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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| In re AARON V. et al., Persons Coming Under the Juvenile Court Law. |
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| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, |
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| Plaintiff and Respondent, |
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| v. |
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| J.R., |
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| Defendant and Appellant. |
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B286248

(Los Angeles County
Super. Ct. No. DK22582)

APPEAL from orders of the Superior Court of Los Angeles County, Stephen Marpet, Commissioner. Affirmed.

Cristina Sanchez, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel and Jessica S. Mitchell, County
Counsel, for Plaintiff and Respondent.

Appellant J.R. (Mother) appeals the juvenile court's jurisdictional and dispositional orders asserting jurisdiction over Mother's three children, Aaron V., Ariel M. and Alyssa M. under Welfare and Institutions Code section 300, subdivision (b), and removing them from her custody.¹ The court made several jurisdictional findings, and Mother challenges only one. We decline to exercise our discretion to review the finding as there would be no change in the children's status were we to conclude it was insufficient to support jurisdiction. Mother also challenges the court's dispositional order, contending it was not supported by substantial evidence. We conclude otherwise. Accordingly, we affirm the court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

On April 12, 2017, Mother texted David M., the father of Ariel and Alyssa, a photograph that appeared to depict Mother pulling a crying Ariel off the floor by her hair with

¹ Undesignated statutory references are to the Welfare and Institutions Code.

the caption “I can’t take care of the children.”² David, who was not close to home at the time, sent the photograph to his sister and asked her to investigate. She called police. Mother told the officers who responded that she had texted the photograph in an effort to persuade David, who had been gone for two days, to return home. She said she had just suffered a miscarriage, was under a tremendous amount of stress, and felt depressed. Mother denied actually pulling Ariel’s hair, stating she had staged the photograph, but Ariel and Aaron told officers that Mother had pulled Ariel’s hair. The officers placed Mother on a 5150 hold after she stated that she could no longer care for the children, and transported her to a mental health facility for evaluation. David refused to return home to care for the children. After a period in police custody, Aaron was placed with his father, Aaron V., Sr., and the younger children with David’s parents.³

The officers called in a referral to the Department of Children and Family Services (DCFS). The caseworker interviewed Mother at the mental health facility. Mother said there had been multiple instances of domestic violence between her and David, including one incident in which David, under the influence of methamphetamine, had slammed Mother’s face against a garage door. The children

² In April 2017, Ariel was three, Aaron was almost six, and Alyssa was ten months.

³ Neither Aaron, Sr. nor David is a party to this appeal.

were present, and the older two pled with David not to hurt Mother. When Mother started to leave with the children, David attempted to grab Alyssa from her. Mother believed that David was currently using methamphetamine, but said he did not consume drugs at home or in front of his family. Mother said she did not want to pursue a restraining order and was “ambivalent” about continuing the relationship with David.

Mother described experiencing a miscarriage two days before the hair-pulling incident. She said she had asked David to drive her to the hospital. At first he ignored her. He eventually agreed to drive her to an emergency room, but stopped for errands along the way. After her discharge from the ER, he stopped at a casino, forcing her to sleep in the car. The next day, David went to San Bernardino to help members of his family, leaving Mother, who needed bed rest, to drive the children to school and otherwise care for them. She said she had not pulled Ariel’s hair “forcefully” or with “ill intent,” but sent the picture in the hope David would return and help her care for the children.

A nurse practitioner at the facility said she did not believe Mother suffered from any chronic mental health issues or that she posed a threat to herself or others. She described Mother as temporarily “emotionally distraught” and “hopeless[].” Mother was discharged April 13, 2017 with a diagnosis of depression.⁴ After her release, Mother

⁴ The facility had drug tested Mother, and her results were negative.

informed the caseworker that she and David were no longer living together and that she intended to reside with a family member.

David admitted “snort[ing]” methamphetamine, but denied using drugs in front of his family. He denied domestic violence. He had a lengthy criminal record, including arrests and convictions for transporting drugs, using controlled substances, and fraud.⁵ He said he was willing to drug test. Shortly after the initial interview, David said he was about to be incarcerated and refused to cooperate with the caseworker.⁶

The children appeared to be well cared for. Ariel told the caseworker that Mother had pulled her hair and that it hurt. She described seeing David hit Mother, but could not elaborate. Aaron said Mother had pulled Ariel’s hair and spanked her. He said Mother sometimes hit him. He reported having seen David “push[]” Mother, but denied being afraid of anyone in the home.

Paternal relatives denied observing any incidents of domestic violence, but said that David and Mother argued frequently. They described Mother as “jealous and controlling” and “obsessed” with David. One paternal aunt

⁵ Mother believed David continued to be involved in transporting controlled substances.

⁶ In June 2017, the caseworker reported that David was incarcerated, but likely to be released in eight months.

expressed concern that Mother would harm the children to get David's attention.

Re-interviewed prior to the jurisdictional hearing, Mother denied pulling Ariel's hair. She said Ariel was crying because she did not want her hair to be combed and had thrown herself on the floor. Mother contradicted her earlier accounts of domestic violence. She denied that she and David engaged in violent altercations in the presence of the children. Concerning the previously-reported incident of domestic violence in which David allegedly pushed her face into a garage door, Mother said that on that occasion, David had broken the window of her car because she was trying to leave him. She stated that two years later, David broke another window because she suspected he was using drugs and locked him out of the house. She said she tried her best to be aware of when he was using drugs and to keep him out of the house when he was under the influence. Mother completed seven of eight parenting classes, eight of 26 sessions for anger management, and seven of 26 sessions for domestic violence counseling for victims. She was visiting the children four days a week.⁷ She stated that she would divorce David if necessary to regain custody of the children.

⁷ From the end of May to the end of June 2017, Mother did not visit Ariel or Alyssa on two of the four days, because she did not want to interact with the paternal relatives who were monitors on those days. In July, Mother declined to sign the visitation plan and refused to meet with the caseworker.

The caseworker concluded that without DCFS intervention, the children would be at a high risk of future maltreatment and physical and emotional harm. The jurisdiction/disposition report stated that Mother was placing the children at risk by continuing her relationship with David, and that Mother was unable to cope with the stress arising from David's actions, which caused her to act inappropriately, as demonstrated by the incident in which she pulled Ariel's hair. Although the report described the hair-pulling incident as "an isolated incident due to [Mother's] having a recent miscarriage, the lack of support from the father and having to care for three very young children all under the age of five," it also found that Mother was in need of parenting education, because she denied abusing Ariel in the face of the photograph showing the child "in pain" and "distress."

The section 300 petition pled identical allegations concerning the hair-pulling incident under subdivision (a) (serious physical harm), subdivision (b) (failure to protect), and subdivision (j) (abuse of sibling) and identical allegations concerning the domestic violence between Mother and David under subdivisions (a) and (b).⁸ Additional

⁸ These allegations stated: (1) "On 4/12/17, . . . [Mother] . . . physically abused . . . Ariel by pulling the child's hair. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The physical abuse of the child by [Mother] endangers the child's physical health and safety and places the child and the child's siblings . . . at risk of serious physical harm, damage and physical abuse"; and (2) "[Mother and David] . . . have a history of engaging in violent altercations in the presence (Fn. is continued on the next page.)

allegations were made under subdivision (b) concerning Mother's alleged mental and emotional problems and David's drug use.⁹ At the July 21, 2017 jurisdictional/dispositional hearing, counsel for DCFS asked the court to strike the allegations made under section 300, subdivision (a) and (j), and to sustain the remaining allegations, including the allegations that Mother pulled Ariel by the hair and that

of the children. In January 2017, [David] pushed [Mother] in the children's presence. In 2015, [David] struck [Mother's] head against a garage door. [Mother] failed to protect the children by allowing [David] to have access to [them]. The violent conduct by [David] against [Mother], and [Mother's] failure to protect the children endangers the children's physical health and safety, creates a detrimental home environment, and places the children at risk of serious physical harm, damage, danger and failure to protect."

⁹ As pled, these allegations stated: (1) "[Mother] . . . has mental and emotional problems, including a diagnosis of depression-unspecified, which renders [her] incapable of providing regular care for the children. On 4/12/17, [Mother] was involuntarily hospitalized for the evaluation and treatment of [her] mental health condition. Such mental and emotional problems on the part of [Mother] endanger the children's physical health and safety and places the children at risk of physical harm, damage and danger"; and (2) "[David] . . . has [a] history of illicit drug use including methamphetamine and marijuana . . . , which renders [him] incapable of providing regular care for the children. [David] has a history of criminal conviction of possession of marijuana 1 oz or less with . . . transport of controlled substances. [Mother] knew of [David's] illicit drug use and failed to protect the children by allowing [him] to have unlimited access to the children. The children are of such tender age that [they] require constant care and supervision. Said illicit drug [use] by [David], and the failure to protect by [Mother] endangers the children's physical health and safety and places the children at risk of serious physical harm, damage, danger and failure to protect."

Mother suffered mental health issues. Counsel for the children joined. Counsel for Mother asked that the hair-pulling allegation be dismissed, contending that it was an isolated incident and that Ariel was not at risk of serious physical abuse, as demonstrated by DCFS's request to dismiss the identical subdivision (a) allegations. Counsel also asked the court to dismiss the allegation that Mother suffered mental health issues, contending that her hospitalization and diagnosis were related to the miscarriage and not evidence of long-term issues.¹⁰ With respect to disposition, counsel asked that the children be released to Mother.

As requested by DCFS's counsel, the court struck the allegations made under subdivisions (a) and (j). It dismissed the allegation that Mother had mental and emotional problems that rendered her incapable of providing regular care for the children, finding that the evidence established her hospitalization "was a singular incident." The court sustained under subdivision (b) the allegations that Mother physically abused Ariel by pulling her hair; that Mother and David had a history of engaging in violent altercations in the presence of the children; and that David had a history of illicit drug use, including methamphetamine and

¹⁰ Mother's counsel further asked that the allegations that the couple engaged in domestic violence be dismissed for lack of evidence and the allegation that Mother failed to protect the children from David as a drug abuser be stricken. These contentions are not re-asserted on appeal.

marijuana.¹¹ With respect to the latter two findings, the court specifically found that Mother failed to protect the children from David. In the dispositional portion of the hearing, the children were removed from the custody of Mother and David, who were permitted monitored visitation only. Mother's reunification plan required her to complete a parenting class and a domestic violence program, and to participate in individual counseling to address the case issues. Mother appealed the court's jurisdictional and dispositional orders.

DISCUSSION

A. *Jurisdiction*

In order to assert jurisdiction over a minor, the juvenile court must find the child at risk of harm under one or more of the categories specified in section 300. (*In re M.R.* (2017) 7 Cal.App.5th 886, 896.) DCFS bears the burden of proving that the minor comes under the juvenile court's jurisdiction by a preponderance of the evidence. (*Id.* at p. 897; see § 355, subd. (a).) On appeal, "we must uphold the court's [jurisdictional] findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial

¹¹ The court struck the language stating that David was a current user of methamphetamine.

evidence to support the findings.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

The court found jurisdiction appropriate under section 300, subdivision (b). Subdivision (b)(1) provides that the juvenile court may assert jurisdiction over a child 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, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” This provision “require[s] DCFS to demonstrate three elements by a preponderance of the evidence: (1) one or more of the statutorily-specified omissions in providing care for the child (inability to protect or supervise the child, the failure of the parent to provide the child with adequate food, clothing, shelter, or medical treatment, or inability to provide regular care for the child due to mental illness, developmental disability or substance abuse); (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 561.)

Mother contends that the hair-pulling incident presented an insufficient basis for the assertion of jurisdiction, claiming that the incident should be viewed as “an isolated incident brought on by her recent miscarriage, lack of support from David, and caring for three children under the age of five.” The hair-pulling incident represented but one portion of the court’s jurisdictional findings, which included the finding that the domestic violence between Mother and David, David’s drug use, and Mother’s failure to protect the children from David as a perpetrator of domestic violence and as a drug abuser endangered the children. As respondent points out, a single true finding can support the court’s assertion of jurisdiction, and the reviewing court “need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In Alexis E.* (2009) 171 Cal.App.4th 438, 451; accord, *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492; see, e.g., *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330 [declining to address remaining allegations after one allegation found supported]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72 [same].) As Mother does not challenge the bulk of the court’s jurisdictional findings, we need not consider whether the finding that she pulled Ariel’s hair would have supported jurisdiction on its own.

Mother asks that we exercise our discretion to review the finding. A reviewing court may consider the merits of a parent’s appeal of fewer than all the jurisdictional findings when the contested findings “(1) serve[] 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].” (*In re M.W.* (2016) 238 Cal.App.4th 1444, 1452, quoting *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Mother contends the finding that she pulled her daughter’s hair creates a greater stigma than the court’s other jurisdictional findings, and that the court relied on the hair-pulling incident to support removal of the children from her custody, a ruling she also challenges on appeal. She cites *In re D.P.* (2014) 225 Cal.App.4th 898 and *In re D.M.* (2015) 242 Cal.App.4th 634 for the proposition that the finding she intentionally hurt her daughter has the potential to impact future dependency proceedings more than the findings she failed to protect the children from David’s perpetration of domestic violence and drug use. Both *In re D.P.* and *In re D.M.* involved findings that the parent inflicted serious physical harm under section 300, subdivision (a). (*In re D.P.*, *supra*, at p. 901; *In re D.M.*, *supra*, at p. 638.) A finding under subdivision (b) does not have the same repercussions. (See § 361.5, subdivision (b)(6) [court may deny reunification services to parent where child has been adjudicated a dependent as the result of “severe sexual abuse” or “infliction of severe physical harm”].) Moreover, Mother does not ask

us to find that the hair-pulling incident did not occur.¹² She asks us to find that it was a single, isolated incident that did not support the assertion of jurisdiction. In determining disposition, the court could properly consider Mother's actions the day she took the picture of herself pulling her young daughter by the hair, regardless of whether the incident in and of itself would have supported the assertion of jurisdiction. (See *In re John M.* (2012) 212 Cal.App.4th 1117, 1126 [in deciding to remove child from parent's custody, court may consider parent's past actions].)

B. *Disposition*

Mother contends the evidence does not support the court's dispositional order, removing the children from her care. We find the order supported by the evidence.

Section 361, subdivision (c) permits the court to remove a child from the physical custody of the parents or guardians "with whom the child resides at the time the petition was initiated" if the court finds by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional

¹² To the extent Mother does seek to convince us that her version of events was the correct one -- that the photograph was staged, that she did not pull Ariel's hair hard, and that the child was crying because she did not want to have her hair combed -- the photograph itself and Ariel and Aaron's statements provide substantial evidence to support the court's factual finding that Mother deliberately pulled Ariel's hair, causing unreasonable pain and suffering.

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 or guardian's physical custody.” (§ 361, subd. (c)(1).) “A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169.) “[T]he minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” [Citation.]” (*In re John M.*, *supra*, 212 Cal.App.4th at p. 1126.)

To support a dispositional order removing custody from a parent, the court may consider “a broad class of relevant evidence,” (*In re Y.G.* (2009) 175 Cal.App.4th 109, 116) including “[t]he parent's past conduct as well as present circumstances.” (*In re John M.*, *supra*, 212 Cal.App.4th at p. 1126.) The court may also consider evidence of the parent's understanding of and attitude toward the past conduct that endangered the child. (Compare *In re J.N.*, *supra*, 181 Cal.App.4th at pp. 1025-1026 [parents were “remorseful, loving, and indicated that they were willing to learn from their mistakes”], with *In re N.M.*, *supra*, 197 Cal.App.4th at p. 170 [father was in denial about past incidents of abuse] and *In re John M.*, *supra*, at p. 1127 [mother never acknowledged any problem with her past actions].) The court's jurisdictional findings represent *prima facie* evidence that the child cannot safely remain in the

home. (*In re John M.*, *supra*, at p. 1126; *In re T.V.* (2013) 217 Cal.App.4th 126, 135; *In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) Although the juvenile court's dispositional findings must be made on clear and convincing evidence, "[o]n review, we employ the substantial evidence test, however bearing in mind the heightened burden of proof." (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

The evidence here supported the court's removal order under the heightened burden of proof. Mother remained in a relationship with David for years while he abused methamphetamine and perpetrated multiple acts of domestic violence. When first interviewed by the caseworker, she was candid about David's actions, but refused an offer of a restraining order and expressed no intention to end the relationship. Subsequently, she contradicted her detailed statement that David had shoved her face into a garage door and tried to grab the infant Alyssa from her arms, and in general, minimized David's past actions with respect to both domestic violence and drug use. She expressed no desire to end the relationship until just prior to the jurisdictional hearing, where she said she would do it to get the children back. She minimized her own actions in taking a photograph while her daughter was in pain and crying from having her hair pulled. Mother claimed her actions on April 12, 2017 were the result of stress caused by the miscarriage, and that she was "understandably upset that David was ignoring her requests for assistance." As the caseworker stated, Mother is in need

of parenting education if she reacts to stress by hurting her child or believes that the best way to communicate her distress to her husband is by showing their child in pain. There will be no lack of stress in Mother's life when she is raising three small children essentially as a single parent. The court's determination that the children should be removed from Mother while she participates in parenting classes and domestic violence, anger management, and individual counseling was supported by the evidence.

DISPOSITION

The court's jurisdictional and dispositional orders are affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.