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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B277354
(Los Angeles County
Super. Ct. No. DK15400)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

N.H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles
County, Akemi Arakaki, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant
County Counsel, and Peter Ferrera, Principal Deputy County Counsel,
for Plaintiff and Respondent.

N.H. (Mother) challenges the juvenile court's jurisdictional finding under Welfare and Institutions Code section 300, subdivision (b)(1) that her children, E.H. (born March 2010) and B.H. (born July 2012) were at substantial risk of serious physical harm due to Mother's substance abuse.¹ We find the evidence sufficient to sustain the court's finding and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Initial Referral and Investigation

On November 22, 2015, the Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging general neglect of the children by Mother. Mother shared custody of E.H. with E.H.'s father, James C. James reported that he had met Mother for a scheduled exchange of E.H., but he refused to leave E.H. with Mother because "he did not like how mother looked." Mother went home, and James returned to his home with E.H. Father asked the police to conduct a welfare check on Mother's home. Police officers went to her home, but no concerns were reported. Mother's breath smelled of alcohol, but she did not appear to be intoxicated. James alleged that Mother had a history of methamphetamine use and a mental health disability.

A caseworker went to Mother's home on December 21, 2015 to investigate James' allegations. Mother was lucid and did not appear to

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

be under the influence of alcohol or drugs. She stated that she had not been drunk when she went to pick up E.H. and that James made those untrue allegations in order to keep E.H. with him. She said that James had made similar untrue allegations about her in June 2015. She admitted that she had a drink when she returned home from the unsuccessful exchange because she was upset that James had kept E.H. She was upset when law enforcement came to her home because they did not tell her why they were there and asked her if she had been drinking.

Mother had full custody of B.H., whose father had no contact with him. Mother shared custody of E.H. with James 50/50 and wanted to have a good relationship with James so they could parent E.H. together.

Mother stated that James called her a “whore” and repeatedly accused her of being “drunk and high.” She denied ever using methamphetamine and was willing to take a drug test. She was in therapy because of domestic violence with James, who was verbally abusive of her.

Mother reported that she drank once a week and had a medical marijuana card. She smoked marijuana, but not around her children, and she believed it did not affect her ability to mother her children.

The caseworker reported that E.H. was well groomed and clean with no visible marks or bruises. E.H. said that she and her brother are given time outs if they disobey and that they are not hit. E.H. stated that she liked being with Mother and felt safe with her. B.H. also appeared clean and well groomed with no visible marks or bruises. B.H. liked Mother and felt safe with her. Both children were

affectionate and comfortable with Mother. Mother stated that she disciplines her children with time outs.

On January 8, 2016, the caseworker interviewed E.H. at James' home. E.H. stated that Mother took care of her and her brother and never hit them. She had never seen Mother smoke or drink alcohol or have friends over. She felt safe with Mother and James and was not afraid of either of them. She always had food to eat at Mother's and James' homes.

James told the caseworker that Mother was belligerent and appeared to be under the influence on the day of the exchange. He stated that E.H.'s clothing sometimes smelled of smoke and that E.H. had told him Mother smokes in the home. He reported that Mother "cares more about drugs" than the children and that E.H. was "in danger of sexual abuse by predators" in Mother's home. He alleged that Mother was "an active prostitute" and had a history of taking Xanax.

Father called E.H. into the room and asked her if Mother smokes. E.H. said no. Father asked her again, and E.H. said she did not know. Father admonished E.H. to tell the truth, and E.H. stated that Mother smoked in the home. Father asked E.H. if Mother drank alcohol, and E.H. stated that she did not know what alcohol was. E.H. started to cry, and Father told her to tell the truth.

E.H.'s babysitter at James' home, Georgina, stated that she had been caring for E.H. since the child was six months old. She saw Mother when James and Mother met to exchange E.H. Georgina had never seen Mother under the influence of alcohol or drugs. E.H.'s clothing sometimes smelled of smoke. According to Georgina, E.H. had reported

not getting breakfast at Mother's home. Georgina did not believe that Mother was capable of caring for her children.

Second Referral

On January 12, 2016, the children's nanny, Alejandra V., attempted to drop the children off at Mother's home earlier than expected. Alejandra knocked repeatedly, but there was no answer other than the sound of the dog barking. Mother's downstairs neighbor came upstairs and asked why Alejandra was knocking on the door and standing in the hallway with the children. The neighbor seemed upset, so Alejandra left and took the children back to her own home. When Alejandra returned home, she received a call from police stating that they were at Mother's apartment and that Mother was intoxicated. Alejandra stated that she had never seen Mother under the influence of drugs or alcohol, and she told the caseworker she had no concerns about Mother caring for her children.

The DCFS caseworker contacted law enforcement to ask about the incident. The deputy reported that Alejandra called the fire department when Mother did not answer the door, but it was the neighbor who called law enforcement. The fire department knocked on Mother's door for ten minutes, and "Mother finally opened the door 'drunk as a skunk.'" Mother's boyfriend was there, and he also appeared to be intoxicated. According to the sheriff's incident report, when Mother told the deputy there were no children at the home, the deputy asked if the children were inside. Mother attempted to slam the door closed and struck the deputy in the face. Mother was arrested for

battery of a peace officer. The deputy reported that the home was dirty, with dog feces on the floor.

DCFS obtained a warrant to remove the children from Mother's custody.

Section 300 Petition and Detention Hearing

On February 1, 2016, DCFS filed a petition under section 300, alleging jurisdiction under subdivision (b)(1): Mother's history of substance abuse and current abuse of alcohol rendered her incapable of caring for the children and placed the children at risk of serious physical harm.

The court ordered the children detained from Mother, found James to be E.H.'s presumed father, and released E.H. to James. The court deferred a paternity finding as to B.H.'s alleged father, Mark R.

Jurisdiction/Disposition Report

According to the February 23, 2016 jurisdiction/disposition report, Mother told the investigator that she was starting a substance abuse treatment program. She said that she sometimes drank excessively but denied having "an alcohol problem." Mother gave the investigator a letter showing Mother's assessment by a drug and alcohol treatment program, but the investigator was not certain if the program was approved by DCFS. When asked if she had "a drug problem," Mother stated that the only drug she used was marijuana and that she had a medical marijuana card. Mother explained that the marijuana was for anxiety.

When asked about the January 12, 2016 incident when she was arrested, Mother explained that she had spent the day with her boyfriend. They were having sex when Alejandra returned early with the children. Mother admitted that they had been drinking. She tried to close the door on the deputy because she was naked. She stated that Alejandra had never before brought the children home without contacting her first, but on that day, Alejandra texted her when she arrived with the children.

Mother showed the investigator hostile text messages from her former nanny, Mia. The day after Mia quit working for her, police were sent to Mother's home because she allegedly was under the influence of drugs and alcohol. Mother believed that Mia, James, and her downstairs neighbor colluded to call the police and make these accusations.

The investigator interviewed E.H. at James' home. E.H. stated that her parents did not like each other and argued about her. E.H. denied being hit or spanked by either parent and said that she was not afraid of either one.

James told the investigator that Mother smoked around the children, and that she was a drug addict, an alcoholic and a prostitute. The investigator explained that it was not illegal for Mother to smoke around the children and told him the dependency court would likely order reunification services for Mother because she had the right to reunify with her child. James "became visibly irritated by this information" and expressed the belief that Mother should never have custody of E.H. Three days after E.H.'s birth, James left Mother, and

he took a paternity test to determine if he was E.H.'s father because he alleged that Mother "was an active prostitute at the time." James accused Mother of threatening to kill him and of sending strange men, allegedly her clients, to pick up E.H. from him. Mia told James that Mother used an online alias for her prostitution business.

The investigator spoke with B.H.'s alleged father, Mark R., who stated that he had not had contact with Mother in three years. He stopped seeing her when B.H. was about four months old because of the ongoing fight between Mother and James. He was requesting a DNA test to determine if he was B.H.'s father.² He expressed skepticism about James' accusations that Mother was a prostitute, although he acknowledged that Mother struggled with alcohol, but not drugs.

Mia, the former nanny, stated that Mother "drinks too much, smokes too much pot, and smokes cigarettes." She believed that Mother loved her children but was not ready to be a mother. Mia stated that she was concerned about the children's safety because "there were men in and out of the home."

Mel G. had lived downstairs from Mother for four years. He called the police the night that Mother was arrested because the dog was barking and the nanny was sitting outside the apartment with the children. He had seen Mother under the influence once when he first moved in.

² After obtaining the results of the DNA test, the court found Mark to be B.H.'s biological father.

Sam B., the director of the center where Mother and James met to exchange E.H. reported that they conducted the exchanges at the center from May 2012 until July 2014, when he terminated them because Mother appeared to be under the influence at the exchange. He stated that Mother was often late and often brought someone with her. He also stated that James “would throw a fit if E.H. had a minute scratch on her that looked like it was weeks old,” and that James complained of a cigarette smell on E.H., although Sam B. did not discern any smell.

Alejandra had worked for Mother as a nanny for a little more than a year. Alejandra cared for the children six to eight hours per day. On the night Mother was arrested, Alejandra texted Mother to let her know she was there. When Mother did not respond, Alejandra and the children went upstairs and knocked on the door. According to Alejandra, Mother’s dog “gets crazy when there is someone at the door” and was barking. The neighbor came upstairs and was angry at Alejandra, although she did not understand why. Alejandra returned home with the children and received a call from the sheriff’s department saying that Mother was intoxicated. The dependency investigator expressed concern that Alejandra was not objective because Mother still employed her to care for B.H., but Alejandra believed she was a neutral caregiver and monitor for Mother’s visits.

Jurisdiction Hearing

Mother called Alejandra to testify. Alejandra testified about the January 12, 2016 incident when Mother was arrested, reciting the events as set forth above.

Edward W., the clinical director of Mother's substance abuse treatment program, testified that Mother had completed approximately 30 hours of assessment work at his center. He testified that Mother met two out of ten criteria in the DSM-5, indicating that she suffered from a low level of alcohol abuse disorder. The two criteria were the "[e]xcessive use of alcohol under considerable stress and episodic use of alcohol in improper response to overwhelming circumstances in lieu of other coping skills." Edward was meeting with Mother weekly for 12 to 18 weeks, and he did not believe she was experiencing problems with alcohol at the time of the hearing.

The court acknowledged that the children had not been harmed yet, but stated that the court did not need to wait for harm to occur. The court found a nexus between Mother's alcohol abuse and her inability to make appropriate decisions and to care for her children and thus sustained the allegation of the section 300 petition, finding both children persons described by section 300, subdivision (b)(1). The court ordered monitored visits for Mother and for Mark with B.H.

Disposition Hearing

The court declared the children dependents of the court and ordered them removed from Mother. The court found Mark to be the presumed father of B.H. and ordered both children placed in the homes of their respective fathers. The court found that "the underlying issues here have to do with substance abuse," and stated that Mother "has continually shown an inability to address those abuse issues that the court can't ignore." The court thus ordered enhancement services for

Mother and ordered her to participate in drug rehabilitation with drug and alcohol testing and a 12-step program. Mother timely appealed.

DISCUSSION

I

On April 12, 2017, we granted Mother's request for judicial notice of orders of the juvenile court, dated February 17, 2017, terminating jurisdiction and granting the fathers physical custody of their respective children, joint legal custody to Mother and the fathers, and supervised visitation rights to Mother. Respondent therefore contends Mother's appeal should be dismissed as moot.

Generally, "[w]hen no effective relief can be granted, an appeal is moot and will be dismissed. [Citation.]" (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.) However, appellate courts will reach the merits of a challenge to a jurisdictional order where the order "could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762 (*Drake M.*); see *In re C.C.* (2009) 172 Cal.App.4th 1481, 1489 [addressing the merits of an appeal "in an abundance of caution," even though the juvenile court had terminated jurisdiction and granted the mother "the very relief she seeks by her appeal"].)

II

Mother contends the juvenile court's jurisdictional finding is not supported by substantial evidence because the children had not suffered

harm and there was no evidence they were at risk of serious physical harm. We find the record sufficient to support the court’s finding.

“In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]’ [Citation.]” (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 184 (*Natalie A.*)). “[W]e do not pass on the credibility of witnesses, resolve conflicts in the evidence or weigh the evidence. Instead, we review the record in the light most favorable to the juvenile court’s order to decide whether substantial evidence supports the order. [Citation.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the court’s findings or orders. [Citation.]” (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146–147.)

Section 300, subdivision (b) permits the assertion of jurisdiction 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 . . . due to the parent’s or guardian’s . . . substance abuse.” (§ 300, subd. (b)(1).) “The three elements for a section 300, subdivision (b) finding are: ‘(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the [child], or a “substantial risk” of such

harm or illness.’ [Citation.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1395–1396.) As the juvenile court acknowledged, there was no evidence that the children had suffered physical harm. Thus, DCFS was required to produce sufficient evidence “to find there was a *substantial risk* that [they] will suffer serious physical harm or illness at the time of the jurisdictional hearing.” (*Drake M., supra*, 211 Cal.App.4th at p. 764.)

The juvenile court relied on the January 2016 incident when Mother was arrested to sustain the allegation. The court reasoned that Mother did not respond to Alejandra’s attempt to return the children and cited Mother’s “unwillingness to open the door to care for her children.” The court further cited Mother’s arrest for battery on a peace officer as evidence of the ongoing concern that Mother’s substance abuse rendered her unable to care for the children.

Mother argues that, according to the testimony of Edward W., she met only the lowest level of alcohol abuse disorder. Nonetheless, “a finding that a parent has a substance abuse problem justifying the intervention of the dependency court” is supported by “a medical diagnosis of substance abuse” or “evidence of life-impacting effects of drug use.” (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 726.) In addition to the assessment that Mother suffered from an alcohol abuse disorder, the record contains some “evidence of life-impacting effects of [alcohol] use.” (*Ibid.*)

For example, when Mother was arrested in January 2016, the deputy reported that she was so intoxicated that she “was not able to walk or run without almost falling” and “several times needed the

assistance of the hallway walls to stay standing upright.” Alejandra told the caseworker that she was supposed to bring the children home at 9:00 p.m. that night, but instead Alejandra arrived at 7:45 p.m. Thus, although Mother and Alejandra indicated that Alejandra brought the children home earlier than expected, it was only about an hour earlier and yet Mother was so intoxicated that she was unable to stand without assistance. In addition to the risk to the children of being left in the care of Mother in that condition, DCFS points out that this was in violation of a family court order that Mother not consume alcohol within 24 hours of caring for E.H.

The record also indicates that in July 2014, Sam B. had to cancel the regular exchanges of E.H. at his center because Mother was under the influence when she arrived. He told the investigator that when she arrived at the center to pick up E.H., she was so drunk that she was “unable to walk straight” and therefore was not able to take E.H.

The juvenile court found Mia, the former nanny, credible and found Alejandra not credible. According to Mia’s statement to the caseworker, Mother had “men in and out of the home” and “was always under the influence.” Given Edward W.’s testimony that Mother suffered from a low level of alcohol abuse disorder, as well as the evidence the court found credible of an ongoing substance abuse issue, the court’s finding is supported by substantial evidence.

“Although a finding of substance abuse is necessary under this prong of section 300, subdivision (b), it does not always follow that such a finding means that the parent or guardian at issue is unable to provide regular care resulting in a substantial risk of physical harm to

the child.” (*Drake M.*, *supra*, 211 Cal.App.4th at p. 766.) Mother thus contends that jurisdiction was improper because the children had not been harmed, and they were not at substantial risk of serious physical harm at the time of the hearing. “The trial court is in the best position to determine the degree to which a child is at risk based on an assessment of all the relevant factors in each case.” (*Ibid.*)

“The juvenile court need not wait until a child is seriously injured to assume jurisdiction if there is evidence that the child is at risk of future harm from the parent’s negligent conduct. [Citation.]” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993; see also *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383 (*Kadence P.*) [“the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child”].) “The court may consider past events in deciding whether a child currently needs the court’s protection. [Citation.]” (*Ibid.*)

Although there was no evidence that E.H. and B.H. had suffered harm, it was reasonable for the juvenile court to infer that Mother’s history of being under the influence when she knew she was scheduled to assume care of the children placed them at substantial risk of harm. Assertion of jurisdiction under section 300, subdivision (b) for substance abuse is justified where 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 (*Rocco M.*), abrogated on other grounds by *In re R.T.* (2017) 3 Cal.5th 622.) Here, “because the children were six years

old or younger at the time of the jurisdiction hearing—children of ‘tender years’ in the language of *Rocco M.*, *supra*, 1 Cal.App.4th at page 824—‘the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of harm’ [citations].” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219.)

We are to “draw all reasonable inferences from the evidence to support the findings and orders of the dependency court,” and we defer to the court’s credibility findings. (*Natalie A.*, *supra*, 243 Cal.App.4th at p. 184.) For the foregoing reasons, we affirm the juvenile court’s jurisdictional finding.

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DISPOSITION

The order appealed from is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.