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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re HAILEY E. et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.R.,

Defendant and Appellant.

B282565

(Los Angeles County
Super. Ct. No. DK21442)

APPEAL from orders of the Superior Court of Los
Angeles County, Robin R. Kesler, Juvenile Court Referee.
Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

Appellant S.R. (Mother), mother of Hailey E. and Enzo R., appeals the juvenile court's jurisdictional and dispositional orders finding jurisdiction appropriate under Welfare and Institutions Code section 300, subdivisions (b) and (j), and removing the children from her care.¹ Four factual findings supported the assertion of jurisdiction: (1) Mother's use of drugs rendered her incapable of providing the children with regular care and supervision and placed them at risk of serious harm; (2) Mother's physical, mental and emotional problems rendered her incapable of providing the children with regular care and supervision and placed them at risk of serious harm; (3) Hailey's father's history of substance abuse and current substance abuse rendered him incapable of providing the children with regular care and supervision and placed them at risk of serious harm, and Mother failed to protect the children from him; and (4)

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

Mother allowed her boyfriend Josh F., a known drug user, unlimited access to the children, including allowing him to drive them.² Mother contends substantial evidence does not support the court's factual findings, and that the court erred by amending the petition at the jurisdictional hearing to add the fourth allegation. Mother further contends the court's decision to remove the children from her care was not supported by substantial evidence.

We conclude substantial evidence supported the first and second findings, making it unnecessary to review the additional findings. We further find that the court's removal order was supported by the evidence. Accordingly, we affirm the court's jurisdictional and dispositional orders.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2017, Mother, Hailey (then five) and Enzo (20 months) were living in Big Bear, having recently relocated there.³ The Department of Children and Family

² Hailey's biological father is Aaron E. His whereabouts have been unknown since the proceeding began. Enzo's father was never identified.

³ While living in San Bernardino County, Mother had been both a dependent child and under investigation for abuse of the children. A 2010 section 300 petition filed in that county when Mother was 11 alleged that her mother, Linda S., had a drug and alcohol problem and mental health issues, and had exposed Mother to domestic violence. Shortly before the petition was filed, Mother had been put on hold in a psychiatric hospital, and

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diagnosed with depression and anxiety. Mother said she had been sexually abused by a former stepfather when she was six or seven, and that she had attempted suicide at the age of 10.

During the pendency of the 2010 proceeding, Mother entered into a romantic relationship with Hailey's father Aaron, who was also a dependent minor and had serious psychiatric and drug-related problems. In January 2011, Mother was hospitalized again after she discovered she was pregnant and cut her arms in an apparent suicide attempt. She was diagnosed with major depressive disorder and post traumatic stress disorder, and confessed to using marijuana and amphetamines. She was discharged in February 2011. Hailey was born in September 2011, when Mother was 14. Mother was given a permanent plan of transition to independence.

In 2014, the foster mother with whom Mother and Hailey had been living reported Hailey had had multiple black eyes. The girl had no injuries when examined by the caseworker. Interviewed by the caseworker, Mother said she had accidentally bumped the girl's head while carrying her. The caseworker concluded the claims of physical abuse and neglect were unfounded. Although Mother admitted using marijuana "occasionally," no dependency proceeding was initiated based on drug use.

Mother was investigated for child abuse again in July 2016, when she was living in San Bernardino County with Aaron. The reporting party stated Enzo appeared malnourished, had burn marks, bruises and diaper rash, and had accidentally fallen into the pool at the complex where the reporting party and Mother lived. The investigator observed only a severe case of diaper rash. In that investigation, Mother admitted taking "every kind of drug" when she was younger, but said the only drug she currently used was marijuana to alleviate the pain of migraines. Aaron, who was living with Mother at the time, denied using any

(Fn. is continued on the next page.)

Services (DCFS) received a referral stating that the caller had heard from Mother's boyfriend Josh that Mother was having a "mental breakdown" after using LSD and Ecstasy and not sleeping for days. The caller also heard that Josh was involved in the sale of drugs, and was using DMT (N,N-dimethyltryptamine, a hallucinogenic).

On January 5, the children were found in the home of Mother's friend, Lilia J., where they had been since January 1. Lilia reported that she had been texting with Mother and Josh, and that Mother had admitted using Ecstasy. In addition, Josh had said he had given Mother LSD to treat her PTSD. Lilia convinced Mother to put the children in Lilia's care. Josh drove them from Big Bear to Lilia's home in Van Nuys. Lilia said she talked to Mother on January 3, and that Mother sounded "high" and was "not making sense at all."

A January 1 text from Josh to Lilia stated Mother had been "having a mental breakdown since last night," and that he had "4 friends here with [him] all night trying to help [him] . . . with [Mother]," but that "nothing [was] working." Josh said he was considering calling a mental hospital if Lilia could not help. In subsequent texts between Mother

drugs other than prescribed psychotropic medication. The investigator concluded that the allegations of general neglect, physical abuse and emotional abuse were unfounded. Shortly after this incident, Mother moved to Big Bear without Aaron and began attending college online.

and Lilia, Mother admitted using Ecstasy, but denied having an addiction or “do[ing] drugs to the extent to where it affects [the] children.” One of Mother’s texts stated: “[I]n the recent past [I] had noticed a slight overuse of the drug that [I] wanted [Josh] to help regulate so I could make sure I didn’t develop a dependence.” Mother’s texts also said she and Josh “do the same amount of drugs” and watched each other to make sure their drug use was “not affecting [their lives] negatively.” Lilia texted her saying: “Please don’t take anymore drugs. Your body cannot take it and you need to think clearly to get out of this hole.” After the children had been left with Lilia for several days and Mother had ignored her requests for funds to hire a babysitter and equipment for the baby, Lilia accused Mother of having “g[i]ve[n] up on [the] children” because “[g]etting high” and her “relationship with Josh” were “more important than being with them.”

At the time of the detention, the caseworker found no marks or bruises on the children and they appeared healthy. However, they had no other clothing, and what they were wearing was small and worn. They were placed in foster care with the M.’s.⁴ Nancy M. said that when they arrived, Hailey’s hair was matted and she was exhausted. Enzo was very hungry and seemed malnourished. He drank formula

⁴ Within a short time, Hailey began exhibiting aggressive behavior toward her brother, and was placed in a new home.

every two hours and appeared to be unfamiliar with solid food.

Mother was interviewed and denied using any drugs except marijuana, for which she had a physician's statement.⁵ She denied Josh had tried to treat her with LSD or DMT. With respect to Ecstasy, Mother said that she might have used the drug unintentionally because she went to "[r]ave parties" where her marijuana could have been spiked. When asked about her mental condition, Mother said she had been feeling "hopeless and helpless," but did not believe she needed hospitalization or that she was in danger of hurting herself. Josh denied providing any drug to Mother, but said he was in favor of using "spiritual drugs" such as LSD and DMT for "rehabilitation." He denied the authenticity of the texts sent from his phone to Lilia's without explaining how someone else could have obtained his phone to send the texts.

Mother was re-interviewed prior to the jurisdictional hearing and admitted using marijuana for pain, which she had "most days." The pain was the result of migraines, which also caused nausea and vomiting and limited her ability to function.⁶ She said she stored the marijuana in a

⁵ Mother agreed to an on-demand drug test, which took place January 6. The test was positive for marijuana only. A test on January 13 was negative, but diluted.

⁶ Mother also had a Lupus-like autoimmune disorder and several gastro-intestinal issues.

lockbox or shed. Mother denied using Ecstasy, saying she had stopped using all drugs other than marijuana after Hailey was born. With respect to her mental health, Mother said she suffered from anxiety and PTSD, but had no mental issues requiring medication. She claimed Josh had said many untrue things about her, and that it would have been “easy for someone to assume” that she was using LSD, DMT, or another drug because of “the misunderstanding of what [she] was trying to communicate” about her “interest in the research of LSD and other illicit substances.” When asked about the texts from her phone to Lilia’s, Mother became evasive, saying electronically stored information was not “the best evidence,” that it was “easy to misuse sentences portraying the wrong ideas through these texts,” that Josh’s texts may have been “falsified or exaggerated,” and that because her phone did not lock, “at any point in time someone else could have sent [the] messages”

Mother’s San Bernardino caseworker said she had been visiting the family monthly and found the children well cared for, free of suspicious marks or bruises, clean and appropriately dressed. Hailey presented as a happy child. Enzo was shy, but attached to Mother and did not like to leave her side. The caseworker was aware Mother was using marijuana for medical purposes. Mother told the caseworker she had her former foster mother watch the children when she ingested marijuana. The caseworker had seen no evidence of mental dysfunction. She was, however,

concerned about Mother's relationship with Josh, finding him "manipulative and controlling."

Aaron's Mother, who lived in Hesperia, said she believed the children were being well cared for despite Mother's use of marijuana, but she had not seen Mother and the children since they moved to Big Bear. She and Aaron's father said that Mother and Aaron had used methamphetamine in their youth, and that Aaron was still using it and was homeless. Brett J., Mother's new boyfriend and Josh's former roommate, reported Josh had caused multiple confrontations in their shared household due to his use of drugs. Brett indicated Josh was using methamphetamine, describing him as suffering from "meth mouth." He said that after the detention, Josh continued to use drugs and had become verbally abusive toward Mother and others, but Mother was "staying sober for the children's return."

The jurisdictional hearing took place January 31, 2017. Mother testified that she and Aaron had broken up after Hailey's birth, but she had allowed him to move in with her and the children from March to July 2016, after Aaron completed a rehabilitation program. She said he was clean during that period and that she had allowed him to watch the children without supervision. They broke up because he hit her. Mother said she had used a lot of drugs prior to becoming pregnant with Hailey, but had not used anything

except medical marijuana since then.⁷ She said she had let Lilia care for the children because she was stressed dealing with Josh, who was “trying to convince everybody that [she] was crazy” and because her medical issues were getting worse. At various times when she was stressed or in pain, she had left the children with her former foster mother, the children’s paternal relatives, or her current boyfriend, Brett. She had also let Josh watch the children, but claimed she did not know he was using drugs until shortly before their relationship ended. Mother claimed to have enrolled in a parenting class and a drug therapy program, and to be drug testing in Palmdale.⁸

Counsel for DCFS argued that assumption of jurisdiction was warranted, pointing to Mother’s long history of drug abuse, her current use of marijuana despite caring for very young children, her admission to using Ecstasy in the texts, and her relationships with Aaron and Josh, both of whom abused drugs. Counsel also argued that Mother’s longtime mental and emotional issues, which had never been

⁷ On cross-examination, counsel for DCFS asked Mother about her 2011 hospitalization and attempted to introduce medical records from that hospitalization. The court allowed the questioning for background information, but did not admit the records, stating that Mother’s actions from that period were “too remote in time” for consideration in connection with the current petition.

⁸ There is no documentary evidence of this in the record.

properly addressed, left her unable to care for the children and had caused her to leave the children with various caretakers, including alleged drug abusers, Aaron and Josh. Counsel for the children agreed there was sufficient evidence of drug abuse and mental health issues to sustain jurisdiction, and stressed that Mother had endangered the children by re-entering into a relationship with Aaron in 2016 and allowing Josh to care for and drive the children.

Counsel for Mother asked that the petition be dismissed. She argued there was insufficient evidence that the children were at risk of harm from Mother's use of drugs or her mental health issues. She pointed out that Mother had been under the observation of caseworkers and others who found no fault with her child care abilities, and that the San Bernardino caseworker was aware that Mother was using marijuana. She contended that no evidence suggested that Mother allowed Aaron to be around the children when he was under the influence.

The court concluded Mother was not credible, particularly with regard to the testimony that she was unaware of Aaron's and Josh's drug use when she allowed them to have unlimited contact with the children. The court found it "uncontroverted" that Mother allowed Josh to drive the children from Big Bear to Van Nuys because she could not handle caring for the children, and that she had "turned [them] over to a sitter with no actual plans of when they would return." The court found true the allegations of the petition that (1) Mother was an abuser of illicit drugs --

specifically, marijuana and Ecstasy -- which rendered her incapable of providing the children with regular care and supervision and placed them at risk of serious harm, and that she was under the influence of illicit drugs while the children were under her care and supervision; (2) Mother had physical, mental and emotional problems, including PTSD and a history of suicidal ideation, which rendered her incapable of providing the children with regular care and supervision and placed them at risk of serious harm; and (3) Aaron had a history of substance abuse and was a current abuser of amphetamines, methamphetamine and marijuana which rendered him incapable of providing the children with regular care and supervision and placed them at risk of serious harm, and that Mother failed to protect the children from him. The court then added a new allegation over Mother's counsel's objection, finding true that "Mother allowed [Josh], a known drug user of LSD and Ecstasy unlimited access to the children, including driving them."⁹

Turning to disposition, the court removed the children from Mother's care and ordered Mother to drug test and to participate in a 12-step program and individual counseling

⁹ The court's original jurisdictional findings were made under section 300, subdivision (b). The allegation that Aaron had a history of drug abuse and was a current abuser of amphetamine, methamphetamine and marijuana had also been made under subdivision (j). On February 7, 2017, the court issued a nunc pro tunc order sustaining that allegation under subdivision (j).

to address case issues. The court subsequently ordered the matter transferred to San Bernardino County. Mother appealed.

DISCUSSION

A. *Jurisdiction*

In order to assert jurisdiction over a minor, the juvenile court must find that the parent is within 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. (*Ibid.*; 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 evidence to support the findings.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

To support assertion of jurisdiction under section 300, subdivision (b), the juvenile court must find “[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." To support jurisdiction under section 300, subdivision (j), the juvenile court must find that "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions."

Appellant contends substantial evidence does not support the factual findings that led to the court's assertion of jurisdiction. She further contends that the court erred in amending the petition at the jurisdictional hearing to add the allegation that she had endangered the children by allowing Josh access to the children and allowing him to drive them. We conclude substantial evidence supports the court's findings that Mother's abuse of illicit drugs, including marijuana and Ecstasy, and her physical, mental and emotional problems endangered the children by rendering her incapable of providing appropriate care and supervision. We decline to review the remaining allegations under the well-recognized principle that "[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that

are enumerated in the petition is supported by substantial evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; accord, *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492.)¹⁰

A parent’s use of drugs can support jurisdiction if the evidence established that it created a specific, nonspeculative, substantial risk of serious harm to the child. (*In re Drake M., supra*, 211 Cal.App.4th at pp. 765-766; *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003-1004; *In re David M.* (2005) 134 Cal.App.4th 822, 830, disapproved in part on another ground in *In re R.T.* (2017) 3 Cal.5th 622.) Such harm may be found where a parent’s drug use has become a persistent and regular habit that causes the parent to neglect his or her children (see, e.g., *In re Natalie A.* (2015) 243 Cal.App.4th 178, 185-186; *In re Christopher R.*

¹⁰ A reviewing court will generally consider the merits of a parent’s appeal that challenges fewer than all the juvenile court’s jurisdictional findings when the contested jurisdictional 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].” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452, quoting *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Here, the findings that Mother abused drugs and suffers mental and emotional problems supported the court’s dispositional order independent of its findings that Mother left the children with untrustworthy caretakers Aaron and Josh. Moreover, we see no additional prejudicial consequences to Mother of the findings related to Aaron and Josh.

(2014) 225 Cal.App.4th 1210, 1219-1220; *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 453), or if the child is “of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] physical health and safety.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, disapproved in part on other grounds in *In re R.T.*, *supra*, 3 Cal.5th 622; accord, *In re Drake M.*, *supra*, at p. 767.)

The finding that Mother used drugs, and that her drug use posed a danger to her children is well supported. By her own admission, Mother had a period in her life when she was taking “every kind of drug.” This history rendered her susceptible to a relapse into addiction, particularly because she was involved in relationships with drug abusers and attending no programs for recovering addicts. She claimed that since Hailey’s birth, she had used only marijuana and only for medicinal purposes. Other evidence revealed a different story. In her texts to Lilia, Mother admitted using Ecstasy and in her interview with the caseworker admitted using marijuana at “raves,” where it might have been spiked with Ecstasy. Mother’s abuse of drugs is further supported by Lilia’s conversation with her on January 3, when she seemed “high” and was “not making sense at all.” Mother’s own texts stated that she had “noticed a slight overuse of the drug” -- referring either to marijuana or Ecstasy -- that she needed help regulating. She also said in the texts that she and Josh did “the same amount of drugs.” As there was evidence Josh was a regular user of LSD, among other

drugs, this statement supported the inference that she was in danger of developing similar habits.

Further, Mother's claim that she left the children in the care of others when she used marijuana and that they were never in danger was not credible. She told the caseworker that she used marijuana for pain and that she was in pain "most days." Nothing in the record suggests she had available a reliable adult to watch the children, especially as she had moved to Big Bear, far from her support group (former foster mother, Aaron's parents and Lilia).

The finding that Mother's mental and emotional problems supported assertion of jurisdiction is subject to a similar analysis. (See, e.g., *In re David M.*, *supra*, 134 Cal.App.4th at p. 830, quoting *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318 [The agency "has the burden of showing specifically how the minors have been or will be harmed and harm may not be presumed from the mere fact of mental illness of a parent"]; *In re David D.* (1994) 28 Cal.App.4th 941, 953 [""Harm to the child cannot be presumed from the mere fact of mental illness of the parent The social worker must demonstrate with specificity how the minor has been or will be harmed by the parents' mental illness"" (italics omitted)].) Mother's mental health issues, including depression and PTSD, were well established. That those problems endangered the children is supported by Josh's January 1 text to Lilia, documenting that she was having a "mental breakdown" serious enough to

consider hospitalization and that it had lasted a day or more. Mother herself acknowledged that periodic bouts of “stress” caused her to leave the children with various caretakers, including Aaron and Josh, who were not trustworthy. A parent of vulnerable young children who is regularly too stressed and anxious to care for his or her children, and must leave them with any available caretaker, is not a capable parent. The court’s finding that Mother’s physical, mental and emotional issues warranted the assertion of jurisdiction was supported by substantial evidence.

B. Removal

Mother contends the evidence does not support the court’s dispositional order, removing the children from her care. Again, we find the evidence supported the court’s decision.

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 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).) “[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.* (2012) 212 Cal.App.4th 1117, 1126.) The court’s jurisdictional findings represent prima facie evidence that the child cannot safely remain in the home. (*Ibid.*; *In re Cole C.* (2009) 174 Cal.App.4th 900, 917; *In re T.V.* (2013) 217 Cal.App.4th 126, 135.) Although the juvenile court’s 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 that supported the court’s jurisdictional holding supported its order removing the children from Mother’s care under the heightened burden of proof. The evidence established that from December 31 to January 3 or 4, Mother suffered a breakdown caused either by her mental health issues, her drug abuse or some combination thereof that prevented her from caring for Hailey and Enzo. She transferred their care to Lilia without providing food, clothing or baby equipment, or making any other provisions for Lilia to assume their care for an extended period. Mother admitted that she periodically suffered bouts of stress that required her to give over the children’s care to others on a regular basis. The court’s conclusion that she could not be trusted to safely care for the children until she dealt with her drug and mental health issues was amply supported by the evidence.

DISPOSITION

The court's jurisdictional and dispositional orders are affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.