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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re FREYA M., a Person  
Coming Under the Juvenile  
Court Law.

B294785  
(Los Angeles County  
Super. Ct. No. 18CCJP05029A)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and  
Respondent,

v.

THEODORE M.,

Defendant and  
Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Theodore M. (father) appeals from the dependency court's jurisdictional finding under Welfare and Institutions Code section 300, subdivision (b)(1),<sup>1</sup> as well as dispositional orders removing F.M., his minor daughter, from his custody under section 361, subdivision (c)(1). Father contends the orders are not supported by substantial evidence. He also contends the court abused its discretion when it ordered drug testing as part of his reunification services. The Los Angeles County Department of Children and Family Services (Department) contends the findings and orders are supported by substantial evidence. We affirm the jurisdictional findings, the removal order, and the order requiring father to drug test.

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

## FACTUAL AND PROCEDURAL BACKGROUND

The facts and circumstances leading up to the current dependency proceeding are the subject of some dispute between T.M. (mother)<sup>2</sup> and father. For the present summary, consistent with the substantial evidence standard of review, “we state the facts in the manner most favorable to the dependency court’s order.” (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1448, fn. 1.)

Minor is mother and father’s only child, born in May 2017. Father has an extensive criminal history for substance use and possession between 1995 and 2015. Mother’s family is in Indonesia, where she grew up.

The family first came to the Department’s attention in January 2018 when law enforcement was called after a late-night dispute between mother and father. By the time law enforcement arrived, father had left, mother had some redness and swelling on her arm, but did not need medical attention, and minor looked fine. Mother told law enforcement she would get an emergency protective order later. A subsequent call to the Department’s hotline stated father has a history of substance use and forcing himself on mother. When the Department tried to contact mother and father about the incident, they denied the domestic violence incident had occurred and refused to participate in the investigation. The social worker noted that father appeared

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

very controlling of mother. He refused to speak with the social worker and accused her of having a phony Department badge.

In late June 2018, the Department opened a new investigation after mother reported three incidents of domestic violence in January, February, and March of that year. The January incident took place after a dispute about father's whereabouts. Mother took father's keys and refused to give them to him. He in turn took mother's phone, and then tried to take the laptop out of the apartment. Mother chased him down the corridor outside the apartment, leaving minor unattended in the apartment. According to mother, father started striking and punching mother. According to father, mother jumped on his back, and the two banged into stairway railings as she tried to grab the laptop from him and he tried to keep it from her as they made their way down the stairs. Mother had visible bruises on her arms. She obtained an emergency protective order, but did not seek a permanent restraining order. Father minimized the incident, saying the property manager blew the argument out of proportion and misled mother into seeking a restraining order.

While the timing of the remaining incidents is unclear, there is evidence that father threw a bag of potato chips at mother, and that father left mother at a convenience store and drove away without her, taking minor with him. Mother called her sister-in-law, who drove mother home. Father did not return home, staying in a hotel that night. In March,

law enforcement responded to an incident where father had called mother stupid for getting lost on her way home, and mother had punched father. The police advised on the process for obtaining a restraining order. When law enforcement conducted a child welfare check on May 18, 2018, mother said she and minor were okay, her relationship with father had improved, and there had been no incidents since the March 2018 incident.

Father was consistently uncooperative with the Department's efforts to investigate in June 2018, denying any domestic violence and refusing to participate in an Up-Front Assessment, counseling, or drug testing. Mother did speak to a social worker, and she began therapy with a service provider who came to the home. The counseling agency reported that father attempted to contact mother's therapist at the therapist's home and her office. He threatened the staff, who contacted law enforcement, but father left before the police arrived. The counseling agency informed the Department that it would no longer provide counseling to mother while father is living in the home, based on father's actions.

In a later interview with a social worker, mother answered questions about whether father raped her. She stated father plays rough, but she goes along because he makes money and so he gets sex from her. Father gets upset and yells at her if she refuses his advances. Neighbors reported hearing mother and father arguing, and expressed concern that father was emotionally abusive to mother.

When social workers detained minor on August 7, 2018, father came to the Department's office and irately demanded his daughter's return, attributing the Department's actions in detaining minor to personal differences between himself and the social worker. When the social worker explained the concerns about mother and father's relationship, and father's earlier refusal to drug test, father said he would drug test that day if he could get his daughter back. When a different social worker explained that she would schedule a drug test appointment, father said "I am not going to do anything for you guys if I can't get my daughter back today," and left the Department's offices.

#### Detention hearing and orders

The Department filed a dependency petition on August 9, 2018, alleging under section 300, subdivisions (a) and (b)(1), that Freya's health and safety were at risk, based on violent altercations between mother and father and mother's failure to protect minor by allowing father to reside in the home.

The detention hearing was continued from August 10, 2018, to August 13, 2018, to allow for an Indonesian interpreter. Father was not present at the time of the hearing on either date. Mother moved to a domestic violence shelter on August 10, 2018, and a shelter worker advised the court the shelter would be able to provide mother with a confidential place to stay until transitional housing was

located. The court ordered the Department to release minor to mother's custody, but only after it confirmed the shelter was a safe environment for minor and could provide confidentiality and assist mother in moving to more permanent housing. The court admonished mother that if there was any indication mother was returning to father, minor would be placed in foster care. Father's attorney requested for minor to be released to father, but the court said father needed to appear before it would consider the request or order visitation. The court also entered a temporary restraining order protecting mother and Freya from father.

Father appeared at a hearing on October 17, 2018. The Department's attorney confirmed that the Department had released minor to mother at a confidential location. The court ordered monitored visits for father, with the Department having discretion to increase monitored visits after father had a face-to-face meeting with the social worker to discuss a visitation schedule. The court denied father's request for more liberalized visitation, including unmonitored visits. Father was served with the temporary restraining order (TRO) from the August 13, 2018 hearing. Mother's attorney voiced concerns that father was acting in an intimidating manner towards mother at the hearing, including staring at her. The court emphasized to father that he was to have no contact with mother. The parties later stipulated to extend the TRO issued on August 13,

2018 to remain in effect until the scheduled adjudication hearing, which was to take place on October 25, 2018.

### Jurisdiction and Disposition Report

The social worker interviewed father on September 17, 2018. During the interview, father provided the worker with a document entitled “Corrections to Slanders, Lies, False Inferences, Mistakes and Misdirections contained within the petition listed in Case #18CCJP05029.” A copy of the document is attached to the jurisdiction and disposition report. On page one of the report, father gives his perspective on mother’s claim that he “threw” her out of the car. According to father’s statement, mother got out of the car to buy coffee at a convenience store that was two blocks from their home. He drove away while she was in the store because she had told him earlier that evening she would go back to Indonesia and take minor with her, causing him to become agitated and fearful. He denied he placed mother in any danger, and stated “I only wished for her to feel an inkling of the sense of abandonment that I would feel should she actual [*sic*] carry out her threat of fleeing with our daughter to Indonesia.” Father’s written statement also accuses the Department of driving a wedge between father and mother, and using minor as a tool to achieve its own agenda. He wrote that the Department “entered our family’s life like a cancer spreading its disease of encouragement to separate our family, slowly killing the life my family had.”



Responding to questions about disagreements between father and mother, father said, “She claims I am on drugs. She doesn’t like my friends; she accuses me of cheating. I am beginning to think that she didn’t marry me for love . . . I question her motives for marrying me now that she has her green card. When I married her there was full disclosure and I told her upfront about my past drug history, so she knew going into the marriage.” Father claimed mother had not wanted to get pregnant and secretly had an IUD put in while he was in China on business.

Mother reported that she and father would argue once or twice a week every week, mostly about money and father’s lies. She said they would argue in the house, where minor could hear. Mother felt that paternal grandfather was abusive, and taught father to be abusive as well. She hoped to break the chain with minor. Mother reported that father was still threatening her through her parents, getting them to tell her she should go back to him if she doesn’t want problems with money.

A paternal aunt, V.C., described the relationship “toxic,” explaining that mother and father are verbally abusive to each other, and the environment is not fair to minor.

#### First adjudication hearing

After hearing testimony and considering the evidence, Commissioner Emma Castro dismissed the petition on

October 25, 2018. Castro noted that father acted in a fashion that demonstrated a relationship of power and control, and she was not condoning father's behavior. Castro observed that when testifying about what he had learned in parenting and anger management classes, father's "responses were a bit flippant. That's consistent with his difficult personality. Sir, you are not an easy person to get along with, but that doesn't mean that the court has to find that there was acts of domestic violence between the mother and the father."

The Department sought a stay of the dismissal order pending appeal. This court issued a stay on October 29, 2018, which remained in place until November 30, 2018.<sup>3</sup>

### Interim events

Despite knowing he was subject to a restraining order, father contacted mother by internet, first with love notes attempting to woo her back and perhaps reconcile their marriage. He opined that the marriage was "disrupted by corrupted minds in the [Department], your people, who have influenced [mother] in such a negative way, encouraged her to tell lies." Once the petition was dismissed at the first jurisdiction hearing, father contacted mother through a phone application, saying there was no reason for mother to

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<sup>3</sup> Both the Department and minor's counsel appealed the dismissal order, but both parties dismissed their appeals after the juvenile court granted a rehearing.

refuse to come back to him unless she didn't want to reconcile. When mother responded she did not want to return to father, he knew it was over, but he continued to contact her, purportedly to ask why she would be so cruel to him.

On October 26, 2018, father sought a restraining order under the Domestic Violence Prevention Act in an unrelated superior court filing. The superior court issued temporary orders and scheduled a hearing for November 20, 2018. In a November 6, 2018 text exchange between mother and paternal aunt V.C., the aunt asked about visiting minor, and mother responded that she did not feel safe. The aunt responded: "this feeling you're having is a little ridiculous. He's never hurt you or [minor] and you know that. There's no reason to feel unsafe. [Father] just wants to see his daughter. There is no order that is legally keeping him away from [minor]. It's unfair to him."

Father had a scheduled monitored visit on November 8, 2018. Claiming he had legal custody of minor, father tried to leave the Department offices with minor; security and law enforcement had to intervene, and father finally left without minor.

A text message from father to mother dated November 10, 2018 stated "I will not stop. You are going to have to speak with me at some time. Why postpone the Inevitable? Put on your big girl pants, act like an adult, and contact me so we can discuss important issues. FYI, you no longer have

health insurance through me anymore as of 12/01/2018. Only Freya and i are on my policy.”

On November 26, 2018, the dependency court granted the Department’s request for rehearing before a judge, which had been filed with the court on November 16, 2018. The court also suspended father’s visits pending the scheduled rehearing, based on the November 8, 2018 attempt by father to take custody of Freya and leave a monitored visit at the Department’s offices.

Father was not present in court on November 26, 2018 because he had a monitored visit with minor. He allowed minor to play with his phone and phone case, which had credit cards and other cards in it. Dollar bills and change fell on the floor, but father did not pick them up. Near the end of the visit, father changed minor’s diaper and left the soiled diaper and wipes on the table of the visitation room. Minor started crying when father handed her over to the social worker, and father responded “I know honey I’m sorry . . . these are bad people. I have to leave you with the bad people.” An assistant asked father to pick up the money from the floor and the dirty diaper and wipes from the table, but father responded, “No I won’t. The money is for you for throwing out the diaper!” He left the visitation room messy and exited the Department’s office. About 45 minutes later, as the social worker was leaving the Department offices to take minor back to mother, her security escort observed father in the parking lot. The social worker suspected father was driving a car she saw following her as she drove.

Unable to positively identify father, she took a few turns to ensure that if the driver was father, he would not be able to follow her. Father continued contacting mother as late as the Friday before the rehearing.

### Second adjudication hearing

The rehearing of the Department's petition took place before Judge Natalie Stone, on December 7 and 13, 2018. The Department called mother and father to testify. Father called D.C., paternal aunt's daughter-in-law, to testify. After oral argument by all parties, the court struck the petition allegations under section 300, subdivision (a), but sustained the allegations under subdivision (b)(1). The court found that mother and father had violent physical altercations as well as extensive verbal altercations, and that mother contributed to the risk of harm as well. The court credited mother's testimony that father struck her during the dispute over the laptop, noting that bruises on the insides of mother's arms were not consistent with hitting a railing. The court also rejected father's argument that there was no longer any risk of harm, noting that the evidence showed that father had made repeated attempts to contact mother even after she made it clear she did not want to reconcile. The risk of further interactions between the parents placed minor at risk of harm if the petition were to be dismissed.

The court also found clear and convincing evidence that removal was necessary, based not only on the earlier

incidents between mother and father, but also on incidents described in the Department's most recent report, which demonstrated "repeated incidents of hostility and the father demonstrating an unnatural desire for control that is dangerous." The report described incidents that took place during monitored visits in November. On November 8, father tried to leave with minor and had to be stopped by security, leading to a court order suspending father's monitored visits for a time. The Department also noted that father was asking anyone who would talk to him for information about mother's whereabouts. At a later visit on November 26, when minor was crying at the end of the visit, father told minor "I have to leave you with the bad people." He displayed a contemptuous attitude towards the social workers, and there was evidence he waited in the parking lot for the social worker to leave with minor and tried to follow them in a car. Father's family reunification services included a domestic violence 52-week class, a parenting class, and individual counseling. He had monitored visitation at the Department's office. The court also ordered father to have five random drug tests, over father's objection.

## **DISCUSSION**

Father contends the court's jurisdictional finding under section 300, subdivision (b)(1), is unfounded. He also contends the court's dispositional order removing minor from his custody was not supported by substantial evidence. The

Department argues that there was sufficient evidence to support the court's order sustaining the allegations under section 300, subdivision (b), and the order removing minor from father's custody.

Father also argues the court abused its discretion when it ordered him to do five random drug tests. The Department responds that the drug testing order was not an abuse of discretion.

### *Standard of review*

“[W]e review both the jurisdictional and dispositional orders for substantial evidence. [Citation.] In doing so, we view the record in the light most favorable to the juvenile court's determinations, drawing all reasonable inferences from the evidence to support the juvenile court's findings and orders. Issues of fact and credibility are the province of the juvenile court and we neither reweigh the evidence nor exercise our independent judgment. [Citation.] But substantial 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.” [Citation.]’ [Citation.]” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.) Substantial evidence can be based on inferences that are grounded in logic and reason, but not speculation or conjecture alone. (*Patricia W. v. Superior*

*Court* (2016) 244 Cal.App.4th 397, 420; *In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1093.) To obtain reversal, the appealing party must show there is no evidence of a sufficiently substantial nature to support the findings or order. (*In re D.C.* (2015) 243 Cal.App.4th 41, 52.)

### *Jurisdictional findings*

Dependency jurisdiction is warranted when “[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.” (§ 300, subd. (b)(1); see also *In re R.T.* (2017) 3 Cal.5th 622, 625.) Section 300, subdivision (b)(1) “authorizes dependency jurisdiction without a finding that a parent is at fault or blameworthy for her failure or inability to supervise or protect her child.” (*In re R.T.*, *supra*, at pp. 624, 627–633, 636–637, fn. 6 [disapproving *In re Precious D.* (2010) 189 Cal.App.4th 1251, and rejecting the reasoning requiring parental neglect for jurisdiction as set forth in *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820].)

“[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here [including subdivision (b)] require only a ‘substantial risk’ that the child will be abused or neglected. The legislatively declared purpose of these provisions ‘is to provide maximum safety



and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and 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.)

“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.) “To establish a defined risk of harm at the time of the hearing, there ‘must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]’ [Citation.]” (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146; see also *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383–1384 “[a] parent’s “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue”].)

Father argues that the Department did not carry its burden of proving that there was a substantial risk of harm at the time of the second jurisdictional hearing. Father emphasizes that the last domestic violence incident took place either in January or March 2018, and that by the

December 2018 hearing date, no risk of domestic violence remained because mother and father were separated with no prospect of reconciling. Father's argument ignores the evidence concerning father's ongoing defiance of court orders requiring him to refrain from communicating with mother and requiring monitored visits with minor. In November 2018, he tried to leave Department offices with minor and had to be stopped from doing so. The Department ultimately sought to suspend father's visits. At the end of one visit, father told the two-year-old minor the social workers were "bad people," telling his crying daughter "I have to leave you with the bad people." Father also tried—unsuccessfully—to woo mother back, and later resorted to threatening her. Screenshots of text messages demonstrate that absent court intervention, the chances were very high father would continue trying to threaten mother or convince her to return to an abusive relationship. Father's unwillingness to admit any role in the abuse supports the court's determination that there was a substantial risk to minor, based on the parents' tumultuous and toxic relationship.

### *Removal order*

The decision to remove a child from parental custody is only authorized when a dependency 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 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 it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163 ["focus of the statute is on averting harm to the child"].) The court has authority to remove custody from one parent when two parents share joint custody. (*In re Michael S.* (2016) 3 Cal.App.5th 977, 984–986.)

"The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child. [Citation.]' [Citation.]" (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.) "The court may consider a parent's past conduct as well as present circumstances." (*In re N.M.* (2011) 197 Cal.App.4th 159, 170.) "[C]ourts have recognized that less drastic alternatives to removal may be available in a given case including returning a minor to parental custody under stringent conditions of supervision by the agency such as unannounced visits." (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 148.)

We agree with authorities holding that, "[t]he clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the

standard of proof at trial.” (*In re E.B.* (2010) 184 Cal.App.4th 568, 578; see also *In re Alexzander C.* (2017) 18 Cal.App.5th 438, 451 [substantial evidence review applies on appeal, even for issues the trial court decides on clear and convincing evidence].)

The record before us supports the court’s determination that there was clear and convincing evidence that without removing minor from father’s custody, she would be at risk of harm. Multiple individuals, including Commissioner Castro, made observations about father’s difficult personality and his controlling nature. Based on his testimony and his conduct, the dependency court could reasonably find a substantial risk that father would place minor at risk, either in an attempt to convince mother to reconcile or in a misguided effort to escalate his threats against mother. Early on in the case, he justified his actions leaving mother at a convenience store as an effort to give mother “an inkling of the sense of abandonment that I would feel should she actual [*sic*] carry out her threat of fleeing with our daughter to Indonesia.” When minor was first detained, father irately accused the social worker of acting based on personal differences with father, rather than a concern for minor’s safety. Father offered to drug test, but only if minor was returned to him that day. Later, father continued to pursue and threaten mother, even though he was aware that a restraining order prevented him from contacting her. The social worker also suspected father of following her after a visit. Taken together, this evidence of

father's disregard for legal restraints and his contemptuous attitude towards the Department, provide substantial evidence that there were no reasonable means to prevent removal.

*Drug testing order*

Father contends the order requiring him to drug test was an abuse of discretion, because it was unrelated to the basis for the court's assertion of jurisdiction. We find no abuse of discretion.

“The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.’ [Citation.]” (*In re A.E.* (2008) 168 Cal.App.4th 1, 4.) “The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.” (§ 362, subd. (d).) But the court “is not limited to the content of the sustained petition when it considers what dispositional orders would be in the best interests of the [child]. [Citations.]” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.) The court acts within its discretion when its orders are reasonably tailored to advance a child's best interests. (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 187.)

Here, father has an extensive criminal history of drug use. Mother's suspicions about his drug use were a point of conflict with father, who admitted mother was aware of his drug history going into the marriage. The Department had also expressed concerns about possible drug use, based on father's agitated demeanor, and father on one occasion offered and then refused to test. On these facts, an order requiring father to submit to five random drug tests is not an abuse of discretion.

### **DISPOSITION**

The court's jurisdictional finding and dispositional orders are affirmed.

MOOR, J.

We concur:

RUBIN, P. J.

BAKER, J.