

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re CARLOS A. et al., Persons
Coming Under the Juvenile Court Law.

B294803

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 17LJJP00076)

Plaintiff and Respondent,

v.

MIRANDA G. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County. Nancy Ramirez, Judge. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant Miranda G.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant Carlos A., Jr.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Sally Son, Deputy County
Counsel, for Plaintiff and Respondent.

Miranda G. (Mother) and Carlos A., Jr. (Father) have three children together, Carlos A. (born in 2011), K.A. (born in 2013), and Christian A. (born in 2015). The juvenile court asserted jurisdiction over the children after finding, among other things, the parents have a history of domestic violence, Father abuses marijuana, and Mother suffers from mental and emotional issues. The court subsequently removed the children from their parents' custody and ordered reunification services. On appeal, Mother and Father challenge the court's jurisdictional findings. Father also challenges the court's dispositional orders requiring he drug test and complete a domestic violence program. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Domestic Violence Between Mother and Father

Mother and Father came to the attention of the Los Angeles Department of Children and Family Services (DCFS) in March 2014, after Father was arrested for domestic violence. The altercation leading to the arrest began when Mother refused to give Father his bag of marijuana. Father pushed Mother against a wall, struck her in the face with his fist, spit in her face, and forcefully bent back her fingers in order to retrieve the marijuana. Mother struck Father with her fist and threw a glass vase at him, which cut his elbow. Carlos and K.A., who were two years old and 10 months old at the time, were present during the incident.

In connection with DCFS's investigation, Mother and Father said they understood the seriousness of what occurred and were willing to accept services. DCFS eventually closed the referral after determining it was an isolated incident and there were no other child safety concerns associated with abuse or neglect.

Allegations of Abuse by Father

Mother and Father separated in November 2016. In January 2017, a family court ordered Mother and Father to share custody of the three children.

In late January 2017, Mother reported to DCFS that Father was physically abusing the children. DCFS investigated the report, but found the allegations unfounded. As part of the investigation, all three children underwent forensic examinations.

A few months later, on July 28, 2017, DCFS received a new referral asserting Father physically abused and neglected Carlos. Mother reported that after a recent visit with Father, Carlos said he had to pull a piece of glass out of his arm. Carlos told the social worker the glass did not cut him and he merely brushed it off his arm.

Mother also reported that she suspected Father was sexually and physically abusing K.A. K.A. and Carlos told DCFS Father did something bad to K.A., but they did not elaborate. Mother took K.A. to the hospital and had a forensic examination performed, but the resulting medical report was "normal," and law enforcement did not suspect a crime had been committed.

Father denied abusing the children and believed Mother had fabricated the allegations against him. Law enforcement and DCFS social workers shared Father's suspicions. A few months

later, Mother told DCFS she realized she had been mistaken about Father sexually abusing K.A.

Issues with Maternal Grandmother

Sometime after separating from Father, Mother began living with maternal grandmother. Around May 2017, maternal grandmother tested positive for methamphetamine. DCFS investigated, but closed the referral after Mother provided assurances that she would not leave the children alone with maternal grandmother and planned to move out of the house within a month. Despite Mother's representations, she continued to live in maternal grandmother's home for several months.

On June 28, 2017, Mother and maternal grandmother were involved in a domestic violence incident. According to maternal grandmother, Mother threw an object at her face, ripped her shirt, and kicked her in the face. Maternal grandmother punched Mother twice in the face. The fight took place in the backyard while the children were in the house. After the incident, maternal grandmother obtained a domestic violence restraining order requiring Mother move out of her home. Despite this order, Mother and the children continued to live with maternal grandmother.

In July 2017, maternal grandmother tested positive for methamphetamine and alcohol.¹ Mother reported she knew maternal grandmother had used drugs many years ago, but had no idea she was still using methamphetamine. A social worker told Mother it was not safe for her and the children to remain living with maternal grandmother. Mother continued to reside in maternal grandmother's home.

¹ Maternal grandmother was drug testing in connection with a separate dependency proceeding.

About a month later, on September 21, 2017, Maternal grandmother reported she was involved in another violent altercation with Mother. According to maternal grandmother and another witness, Mother punched maternal grandmother in the mouth and then pushed and punched maternal great-uncle when he tried to calm her. All the children were in the room at the time. After this incident, maternal grandmother told Mother she could not live in her home anymore.

Father's Marijuana Use

Mother told DCFS that, when they lived together, Father would smoke marijuana inside the house and near the children. He would also smoke marijuana while driving with the children in the car. Mother further accused Father of forcing Carlos and K.A. to take care of Christian while Father smoked marijuana and played on his phone.

Carlos told a social worker that Father makes him and his siblings go outside while he smokes "cigarettes." The social worker noted in her report that Carlos does not know the difference between tobacco cigarettes and marijuana cigarettes.

Father acknowledged to DCFS that he has a medical marijuana card and uses marijuana. He insisted he does not smoke in the children's presence and only smokes while outside the home. Father tested positive for cannabinoids on two occasions, and subsequently refused further testing.

Mother's Mental Health Issues

On September 25, 2017, Father was driving Mother and the children in his car. While stopped at a red light, Mother pulled out a knife, threatened to kill herself, and jumped out of the car into traffic. When the police arrived, Mother again threatened to

hurt herself. The police placed Mother on an involuntary psychiatric hold.

The next day, Mother told DCFS she had a mental breakdown that was triggered by Father telling her DCFS would take away her children. Mother explained that she was not “crazy” and simply could not handle the thought of having her children taken from her. During a subsequent interview, Mother denied threatening to kill herself or suffering any mental or emotional problems.

Detention and Petition

On September 29, 2017, the court detained the children and ordered them placed with Father. The same day, DCFS filed a petition asserting the children are persons described by Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).²

The petition alleged two bases for finding jurisdiction under section 300, subdivision (a): (1) Mother and maternal grandmother have a history of engaging in violent altercations, including two domestic violence incidents occurring in 2017 (count a-1); and (2) Father abuses marijuana, which interferes with his ability to provide regular care and supervision of the children (count a-2).

The petition further alleged six bases for finding jurisdiction under section 300, subdivision (b)(1). The first count (count b-1) alleged the children were at risk of serious physical harm because Mother and Father engaged in a hostile custody battle regarding visitation; Mother made false allegations that Father was physically and sexually abusing K.A.; Mother subjected K.A. to repeated investigations by law enforcement,

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

DCFS, and a forensic interviewer; Mother refused to return the children to Father at the conclusion of visits; and Mother told Carlos and K.A. to report that Father acted badly against K.A.

The remaining counts under section 300, subdivision (b), were premised on the following allegations: Mother and maternal grandmother have a history of engaging in violent altercations, including two domestic violence incidents occurring in 2017 (count b-2); Mother and Father have a history of engaging in violent altercations, including one domestic violence incident occurring in March 2014 (count b-3); Mother suffers from mental and emotional problems, including suicidal ideation and a suicide attempt, resulting in an involuntary hospitalization (count b-4); Mother allowed maternal grandmother unlimited access to the children despite maternal grandmother's abuse of methamphetamine and alcohol (count b-5); and Father abuses marijuana, which interferes with his ability to provide regular care and supervision of the children (count b-6).

Removal from Father's Home

On May 23, 2018, DCFS filed a request that the children be removed from Father's home. The request noted that Mother and Father had recently been charged with a burglary that took place in February 2018. Mother told DCFS that Father forced her to participate by threatening to cut off her contact with the children. Father eventually entered into a plea deal and was convicted of burglary.

DCFS also disclosed that Mother had been living with Father and the children, in violation of the court's prior order. According to Mother, during that time, Father was emotionally abusive and would threaten to kick her out of his home if she did not have sex with him.

The request further noted that Father recently admitted hitting the children as punishment. When DCFS told Father he could not use corporal punishment, Father responded that he would continue to hit his children and bribe them to lie to DCFS. During subsequent interviews with Carlos, it was clear he had been coached regarding Father's physical punishment.

DCFS also included in the request reports from the children's teachers. Carlos's teacher expressed concerns that, while living with Father, he would come to school dirty and did not complete his homework. Another teacher reported that K.A.'s and Christian's clothes, blankets, and bodies are usually dirty and have stains. Christian's teacher would wipe the child's body with a baby wipe every day because he is so dirty.

The juvenile court granted DCFS's request and removed the children from Father's home. The children were placed with paternal grandmother.

Jurisdiction Hearing

The court held a jurisdiction hearing on June 28, 2018. DCFS requested the court sustain each count in the petition. The children's counsel requested the court dismiss count b-1, concerning the acrimonious custody battle, and count b-3, concerning domestic violence between Mother and Father. Counsel expressed no opinion on count b-4, concerning Mother's mental and emotional health, and asked the court to sustain the remaining counts. Mother and Father sought dismissal of the entire petition.

The court dismissed count a-2, concerning Father's marijuana use, and count b-3, concerning the acrimonious custody battle. The court sustained the remaining counts as

alleged.³ Then, over Mother's objection and without a request from DCFS, the court added a count under section 300, subdivision (c) (count c-1): "Parties have been in an acrimonious family law case whereby mother was making false allegations against the father and children have been subjected to unwarranted medical exams." The court noted it was adding the count "according to proof based upon the information provided in the report."

Disposition Hearing

At the December 12, 2018 disposition hearing, Father indicated he did not want the children returned to his custody. He instead requested unmonitored overnight weekend visits and asked that he not have to drug test or participate in a domestic violence program. Mother's counsel indicated she was currently participating in an inpatient residential treatment program. Counsel did not indicate that Mother wanted the children returned to her custody.

The court removed the children from their parents' custody and ordered reunification services for the parents. The court ordered Father complete weekly drug testing and participate in a domestic violence program, parenting program, and individual counseling. The court ordered Mother participate in the same services. In addition, it ordered she complete an anger management program, participate in mental health counseling, and undergo a psychological assessment and psychiatric evaluation.

Mother and Father timely appealed.

³ On count b-3, the juvenile court corrected a typographical error in the petition.

DISCUSSION

Mother and Father separately contend the juvenile court's jurisdictional findings are not supported by substantial evidence. They also contend the court violated their due process rights by adding and sustaining count c-1, which was not pleaded in the petition or urged by DCFS. Father further challenges the dispositional orders requiring he drug test and participate in a domestic violence program. We find some of the court's jurisdictional findings are supported by substantial evidence and the court did not abuse its discretion in fashioning the dispositional orders.

I. Substantial Evidence Supports Count B-3 Concerning the Parents' History of Domestic Violence

Mother and Father assert there is not substantial evidence supporting count b-3, which concerned their history of domestic violence. They contend the only evidence supporting the count is a single incident of domestic violence that occurred in 2014, which is insufficient to show a current risk of harm to the children. We disagree.

“‘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 . . . 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.’” (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

Under section 300, subdivision (b)(1), the juvenile court may exercise jurisdiction over a child when the child “has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness” as a result of the failure of his or her parent to “adequately supervise or protect the child.” (§ 300, subd. (b)(1).) It is well established that exposure to domestic violence may serve as the basis of a jurisdictional finding under section 300, subdivision (b)(1). (See *In re R.C.* (2012) 210 Cal.App.4th 930, 941; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 (*Daisy H.*); *In re E.B.* (2010) 184 Cal.App.4th 568, 576.)

A single incident of potentially harmful conduct may be sufficient to establish jurisdiction. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025–1026.) “In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent’s current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim” (*Ibid.*)

Here, there is sufficient evidence to support jurisdiction under section 300, subdivision (b)(1), based on Mother and Father’s history of domestic violence. The risk to the children posed by the 2014 incident was substantial; it occurred in Carlos’s and K.A.’s presence, who were extremely young at the time, and the violence was severe enough to result in injuries to both Mother and Father. Despite indicating to DCFS that she understood the seriousness of what occurred, Mother was subsequently involved in two additional domestic violence

incidents in her children's presence. The evidence further shows that, after separating in 2016, Mother and Father continued to live together intermittently, during which time their relationship was acrimonious and Father was emotionally abusive. Father also continued to use marijuana, which was a trigger for the 2014 incident. From this evidence, the juvenile court could have reasonably concluded Mother and Father had yet to fully address the underlying issues that led to the 2014 incident. This evidence is sufficient to find a continuing risk to the children posed by Mother and Father's history of domestic violence.

Daisy H., *supra*, 192 Cal.App.4th 713, upon which Mother relies, is distinguishable. In that case, the court reversed a finding that the children were persons described by section 300, subdivisions (a) and (b), where the evidence showed a single episode of domestic violence between the parents that occurred "probably seven years" before DCFS filed the petition, the parents had since separated, and none of the children were physically exposed to the violence. (*Daisey H.*, at p. 717.) Here, in contrast, the incident of domestic violence was more recent, the children were physically exposed to the violence, Mother and Father continued to live together intermittently, and neither Mother nor Father had fully addressed the issues that led to the violence. Given these circumstances, the continuing risk to the children was much greater than the risk to the children in *Daisy H.*

II. Substantial Evidence Supports Count B-6 Concerning Father's Marijuana Abuse

Because there is substantial evidence supporting the jurisdictional findings related to Mother and Father's history of domestic violence, we need not consider the parents' other

challenges to jurisdiction. It is well established that when there are multiple grounds for the assertion that a child comes within the jurisdiction of the dependency court, the reviewing court may affirm the finding of jurisdiction if any one of the statutory bases for jurisdiction is supported by substantial evidence. In such cases, the reviewing court need not consider other challenged jurisdictional findings. (*In re I.J.* (2013) 56 Cal.4th 766, 773; *In re J.C.* (2014) 233 Cal.App.4th 1, 3–4; *In re Francisco D.* (2014) 230 Cal.App.4th 73, 80; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 (*Alexis E.*)). Nonetheless, we exercise our discretion to consider the parents’ challenge to count b-6, concerning Father’s marijuana abuse, because it serves as the basis for a dispositional order that Father also challenges on appeal.⁴ (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763 (*Drake M.*); *In re A.R.* (2014) 228 Cal.App.4th 1146, 1150.)

There is no dispute that Father is a recurrent user of marijuana. Mother and Father contend, however, there is insufficient evidence showing he abused the drug or that his use posed a risk of physical harm to the children. We disagree.

A child may be declared a dependent of the court as a result of “the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.” (§ 300, subd. (b)(1).) “[E]ven legal use of marijuana can be abuse if it presents

⁴ While we note that the juvenile court ought not to have crafted and then sustained count c-1, which was based on a factual and legal basis not at issue in the original petition (see *In re G.B.* (2018) 28 Cal.App.5th 475, 484–489), we need not say more about the issue because the court properly assumed jurisdiction on other bases, and the count did not serve as the basis for any dispositional orders challenged on appeal.

a risk of harm to minors.” (*Alexis E.*, *supra*, 171 Cal.App.4th at p. 452.)

Substance abuse for purposes of section 300, subdivision (b), may be shown by evidence of criteria recognized by the medical profession as indicative of a substance abuse disorder. (See *Drake M.*, *supra*, 211 Cal.App.4th at p. 766; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1217–1218 (*Christopher R.*).) The courts in *Drake M.* and *Christopher R.*, for example, looked to the fourth edition of the Diagnostic & Statistical Manual of Mental Disorders (DSM-IV-TR) to determine whether a parent’s drug use constituted substance abuse. (*Drake M.*, *supra*, at p. 766; *Christopher R.*, *supra*, at p. 1218.) The DSM-IV-TR defines substance abuse as “ [a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: ¶ (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., . . . neglect of children or household); ¶ (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use); ¶ (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct); and ¶ (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).’ ” (*Drake M.*, *supra*, at p. 766.)

Under the criteria outlined in *Drake M.* and *Christopher R.*, substantial evidence supports a finding that Father has a substance abuse disorder. The record demonstrates that Father's marijuana use resulted in his failure to fulfill major role obligations at home, led to interpersonal and legal problems, and subjected him and his children to hazardous situations. Carlos and Mother, for example, reported that Father neglected his parenting responsibilities by leaving the young children—who ranged in age from two to six years old—unsupervised while smoking marijuana. The children's teachers reported that, while under Father's care, they consistently showed up to school in soiled clothing and covered in dirt, which the juvenile court could have reasonably inferred was connected to Father's marijuana use. (Cf. *In re Natalie A.* (2015) 243 Cal.App.4th 178, 186 [a parent's continued unemployment and transient living situation provided evidence of marijuana abuse].) Mother further reported that Father engaged in hazardous behavior by smoking marijuana while driving the children. Finally, the 2014 domestic violence incident, which placed the children at risk of harm and resulted in Father's arrest, was the result of a dispute over marijuana. Taken together, this evidence amply demonstrates that Father's marijuana use rose to the level of substance abuse.

Where, as here, the children were of tender age (six years old or younger) at the time of the jurisdiction hearing, "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 physical harm." (*Drake M.*, *supra*, 211 Cal.App.4th at p. 767; accord *Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219.) Mother and Father did not conclusively rebut this evidence. Thus, there is no merit to their contentions

that the record lacks evidence showing a nexus between Father's marijuana use and a risk of harm to the children.

There is also no merit to Mother's and Father's suggestions that there was no risk of harm given the court did not cite Father's marijuana use as a basis for removing the children from his custody in May 2018. The parents cite no authority, nor are we aware of any, that the scope of a juvenile court's jurisdictional findings is limited by its pre-jurisdictional findings and orders. For the reasons discussed above, there is sufficient evidence to support a finding that, as of the jurisdiction hearing, Father's marijuana use posed a substantial risk of physical harm to the children. The juvenile court properly asserted jurisdiction over the children on that basis.

III. The Court's Dispositional Orders Were Not an Abuse of Discretion

Father contends the juvenile court abused its discretion in ordering he drug test and participate in a domestic violence program. His arguments presuppose a lack of substantial evidence supporting the juvenile court's jurisdictional findings related to his substance abuse and history of domestic violence. Because we concluded those findings are supported by substantial evidence, we reject his derivative arguments related to the dispositional orders.

DISPOSITION

The orders are affirmed.

BIGELOW, P. J.

We concur:

GRIMES, J.

STRATTON, J.