Filed 2/9/17 In re Samantha D. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re SAMANTHA D., a Person Coming Under the Juvenile Court Law.	B270405 (Los Angeles County Super. Ct. No. DK12630)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.M., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Zeke D. Zeidler, Judge. Affirmed.

Claire Abrams, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

Mother M.M. appeals from the orders sustaining the dependency petition under Welfare and Institutions code section 300, subdivision (b)(1) as to her daughter, Samantha D., and placing Samantha in her care under supervision by the Los Angeles County Department of Child and Welfare Services (DCFS). She contends there was no evidence she neglected Samantha, and insufficient evidence that her continued provision of care to Samantha posed a substantial risk of harm. We conclude that parental neglect is not a prerequisite to assertion of dependency jurisdiction, and that substantial evidence supports the court's finding that Samantha was at substantial risk of serious physical harm or illness. Therefore, we affirm the orders.

BACKGROUND

In December 2013, when she was 12 years old, Samantha D. (born January 2000) came to the attention of DCFS after it received a referral indicating that Samantha had been hospitalized three times in 2013 due to her uncontrolled diabetes. The reporting party was concerned for the child's safety if released again into the care of her mother, appellant Maritza M. (mother). During her hospitalization in December 2013, Samantha's blood sugar (A1c,[1] or hemoglobin) level exceeded 14 percent

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1 An A1c test reflects the average blood sugar level for over the past two to three months to indicate how one's diabetes is being controlled over a period of months. The higher one's A1c reading, the greater the risk of suffering diabetes–related complications. Medical professionals recommend an A1c reading of less than 7–7.5 percent, depending on age

(it should have been 7). An adult sister reported that Samantha ate desserts and junk foods, and refused to take her insulin between meals. The reporting party believed that mother had failed to provide adequate supervision or to set appropriate limits for Samantha, who might die if her diabetes remained uncontrolled.

Samantha and two younger siblings (who are not subjects of this action), live with mother and two of mother's adult children. Samantha's diabetes was diagnosed when she was 11. While hospitalized in December 2013, Samantha admitted that she had ignored instructions regarding her care and lied to mother about her diet and insulin intake. DCFS determined that voluntary family maintenance (VFM) services would best serve the family, and that counseling was in order to help the family address father's abandonment. Samantha's father, Jorge D. (father, who is not a party to this appeal), also has diabetes. Samantha had forged a special bond with father over their shared illness. She became depressed after he abandoned the family when she was 13 years old to return to Guatemala to live with his former wife and children. DCFS provided VFM services for about a year, beginning in early 2014.

In mid-March 2014, mother was reportedly complying with the VFM plan, and had been present during all of Samantha's blood checks and insulin injections. Samantha's most recent test indicated that her

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and type of diabetes. (http://www.mayoclinic.org/tests-procedures/a1c-test/home/ovc-20167930; http://www.webmd.com/diabetes/glycohemoglobin-ghb#3.)

A1c level had been reduced to 9.9 percent. By July 2014, DCFS had has assigned the matter to its Medical Case Management Service (MCMS) unit, and assigned a public health nurse (PHN) to supervise the case. The PHN followed up with Samantha's health care providers, and monitored mother's compliance, made recommendations to Samantha and mother based on Samantha's medical needs, and discussed with mother how important it was that Samantha have adequate medical supplies and medication available at all times, whether at home, school or elsewhere. The PHN and mother also discussed Samantha's excessive weight, and the PHN stressed that mother needed to make healthy food choices and a weight loss program available, and to encourage Samantha to engage in physical activities. The PHN reported that Samantha was being followed for mental health treatment to address ongoing depression, per the VFM case plan, and that her most recent A1c level had been 10.4 percent.

A social worker visited the family home in late February 2015 when DCFS was planning to close the case. However, when mother revealed that Samantha's most recent A1c reading in mid–February 2015 was 13.3 percent, DCFS explained it would be necessary to file a non–detained petition. The family's VFM case had been open over a year, and the reasons that led to DCFS involvement remained unresolved. Mother was frustrated because Samantha refused to cooperate or participate in managing her own health care, or to eat appropriate foods. For example, the teenager would sneak junk food (e.g., mother found a chocolate wrapper by Samantha's bed), and consumed excessive

amounts of sugar (18 bottles of juice in four days, and as many as five packets of sugar in each cup of coffee).

In early April, mother and Samantha met with a DCFS multi-disciplinary team to assess the family's progress. The group discussed Samantha's health concerns, her elevated glucose levels and her non–compliance with her medical regimen. Samantha promised to make an effort to eat better. Mother informed the group that Samantha became depressed after father left the family, and spent most of her time in her room. Mother was asked to check with Samantha's psychiatrist regarding the medication dose and was reminded to attend therapy and parenting programs. She agreed to do so. Mother and Samantha were referred to "Teen Power," a 10–week support program at Children's Hospital Los Angeles (CHLA) with parallel groups for diabetic teens and their caregivers, to address issues confronting teens with diabetes who experienced emotional and behavioral issues inhibiting optimal diabetes care. Samantha and mother actively participated in and completed the program in June. They registered for a second program, and mother said they intended to continue participating in the support group. In late June, the Teen Power program agreed that Samantha's mental health treatment could be transferred to its facility for individual counseling to address her depression after mother told DCFS the child's therapist planned to close her daughter's case notwithstanding her ongoing depression.

In July 2015, DCFS filed a petition pursuant to Welfare and Institutions Code section 300,[2] subdivision (b)(1) alleging that, while mother had been trained to administer Samantha's medications and to maintain an appropriate diet in order to control her daughter's diabetes, she failed to refill or administer Samantha's medications regularly or to ensure that her then 15–year–old daughter consistently checked her own glucose levels or maintained a proper diet. DCFS also alleged that the remedial services it provided had not resolved the family's problems, that mother remained unable to understand or adequately manage Samantha's disease, and that mother's "failure or inability to supervise or protect" Samantha adequately, "endanger[ed] the child's physical, health and safety and place[d] her at risk of serious harm, damage and danger."

The allegation that mother "failed to refill and to administer [Samantha's] medications" arose from an incident in June 2015, while mother was in the process of transferring Samantha's medical care from providers in Long Beach to CHLA. Mother, a Spanish–speaker, encountered numerous difficulties making that switch, including CHLA's failure to return numerous calls she made to try to schedule medical appointments for Samantha, and CHLA's claim not to have received medical records forwarded by Samantha's previous doctors. At one point in June, mother had to take Samantha to a community clinic after the child ran out of the medicine that was usually delivered

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[2] Statutory references are to the Welfare and Institutions Code.

directly to their home.[3] DCFS claimed that Samantha was without her medication for three weeks. Mother disputed this, and said the lapse in deliveries had not caused a lapse in Samantha's taking her medication. Despite her concerted efforts, mother's difficulty receiving any response from CHLA or scheduling an appointment for Samantha continued into July. The problem was finally rectified when County medical professionals interceded and were able to obtain an endocrinology appointment for Samantha at CHLA.

When the PHN and social worker visited the family's home on July 9, 2015, mother showed them she had a closet filled with "plenty" of Samantha's medicines and supplies. Still, mother remained frustrated that Samantha was not fully participating in managing her illness. For example, mother prepared healthy breakfasts for Samantha, who ate them, and then stopped for donuts on the way to school. And, despite being regularly reminded by mother, Samantha failed or refused to monitor her blood sugar levels and ate many high sugar, high carb snacks. Mother tried to help Samantha count calories and carbs, but was not always able to do so because she was working. Mother's adult children in the home tried to help, but that resulted in

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[3] When mother went to the pharmacy to investigate why the medicine was not delivered, she learned the prescription had been cancelled without informing her because of the change of doctors, and that the new pharmacy did not have a mail order service. Mother was able to rectify the problem and obtain Samantha's medication and a pharmacy that made home deliveries.

confrontations with Samantha. Mother checked on Samantha as often as she could, and sent texts to remind her to test her glucose level. Nevertheless, Samantha sometimes failed or simply refused to do so. Also, although the school nurse was given the medical orders regarding Samantha's need for insulin, Samantha refused to go to the nurse's office and would not give herself insulin injections in the school bathrooms, which she claimed were unsanitary. Mother believed Samantha's glucose levels vacillated so much because the teenager refused to change her eating habits, and did things like awaken at night to snack.

During the July 2015 home visit, Samantha showed the PHN her insulin pens and was able to describe the correct procedure for administering insulin. She admitted that she forgot to check her glucose and to give herself insulin injections. She acknowledged that she had deleted a calorie–counting app on her phone because it took up too much space. Samantha told the PHN that she did not like to go out, had told only one friend about her diabetes and sometimes felt depressed.

In addition to her diabetes–related health problems, Samantha suffers from hypothyroidism (for which she takes medication), is overweight and depressed. Mother reported that Samantha had "not seen a psychiatrist in a long time because she did not like the previous one," had stopped taking her psychotropic medication, and was about to attend her final therapy session, which DCFS had terminated. Samantha also has a vitamin D deficiency, but had stopped taking

vitamin D (and would not go outside), and had not seen a nephrologist since switching to CHLA. Samantha needs glasses, but had lost her last pair and only wanted a specific brand that mother was unable to provide.

At the time of the detention hearing on July 28, 2015, father's whereabouts were unknown. The court ordered that Samantha remain in mother's care, and set a combined adjudication/disposition hearing for October.

In its report for the hearing on October 21, 2015. DCFS informed the court that Samantha had started to be more attentive to her own medical and nutritional needs, but remained unable fully to grasp the severity of medical complications she could suffer if her diabetes was not kept in check. When questioned in late September regarding the allegations of the petition, Samantha specifically "*denied that mother [had] been neglectful of her medical care and denied that mother failed to refill her medication*." To the contrary, Samantha told DCFS that a "big box full of [her] supplies" had been sent to her home. Samantha also "denied that mother has not shown importance [*sic*] or an interest in [her] well–being and [said] that mother has ensured that she attends all medical appointments since transferring her medical care to [CHLA]."

Samantha explained that her glucose levels were high because she did not follow her doctors' instructions to "take care of [her]self." She "would lie to [mother] and say [she had] checked [her] blood sugar," when she had not. Samantha admitted that, despite mother's "regular

reminders" to check her glucose levels, she "fail[ed] to follow through with her responsibilities in managing her diabetes," and did not comply with her prescribed medication regimen.[4] She admitted the problem was that she ate chips, soda and other unhealthy foods "behind [mother's] back."

Mother was also interviewed on September 25. She said she had done her best to ensure that Samantha ate appropriate foods and followed medical instructions to control her diabetes. But her ability to maintain control was limited by her inability to supervise Samantha while she was at work, coupled with the teenager's insistence on eating junk foods, and her depression and refusal to exercise. Mother said the teen had started taking more responsibility for her own health since attending a weekly support group. However, just the day before, mother had gone to Samantha's school where the nurse informed her that Samantha was not performing her midday blood sugar tests. Mother said Samantha insisted on conducting the tests and administering the insulin herself, but then sometimes refused to do either even after being reminded.

Regarding the gap in Samantha's medications, mother explained that Samantha had always received automatic refills, which were

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[4] The DCFS report reflects that Samantha's glucose readings were most consistently recorded in the mornings and evenings when mother was home. Samantha did not perform the tests at all during school days. There are gaps of up to five days with no readings at all.

mailed to the home, and denied neglecting Samantha's medical needs. She explained that when Samantha's health care was switched to CHLA, there was a short time during which the child's medication was not delivered. Mother had been unaware the automatic refills had ceased, and the new pharmacy did not deliver. Mother obtained medication for Samantha at a community clinic during the interim, and transferred to another pharmacy so that home deliveries resumed.

Mother was participating in a parenting education program, and both she and Samantha received individual counseling and attended support groups at CHLA. Mother remained willing to comply with the case plan. She realized that, even though it was Samantha who should be responsible to check her glucose levels at school, that was not going to happen. So, it would be difficult, but it was up to mother constantly to remind her.

DCFS opined that Samantha "remained stable" in mother's care. Mother and Samantha had each expressed a commitment to continue participating in counseling and group sessions, and to make an effort to improve Samantha's understanding of the severity of her diabetes and the importance of complying with the prescribed regimen. Despite her frustration, mother was committed to continue doing everything she could to encourage her daughter to manage her illness with diet and treatment. Samantha did not believe that mother was either indifferent to her needs or neglectful. She freely admitted lying to mother about what she readily acknowledged were her own responsibilities. The social worker concluded that mother and

Samantha each suffered from varying levels of depression, associated with the aftermath of father's departure from the family. But, both had continued participating in mental health services, and remained willing to do so in order to better manage their own well–being and to remain focused on Samantha's medical needs. In conclusion, DCFS opined that, although there was a need for improvement it did "not appear that [Samantha was] at imminent risk under the mother's care, therefore, the detention of the child [did] not appear necessary." DCFS recommended that family maintenances services be continued.

At the close of the adjudication phase, County Counsel argued that Samantha remained at risk because mother had difficulty properly providing or obtaining care for her medical needs, had not "really monitor[ed] the child sufficiently, was not refilling [Samantha's] medications appropriately, [and] was not making doctors' appointments for the child." As a result, Samantha's glucose levels had varied dramatically and exceeded acceptable levels for an insulin–dependent child. County Counsel urged the court to retain jurisdiction so DCFS could ensure that mother appropriately monitored her teenage daughter's health, followed doctors' advice and attended medical appointments. The juvenile court asked what the effect, if any, had been of the alleged three–week gap in Samantha's receipt of medication in terms of the alleged current risk of future harm. County Counsel did not respond directly to this inquiry, saying only that mother should not have let the delay occur because such a lengthy gap in the receipt of medication for someone with diabetes could be very dangerous.

The juvenile court also observed that DCFS's latest report indicated that mother was "checking [Samantha's glucose] levels in the morning and the evening," and that Samantha was supposed to be checking the levels herself during the school day, but did not. The court asked what effort, if any, DCFS had made since becoming involved with the family to give mother confidence that Samantha would check her glucose levels when mother was not there to remind her, and whether DCFS had done anything to ensure that there was a mechanism in place during the school day to accomplish that goal. County Counsel was unable to respond to either question.

The court observed that DCFS had essentially assigned "100 percent" responsibility to mother to check Samantha's glucose levels and manage the diabetic teen's home care. The agency acknowledged that mother had taken on a more active role, and was watching Samantha's diet and checking her glucose levels in the morning and evening. Thus, the court wondered if the only remaining risk was "the medication complaints?" County Counsel responded that DCFS remained concerned about Samantha's elevated glucose levels.

At this point in the hearing, the court received a last–minute information indicating that father had been contacted that day in Guatemala.[5] The adjudication hearing was continued to January 12,

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[5] The last-minute information said father was suffering diabetes–related complications, was legally unable to return to Los Angeles and was financially unable to provide for Samantha. He also claimed it

2016, to give father an opportunity to participate. In the meantime, DCFS was ordered to provide a supplemental report addressing compliance by mother and Samantha with the girl's diabetes management program, and to address the merits of dismissing this action "outright."

DCFS never provided the supplemental report. On January 4, 2016, in lieu of this report, DCFS submitted a last-minute information that failed to address whether the action should be dismissed. DCFS reported that Samantha was still attending therapy, albeit reluctantly and inconsistently, and incorrectly reported that she had not attended a medical appointment since October.[6] DCFS opined that mother and Samantha still required DCFS support. Accordingly, DCFS said it was in Samantha's best interest for the court to sustain the petition and assume jurisdiction, so that the agency could "continue monitoring the family in order to ensure that [Samantha] is improving in her diabetes management."

The adjudication hearing was reconvened on January 12, 2016. County Counsel argued that remedial services provided by DCFS had

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would be dangerous for Samantha to be with him in Guatemala, which lacked the medical resources she needed.

[6] At the continued adjudication hearing on January 12, mother presented evidence that Samantha had undergone examinations for endocrinology, diabetes and metabolism on December 18, 2015.

not resolved the problems that led to the agency's involvement, and recommended that the court sustain the petition.

Mother urged the court to dismiss the petition, arguing that DCFS had failed to carry its burden to demonstrate the truth of the allegations. Her counsel argued that mother had fully complied with all of DCFS's recommendations, and had done everything within her power to assist her 16 year old to manage her illness. There was nothing more mother could learn by taking more classes, and little more she could do to help the teen who had to learn to assume responsibility to manage her diabetes, especially when she was away from mother and in school. Mother's counsel argued there was no basis for the assertion of jurisdiction, nor any reason for concern that Samantha faced a current or future risk of harm in mother's care.

Samantha's counsel observed that the girl's A1c level remained uncontrolled and dangerously high, and joined DCFS's request that the court sustain the petition. Her attorney noted that the girl's A1c level had been 13.4 percent in September 2015, and had risen to 14 percent in mid-December 2015, double the optimal seven percent goal. Further, the last-minute information indicated that Samantha's participation in and attendance at support group and therapy sessions recently had become inconsistent. Her counsel noted the situation could be quite dangerous for Samantha, given the potentially grave consequences of her illness.

At the conclusion of the adjudication phase, without stating its reasons, the court found DCFS had proved the allegations by a

preponderance of the evidence, and sustained the petition. (§ 300, subd. (b)(1).) Proceeding to disposition, the court removed Samantha from father's custody, placed her in mother's care under DCFS supervision and ordered that family maintenance services be provided. Mother appeals.

DISCUSSION

Mother contends the juvenile court erred in asserting jurisdiction in this action as there is no evidence she neglected Samantha, and DCFS failed to satisfy its burden to show that her continued provision of care posed a substantial risk of serious physical harm or illness to Samantha. Mother is partly correct. The record contains insufficient evidence that mother neglected Samantha's medical condition. However, the record does contain substantial evidence that, despite her efforts, and through no fault of her own, mother remained unable adequately to exert sufficient control or supervision over her teenage daughter in order to obtain Samantha's consistent compliance with her own health regimen. Mother's inability to do so resulted in a substantial risk that Samantha would suffer serious physical harm or illness.

1. *The Relevant Provision of Section 300, Subdivision (b)(1) Does Not Require a Showing of Parental Culpability*

As relevant here, section 300, provides a basis for the assertion of dependency jurisdiction if "[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 . . . to adequately supervise or protect the child*." (§ 300, subd. (b)(1), italics added.) We must determine what the statute requires, before reviewing the court's factual findings bearing that interpretation in mind.

It has been stressed repeatedly that "[s]ubdivision (b) means what it says." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.) Longstanding rules of statutory construction require us to afford meaning to every word and phrase in a statute. (*In re B. J. B.* (1986) 185 Cal.App.3d 1201, 1206-1207.) Where possible, we must give significance to each word, phrase and sentence of a statute, and avoid a construction that renders any parts therein surplusage. (See *Walker v. Superior Court* (1988) 47 Cal.3d 112, 121-122.) "'Our task in construing a statute is to ascertain and give effect to the Legislature's intent. [Citation.] We begin by examining the words of the statute, giving them their usual and ordinary meaning and construing them in the context of the statute as a whole. [Citations.]' [Citation.]" (*Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 209.) "'"If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls." [Citation.]'" (*Ibid.*, citing *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, 719.) The plain language of the first clause of section 300, subdivision (b)(1) provides that a parent's *inability* to provide adequate protection or supervision provides a basis for juvenile court jurisdiction if the result of that inability places the child at substantial risk of serious physical harm or illness.

Considered in the context of other provisions of section 300, the concept that a child may be subject to dependency jurisdiction even in the absence of parental fault is consistent with the view that the Legislature expressly determined that parental culpability is a prerequisite for some grounds for dependency jurisdiction, but not others. Courts typically infer that the omission of a culpability requirement from a particular ground was intentional. "When language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful." (*In re Ethan C.* (2012) 54 Cal.4th 610, 638 (*Ethan C.*).) This is particularly so where the differential treatment occurs in the same statute or, as here, the same subdivision.

Certain provisions of section 300 require a showing of intentional parental conduct. (See § 300, subds. (a) [parent's "nonaccidental" infliction on child of serious physical harm; (c) [child has suffered, or may suffer, serious emotional damage "as a result of" parent's conduct]; (d) [parent's sexual abuse of child], (e) [parental infliction of severe physical abuse on child under five]; and (i) [parent has subjected child to acts of cruelty].) Other provisions of the statute also require a showing of culpability, although negligence will suffice. (See § 300, subd. (b)(1) [second and third clauses; parent's "willful or negligent failure" to supervise or protect a child left with another, or to provide "adequate food, clothing, shelter, or medical treatment"]; § 300, subds. (d), (e) & (i) [addressing parental failure to protect child from sexual abuse, severe physical abuse of young child or cruelty, when parent

knew or should have known risk existed]; and (j) [parental "abuse or neglect" caused another child's death].)

And, as with the provision of section 300, subdivision (b)(1) at issue here, under some circumstances the Legislature has deemed the assertion of dependency jurisdiction appropriate without any showing of parental culpability. (See § 300, subd. (b)(1) [fourth clause; parent's "inability . . . to provide regular care for the child" because of parent's mental illness or developmental disability]; § 300, subd. (b)(2) [sexually exploited child whose parent has failed to protect them]; § 300, subd. (c) [child at substantial risk of suffering, serious emotional damage, and is without a parent "capable of providing appropriate care"]; *In re Roxanne B.* (2015) 234 Cal.App.4th 916, 921 [this provision of § 300, subd. (c) does not require "'parental fault or neglect'"]; § 300, subd. (g) [child "left without any provision for support"]; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1128–1129 [conduct under § 300, subd. (g) need not be willful].) Dependency court jurisdiction is not grounded on principles of culpability. (See *In re V. M.* (1987) 190 Cal.App.3d 753, 757 [observing that imposition of dependency jurisdiction turns on the welfare of the child, not parental fault or lack thereof].) Rather, under this provision of section 300, subdivision (b), DCFS need only show that a parent cannot, for whatever reason, exercise adequate control or supervision of her child, and that this inability places the child at substantial risk of serious physical harm or illness.

We acknowledge that our conclusion that dependency jurisdiction may attach absent a showing of parental culpability is at odds with the

decision by our colleagues in Division One in *In re Precious D.* (2010) 189 Cal.App.4th 1251 (*Precious D.*) In *Precious D.* a mother was unable to protect her teenage daughter who continually ran away and refused to return home. (*Id.* at p. 1261.) DCFS conceded "that it sought dependency court jurisdiction because of [the child's] incorrigible behavior and her need for court-ordered services, not because of any neglectful conduct by [the mother]." (*Id.* at p. 1259.) The court concluded there was insufficient evidence to support the assertion of jurisdiction, because the mother had not been negligent, and the court feared that assertion of jurisdiction based on a parent's blameless inability to control a teen could result in the termination of parental rights without any finding that she was an unfit parent. (*Id.* at pp. 1259–1261.) The court held that "the provision of [section 300, subdivision (b)] providing for jurisdiction based on the parent's 'inability . . . to adequately supervise or protect the child' requires that the parent be unfit or neglectful in causing serious physical harm to the child or a risk of such harm." (*Id.* at pp. 1253–1254.) We respectfully disagree.[7]

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[7] Our colleagues in Division Two disagreed with *Precious D.,* and the issue is pending before the California Supreme Court. (See *In re R.T.* (2015) 235 Cal.App.4th 795, review granted June 17, 2015, S226416). Two other decisions likewise disagreed (*In re Tyler R.* (2015) 241 Cal.App.4th 1250, and *In re Maricela H.* (2012) 210 Cal.App.4th 615), but after review was granted in those cases, the review-grants were later dismissed, and thus review is no longer pending in those cases.

The assertion of jurisdiction is merely one of the earliest steps in a series of steps that may or may not lead to termination of parental rights. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 247–250 [outlining steps] (*Cynthia D.*); *Ethan C., supra*, 54 Cal.4th at p. 617.) Parental rights of a custodial parent may only be terminated upon a finding, by clear and convincing evidence, at the permanency planning (§ 366.26) hearing. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 931, fn. 3.) By the time a dependency case has reached the final step and termination of parental rights is possible, the danger of returning a child to parental custody is well-established, and there is no longer good reason to believe a positive parent-child relationship exists. (See *Cynthia D., supra*, 5 Cal.4th at pp. 253, 256.) Indeed, at this point, the "'court is required only to find that clear and convincing evidence establishes the child is likely to be adopted, reunification services were properly terminated or not offered, and termination of parental rights would not be detrimental to the child.'" (*In re Jason J., supra*, 175 Cal.App.4th at p. 931, fn. 3.)

2. *The Jurisdictional Findings are Supported by Substantial Evidence*

A juvenile court's findings at the jurisdictional hearing that the allegations of the petition are true must be based on a preponderance of the evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.) DCFS bears the burden to produce evidence to support the allegations of the petition. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.) We

review the court's findings using the substantial evidence standard of review, and will affirm the findings if they are supported by reasonable, credible evidence. (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 118–119.) In determining whether substantial evidence supports the jurisdictional findings, a "reviewing court may not 'consider whether there is evidence from which the dependency court could have drawn a different conclusion,' but is limited to determining whether 'there is substantial evidence to support the conclusion that the court did draw.' [Citation.]" (*In re Jesus M.* (2015) 235 Cal.App.4th 104, 113.)

As discussed above, the unambiguous language of the first clause of section 300, subdivision (b)(1) makes it clear the Legislature intended to extend juvenile court protection to children, like Samantha, whose parents have acted in their children's best interest and have done all they can, but who nonetheless remain unable to provide adequate supervision and care. In this case, it is abundantly clear that, despite the fact that mother—a single parent with two younger children, a full-time job, and a significant language barrier—has devoted loving, extensive effort to try to help Samantha manage her diabetes, deal with collateral medical and emotional problems, and ensure her daughter's compliance with a stringent medical regimen. It is also clear that, although mother has achieved some success when she is able personally to supervise Samantha, she has not been nearly as successful in obtaining Samantha's cooperation when the teen is unsupervised or is at school. We are not free to second–guess the juvenile court's implicit determination that, although mother did not *fail* to devote her best

efforts to supervising, protecting or providing care for Samantha, she nevertheless remained *unable* adequately to accomplish those goals, and her inability to do so posed a substantial risk to her child's health.

Samantha is not an incorrigible teen like the child in *Precious D., supra*, 189 Cal.App.4th at page 1253. She is, however, quite willful. And, although Samantha claims to understand the serious ramifications to her health of the dangerous conduct in which she sometimes chooses to engage, she remains reluctant to devote the consistent, vigilant level of care necessary to manage her illness. Mother does not deny she is frustrated and unable to control the teen's behavior no matter how hard she tries to remain on top of the situation. Samantha eats her healthy meals, then snacks on foods she knows pose a grave risk to her health. Mother regularly reminds Samantha to check her blood sugar and take her insulin. Samantha forgets, or refuses to do so or lies and claims that she has done so. Samantha is understandably reluctant or embarrassed to perform her glucose tests in public or unsanitary restrooms, but refuses to do them in the school nurse's office. Moreover, she has weight issues and a vitamin D deficiency that further complicate her health condition, yet refuses mother's entreaties to leave her room and go outdoors for exercise or sunshine, or to maintain a healthful diet.

Clearly, mother has exerted significant effort to safeguard Samantha's health. However, the record demonstrates she has been and remains unable to ensure that Samantha complies with the strict dietary and medical regimen required to optimize her ability to control

her chronic, potentially life-threatening disease. The juvenile court did not err in asserting jurisdiction over Samantha based on mother's inability to ensure her daughter's health and physical well-being.[8]

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.

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[8] We reject mother's contention that the assertion of jurisdiction as to Samantha based on mother's inability to protect her necessarily poses an additional risk to her younger children. The assertion of jurisdiction here is specific to Samantha, and does not constitute a finding that mother is an unfit parent with respect to Samantha, let alone mother's other children. (See *In re Cody W.* (1994) 31 Cal.App.4th 221, 225–226.)