustaining the original petition (§ 300). "As a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings. [Citation.] We nonetheless retain discretion to consider the merits of a parent's appeal [citation], and often do so when the finding '(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction' [citation].' [Citations.]" (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) Mother's appeal warrants review because the section 342 petition serves as the basis for the disposition order removing the children from her custody (§ 361, subd. (c)(1)).

evidence in favor of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court. Evidence from a single witness, even a party, can be sufficient to support the trial court's findings. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450–451; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) The substantial evidence standard “ ‘simply requires the trier of fact “to believe that the existence of a fact is more probable than its nonexistence . . . .” ’ ” (*In re Angelia P.* (1981) 28 Cal.3d 908, 918.)

A child falls within the jurisdiction of the juvenile court under section 300, subdivision (b)(1) if “[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.” “A jurisdictional finding under section 300, subdivision (b) requires ‘(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness.’ [Citation.]” (*In re John M.* (2013) 217 Cal.App.4th 410, 418; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) There must be a “ ‘ “showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]” ’ [Citations.]” (*In re J.O.* (2009) 178 Cal.App.4th 139, 152.) Courts may consider past events in deciding whether children currently need the courts’ protection. A parent’s “ ‘[p]ast conduct may be probative of



current conditions’ if there is reason to believe that the conduct will continue.” (*In re S. O.* (2002) 103 Cal.App.4th 453, 461; accord, *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.)

Mother contends that there is no evidence that any of the conduct alleged in the subsequent petition will recur. She argues that the October 25 incident was the one and only time she used drugs and that there is no evidence that she has used since. Mother is wrong.

The record here shows that mother was using drugs on October 25, and tested positive *two days later*. More important, a missed drug test is “properly considered the equivalent of a positive test result.” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1217.) Mother tested positive for methamphetamine and amphetamine in late October, and then missed *four* on-demand tests *through January 2016*. Substantial evidence shows that mother’s drug use is recurring.

Mother argues that her drug use, “‘without more,’ does not bring a minor within the jurisdiction of the dependency court.” Yet, there is more: Mother has been unusually belligerent, screaming at her parents, kicking her father, stepping on her mother’s foot, and scaring L.’ caregiver. Also, the children are “of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Mother has been neglecting these children’s needs and exposing them to her drug use and aggressive behavior and making them cry while in mother’s custody under the Department’s supervision. Mother failed to ensure that L. attend daycare regularly to receive the speech therapy ordered by the court. “The legislatively declared purpose [of section 300] ‘is . . . to ensure the safety, protection,

and physical and emotional well-being of children *who are at risk of that harm.*’ (§ 300.2, italics added.) ‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) These children are at risk of serious harm or illness from mother’s drug use if the court does not intervene.<sup>4</sup>

To challenge the subsequent petition’s second count, mother argues there was “no evidence she physically harmed or threatened to harm the children,” and no evidence that the children were present when she was physically aggressive with the grandparents. Acknowledging she yelled at her own parents while the children were home, mother argues that the fact the children cried when she screamed at the grandparents does not support a section 300, subdivision (b) jurisdictional finding. Mother misperceives the subdivision (b) allegation.

Physical aggression in the household is sufficient to put the children at risk of the harm defined by section 300, subdivision (b). “[D]omestic violence in the same *household* where the children are living *is* neglect; it is a failure to protect [Jaylen and L.] from the substantial risk of encountering the violence and suffering serious physical harm or illness.” (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194, first italics added.) Ongoing

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<sup>4</sup> County Counsel argues that mother met the definition of a “substance abuser” as defined in *In re Drake M.* (2012) 211 Cal.App.4th 754 and the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). However, mother does not argue she did not meet the definition. She argues that her drug use will not recur. Accordingly, we do not address the County’s contention under *Drake M.*

domestic violence in the household where children are living, standing alone, “is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” (*Ibid.*) Mother was physically abusive, more than just once, to her own parents while the children were in the house.

Likewise unavailing is mother’s argument that there was no evidence she was likely to be physically aggressive with the children or others in the future. The original petition was sustained because of domestic violence between mother and father in front of the children. Since then, mother has been physically aggressive with her own parents, one of whom is wheelchair-bound. Mother points to her family’s denials that she physical abused them, but the social worker saw mother call the grandmother “ ‘a bitch’ and ‘step[] on the grandmother’s foot’ ” when the grandmother attempted to report mother’s behavior. The social worker wrote, under penalty of perjury, that “the children were crying after the mother was heard ‘screaming at the grandmother’ when they were *all* in the bedroom.” (*Italics added.*) Also, the maternal grandmother told the social worker that mother “ ‘kicked the grandfather.’ ” The grandmother reported that while normally aggressive, mother was more aggressive than usual. The court had evidence that mother was aggressive to baby Jaylen in front of a therapist and her aggression has scared the foster mother who wants L. removed. This evidence amply supports the court’s conclusion that mother has been and continues to be verbally and physically aggressive with those in her household, with and around the children, and with others, and that the behavior has been escalating and will continue to recur. Mother poses a substantial risk of serious

harm to the children because of her drug use and aggressive behavior.

2. *The disposition order is supported by substantial evidence.*

To remove children from their parent's custody, the juvenile court must have clear and convincing evidence that there is or would be a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if returned home, and there are no reasonable means to protect the children's physical health without removing them from the home. (§ 361, subd. (c)(1).) "The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917), and "the parent's response to the conditions that gave rise to juvenile court intervention." (*In re Maria R.* (2010) 185 Cal.App.4th 48, 70, disapproved on other grounds in *In re I.J.*, *supra*, 56 Cal.4th 766.)

Mother's principal contention is unavailing that because the record contains no evidence to support the jurisdictional findings, the same record fails to provide clear and convincing evidence to support the removal order. We have already determined that substantial evidence supports the juvenile court's jurisdictional findings with the result that there is prima facie evidence supporting removal. Mother's substance abuse, physical aggression, failure to properly and adequately care for these very young children more than adequately supports the

order under section 361, subdivision (c)(1) removing them from mother's custody.

**DISPOSITION**

The orders are affirmed.

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ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.