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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re I.A. et al., Persons Coming Under the Juvenile Court Law.	B276823
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.A., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK15161)

APPEAL from an order of the Superior Court of Los Angeles County. Zeke Zeidler, Judge. Affirmed in part and dismissed in part.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Stephanie Jo Reagan, Deputy County Counsel for Plaintiff and Respondent.

M.A. (mother) appeals the juvenile court's jurisdiction and disposition orders declaring her three-year-old daughter I.A. a dependent of the court and removing her from mother's care. While this appeal was pending, the juvenile court terminated jurisdiction over I.A. and the Department of Children and Family Services (Department) moved to dismiss the appeal as moot. We agree with the Department that the appeal from the disposition order is moot. However, we exercise our discretion to reach the merits of mother's appeal as to the jurisdiction order, and conclude that substantial evidence supports the order. On these grounds, we dismiss in part and affirm in part.

FACTUAL AND PROCEDURAL BACKGROUND

Around midnight on January 11, 2016, California Highway Patrol Officer Sergeant Ward observed a parked vehicle on the side of the freeway. He approached the vehicle and found mother and I.A. inside. The vehicle reeked of alcohol and mother appeared intoxicated—her eyes were red and watery, and her speech was slow and slurred. Mother said I.A. had gotten hot and was having difficulty breathing so she had stopped the car and taken off I.A.'s clothes. Sergeant Ward observed I.A. sitting naked on the passenger seat with a blanket draped over her despite the temperature being 38 degrees. There was no car seat. He asked mother why she did not call 911 if her daughter had trouble breathing and mother said, "I probably should have. I'm sorry."

Sergeant Ward asked mother where she was going. She pointed to a Santa Clarita off-ramp and said that her father lived off that exit. But when Sergeant Ward asked where her father lived, mother said, "Santa Ana." She then said she was in Santa Ana but, after looking around, said, " 'I think I'm still in Malibu by the beach.' " Sergeant Ward administered field sobriety tests

which mother did not pass. Her breath alcohol concentration was approximately twice the legal limit. When asked how much alcohol she had consumed, mother said she had had two mixed drinks with rum.

I.A. was transported to the hospital to be medically examined. The medical staff determined I.A. had no medical problems and was not exhibiting symptoms of respiratory distress. Mother was arrested and charged with driving under the influence.

A social worker interviewed mother the following day. The social worker attempted to visit mother at the address mother had provided, but upon arrival, realized the address was for a business center. The social worker called mother who acknowledged providing a false address. When asked about the events of the prior day, mother said she had consumed alcohol at a wedding before driving home. She had pulled over on the freeway because her car was making noises. When Sergeant Ward arrived, she was in the process of changing I.A.'s clothes. Mother denied have any problems with alcohol but said that she had had an "alcohol problem" three years prior.

The Department filed a petition asserting jurisdiction over I.A. under Welfare and Institutions Code section 300, subdivision (b).[1] The Department alleged that mother had endangered I.A. by driving under the influence of alcohol while I.A. was in the front seat of the vehicle, and by failing to secure I.A. in a car seat. The Department further alleged that mother had a history of alcohol abuse and currently abused alcohol which rendered her incapable of providing regular care for I.A.

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[1] All further statutory references are to the Welfare and Institutions Code.

At the detention hearing on January 14, 2016, I.A. was ordered detained and was released to father, who lived separately from mother. The court ordered the Department to refer mother for weekly random drug and alcohol testing. The Department was also ordered to provide mother with referrals for substance abuse treatment and parenting programs, which the Department did.

On February 18, 2016, mother was interviewed again. She said that, on the night of the incident, she had drunk four cups of brandy. She acknowledged she had "made a mistake" and said she did not "usually drink that much." She further said she had since stopped drinking alcohol completely. After she had pulled over to the side of the freeway, I.A. began to cry because she was cold. Mother then took off I.A.'s seat belt to change her clothes. She said "I did not hurt my child. I was just changing her." Mother denied having a history of alcohol abuse, and denied having previously said she had had an alcohol problem three years ago.

At the jurisdiction and disposition hearing on March 17, 2016, the Department reported that mother had failed to appear for drug tests on January 20, 2016 and February 1, 2016. Her February 10, February 24 and March 4, 2016 drug tests were negative. Mother had not enrolled in a substance abuse program but had been participating in parenting classes. The Department had also interviewed father, who denied that mother had a history of alcohol abuse and said he had never seen her intoxicated.

The court found the petition's allegations true and ordered I.A. removed from mother's care. I.A. was placed with father under Department supervision. Mother was provided with enhancement services, and father with family maintenance services. Mother was ordered to complete a substance abuse

program with weekly random drug/alcohol testing, a "12-step program," and a parenting program. Mother timely appealed from the jurisdiction and disposition orders.

DISCUSSION

1. *The Motion to Dismiss*

While this appeal was pending, the juvenile court terminated jurisdiction over I.A.[2] I.A. was ordered released to her parents' care. The Department has moved to dismiss the appeal on the ground the appeal is moot because we can no longer provide any effective relief. Mother opposed the motion.

"When no effective relief can be granted, an appeal is moot and will be dismissed." (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315.) Mother does not dispute that, as I.A. has been returned to her custody, any order by this court reversing the juvenile court's removal order would have no effect. Accordingly, we grant the motion with respect to the portion of the appeal pertaining to the disposition order.

Mother does contend, however, that her appeal from the jurisdiction order is not moot. She argues that she will remain listed on the Child Abuse Central Index (CACI) unless the court's finding of neglect is reversed. (See Pen. Code, § 11170, subd. (a)(3) ["The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be not substantiated."].)

We may exercise our discretion to reach the merits of a challenge to any jurisdictional finding when the finding may be

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[2] We take judicial notice of the juvenile court's January 13, 2017 order.

prejudicial to the appellant. (*In re J.C.* (2014) 233 Cal.App.4th 1, 4.) Here, the finding that mother neglected I.A. could result in her inclusion on the CACI. In addition, the finding has the potential to prejudice mother in any future dependency proceedings. (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.) Accordingly, we deny the motion with respect to the portion of the appeal pertaining to the jurisdiction order and address the merits.

2. *Substantial Evidence Supports the Jurisdiction Order*

Section 300, subdivision (b)(1) provides for juvenile court jurisdiction when 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 or guardian to adequately supervise or protect the child."

" 'The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.' [Citation.] 'Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300' at the jurisdiction hearing. [Citation.] 'On appeal, the "substantial evidence" test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.]' [Citation.]" (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

A section 300, subdivision (b) jurisdictional finding may not be based on a single episode of endangering conduct in the absence of evidence that such conduct is likely to reoccur. (*In re J.N.*, *supra*, 181 Cal.App.4th at p. 1023.) However, the "nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to

establish current risk depending upon present circumstances." (*Id.* at p. 1026.)

Here, mother contends that I.A. was not at substantial risk of serious physical harm at the time of the jurisdiction hearing. We disagree. Mother argues the court's assertion of jurisdiction was based solely on mother's driving under the influence on the night of January 11, 2016, and there was no evidence mother had an ongoing problem with alcohol. She analogizes to *In re J.N., supra,* 181 Cal.App.4th 1010, where the court concluded that despite "the profound seriousness of the parents' endangering conduct on the one occasion in this case, there was no evidence from which to infer there is a substantial risk such behavior will recur." (*Id.* at p. 1026.)

In *J.N.*, the father was driving while intoxicated and his wife and three children were passengers in the vehicle. (*J.N.*, *supra*, 181 Cal.App.4th at p. 1016.) The vehicle crashed into a light pole and two of the children were injured. (*Id.* at pp. 1015–1017.) The evidence showed that the father had consumed about six beers at a restaurant before driving, and mother three. (*Id.* at pp. 1016, 1020.) Mother and father were remorseful: mother regretted "drinking over her limit and not stopping father from driving under the influence with the children in the car" and was "grateful" the children were safe; father regretted making " 'a bad decision to drive' " and was " 'thankful his children [we]re safe.' " (*Id.* at pp. 1018–1019.) Both parents were "cooperative and willing to change." (*Id.* at p. 1019.) Neither parent had a history of alcohol abuse. (*Id.* at p. 1018.)

The juvenile court asserted jurisdiction under section 300, subdivision (b), sustaining findings of neglect against both parents. (*J.N.*, *supra*, 181 Cal.App.4th at pp. 1014–1015, 1021.)

The Court of Appeal reversed, concluding that the evidence showed the children were not at current risk of serious physical harm. (*Id.* at p. 1025.) The court stated, "In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident. The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances." (*Id.* at pp. 1025–1026.)

The court concluded there was no evidence the parents had ongoing substance abuse problems or that "either parent's parenting skills, general judgment, or understanding of the risks of inappropriate alcohol use is so materially deficient that the parent is unable 'to adequately supervise or protect' the children." (*J.N.*, *supra*, 181 Cal.App.4th at p. 1026.) Accordingly, the court found insufficient evidence "the children were at substantial risk of serious physical injury as the result of parental inability to adequately supervise or protect the children." (*Id.* at p. 1027.)

Here, mother argues that, like the parents in *J.N.*, there was no evidence she had an ongoing problem with alcohol or that she lacked understanding of the risks of alcohol use such that she

could not adequately supervise or protect I.A. We disagree and conclude *J.N.* is factually distinguishable.

Here, there was evidence mother had a history of alcohol abuse—she told a social worker she had an "alcohol problem" three years prior. There was also evidence mother lacked understanding of the risks of alcohol—she later recanted her acknowledgement of prior alcohol abuse and failed to enroll in a substance abuse program which suggested she was unwilling to address the problem. Furthermore, although mother said she had stopped consuming alcohol after the incident, there was evidence mother may have been hiding her current alcohol use—she missed two random drug tests. A "missed drug test, without adequate justification, is 'properly considered the equivalent of a positive test result[.]' [Citation.]" (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.) The trial court did not have to credit evidence from father that minimized mother's alcohol problems.

In addition, unlike the parents in *J.N.* who recognized the danger their children had been placed in due to their actions, mother minimized the risk of harm to which I.A. had been exposed because of her intoxication. Mother drove with I.A. in the car while her intoxication level was twice the legal limit, and there was evidence I.A. was not buckled into a car seat. Although mother acknowledged she had made a mistake in drinking too much, she defended her actions in the car, telling the social worker "I did not hurt my child. I was just changing her." In fact, the evidence showed that mother was not coherent when she was in the car. She did not know what part of town she was in, and contradicted herself about whether I.A. was in distress because she was too hot or too cold. Her failure to acknowledge the impact her inebriation had on her ability to supervise and

protect I.A. suggested that mother still did not understand the risks her alcohol use posed to I.A. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["One cannot correct a problem one fails to acknowledge."].)

There was also evidence that, unlike the parents in *J.N.*, mother did not cooperate with the Department. Mother gave the Department a false address, did not enroll in a substance treatment program despite the Department's referrals, and made inconsistent statements to the social workers about her use of alcohol and the events on January 11, 2016. Mother's lack of cooperation with the Department was another indication of her unwillingness to address the behavior that endangered I.A. On all these grounds, we conclude there was substantial evidence at the time of the jurisdiction hearing that I.A. was at substantial risk of serious physical harm: mother had endangered I.A. by driving while intoxicated and there was substantial evidence from which to infer such behavior would reoccur.

As there is substantial evidence supporting the finding that mother endangered I.A. through driving while intoxicated, we decline to address the additional jurisdictional allegation as to whether mother met the diagnostic criteria of a substance abuser. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491–1492 ["an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence."].)

DISPOSITION

The jurisdiction order is affirmed. The portion of the appeal pertaining to the disposition order is dismissed as moot.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.