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**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B271668
(Los Angeles County
Super. Ct. No. CK86162)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Y.D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Benjamin R. Campos, Commissioner. Affirmed with directions.

Robert McLaughlin, 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.

Y.D. (mother) appeals from the juvenile court's jurisdictional and dispositional orders regarding her infant daughter, I.M. (child), who was born in January 2016. Mother's challenge to the court's dispositional order is by implication only—that is, her principal challenge is to the jurisdictional finding, arguing that because jurisdiction was inappropriate, the dispositional order necessarily fails. With regard to the court's exercise of jurisdiction, mother claims that it was not supported by substantial evidence. We disagree and, accordingly, affirm.

BACKGROUND

The petition filed by the Department of Children and Family Services (DCFS), pursuant to Welfare and Institutions Code section 300,¹ that is the subject of this appeal is not the first such petition or investigation by DCFS regarding mother's care and protection of her children.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

I. Prior petitions and investigations by DCFS

In August 2011, the juvenile court, pursuant to two section 300 petitions filed by DCFS—one in January 2011, the other in February 2011—found the child’s four older half-siblings to be wards of the court, because O.H., the father of three of those siblings, was using and trafficking in illegal drugs in the family home and mother was failing to protect the children from O.H.’s misconduct. A year later, in August 2012, the juvenile court terminated jurisdiction over three of the half-siblings² and issued a custody order granting mother sole physical and legal custody of the children and limiting O.H.’s future contact with the children to monitored visits.

In October 2014, DCFS received a referral alleging mother’s general neglect of the child’s four half-siblings. Following an automobile accident, mother, eight months pregnant at the time, was taken to a hospital where reports indicated she had methamphetamine in her possession. Allegedly, mother “disclosed that she had the methamphetamine for personal use and also reported that she either snorts or injects the methamphetamine.” Mother, however, later denied using illegal drugs and her drug test was negative. DCFS subsequently closed its investigation into the matter, deeming it “[i]nconclusive.”

² Jurisdiction over the fourth half-sibling was terminated in February 2013.

In November 2014, shortly after the birth of the child's fifth half-sibling, DCFS received another referral after law enforcement transported mother and O.H. to the hospital following a domestic violence incident between them. During the incident, O.H. locked mother and the children in the bathroom, stabbed mother and cut his own throat with a piece of a broken wine glass; when the police arrived, O.H. used both mother and the children as a shield before police tasered him into submission.

In December 2014, DCFS received yet another referral after mother went to the children's school and complained about O.H.'s domestic violence and her need to get away from him. The referral indicated that the children appeared "traumatized," possibly by domestic violence in the home.

On December 11, 2014, as a result of these referrals, DCFS filed another section 300 petition on behalf of the child's five half-siblings (the second petition). In February 2015, the juvenile court sustained the second petition, finding, *inter alia*, that mother failed to protect the child's half-siblings from O.H.'s violence and that both mother and O.H. had unresolved histories of drug use, including methamphetamine.

II. The petition at issue

On February 26, 2016, DCFS filed a petition pursuant to section 300, subdivisions (b) and (j) on behalf of the child, alleging that the child was at risk of serious harm arising from mother's unresolved history of drug use and her failure to protect the child's half-siblings from her domestic violence

with O.H. (the third petition). DCFS subsequently filed an amended version of the third petition alleging that J.M., the child's presumed father (father), failed to protect the child, as he knew or reasonably should have known about mother's substance abuse.

III. Jurisdiction and disposition

On March 23 and 30 and April 4 and 8, 2016, the juvenile court held a contested jurisdiction and disposition hearing. “[S]imultaneously,” the court conducted a 12-month review hearing with respect to the second petition and the child's half-siblings. At the conclusion of the hearing, the court dismissed the third petition's count regarding the mother's drug history—DCFS's social worker testified at the hearing that mother, in accordance with the court's orders stemming from the second petition, had submitted to ten random drug tests and that the results from all of those tests had been negative, and that there was no current evidence that mother abused drugs.³

³ The April 8, 2016, minute order indicates that the juvenile court sustained the b-1 or drug abuse allegation. However, the transcript clearly indicates that the drug abuse allegation was dismissed due to a failure of “proof.” “Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls.” (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.) We direct the trial court to amend the minute order so that it reflects the dismissal of the drug abuse allegation against mother.

The court, however, sustained both allegations (§ 300, subd. (b), (j)) that mother's failure to protect the child's half-siblings "endangers the child's physical health and safety and places the children at risk of serious physical harm, damage and failure to protect." As a result, the court declared the child a dependent child, removed her from mother's custody, and released her to father's custody. In addition, *inter alia*, the court ordered family maintenance services for father and enhancement services for mother, and granted mother monitored visitation with the child. In addition, the juvenile court found that with respect to the child's half-siblings, a return to their mother's custody would place them at substantial risk and, as a result, terminated family reunification services for the mother and the child's siblings.

In explaining its decision, the juvenile court combined its discussion of its jurisdictional findings with regard to the child with its 12-month review findings about the child's half-siblings. The court, acknowledged that, when each of mother's failings as a parent is viewed in isolation, the question could be considered a close call. However, because the court is charged with viewing mother's failings—her "lack of insight," her "lack of parental instinct," her "glacier-like" progress as a parent—in the context of the "totality of the circumstances," the court stated it had "no choice" but to make the child a ward of the state.

DISCUSSION

I. Standard of review

We review the court’s jurisdictional findings for substantial evidence. “ ‘In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “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.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ‘ “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” ’ ’ ’ ’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*)). “ ‘Substantial evidence is evidence that is “reasonable, credible, and of solid value”; such that a reasonable trier of fact could make such findings.’ ” (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140; see *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393–1394.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the

findings or order.” (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)

II. Substantial evidence supports the juvenile court’s jurisdictional findings

Where, as here, a dependency petition alleges multiple grounds for its assertion that a minor comes within the juvenile 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 such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) “As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate.” (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.)

Subdivision (j) of section 300 is the one that most closely describes the situation regarding the child. Accordingly, we will focus on that subdivision. As discussed in more detail below, we conclude that the evidence supported the juvenile court’s jurisdictional finding under section 300, subdivision (j).

A. SUBDIVISION (J)

“Subdivision (j) applies if (1) the child’s sibling has been abused or neglected as defined in specified other subdivisions and (2) there is a substantial risk that the child will be abused or neglected as defined in those subdivisions.”

(*I.J.*, *supra*, 56 Cal.4th at p. 774.) “ ‘[S]ubdivision (j) was intended to *expand* the grounds for the exercise of jurisdiction as to children whose sibling has been abused or neglected as defined in section 300, subdivision (a) [serious physical harm], (b) [inadequate care], (d) [sexual abuse], (e) [severe physical abuse], or (i) [act of cruelty]. Subdivision (j) *does not* state that its application is limited to the risk that the child will be abused or neglected *as defined in the same subdivision* that describes the abuse or neglect of the sibling. Rather, subdivision (j) directs the trial court to consider whether there is a substantial risk that the child will be harmed under subdivision (a), (b), (d), (e) *or* (i) of section 300, notwithstanding which of those subdivisions describes the child’s sibling.’ ” (*Ibid.*, first italics added.)

Unlike the other subdivisions of section 300, subdivision (j) includes a list of factors for the court to consider: “The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, *and any other factors the court considers probative in determining whether there is a substantial risk to the child.*” (§ 300, subd. (j), italics added.) “ ‘Subdivision (j) thus allows the court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under one of those [other] subdivisions. [¶] The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of

the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.’ ” (*I.J., supra*, 56 Cal.4th at p. 774, first italics added).)

Because the juvenile court is directed to consider both the circumstances surrounding and the nature of the abuse or neglect of the sibling, “subdivision (j) implies that the more egregious the abuse, the more appropriate for the juvenile court to assume jurisdiction over the siblings. (§ 300, subd. (j).) ‘Some risks may be substantial even if they carry a low degree of probability because the magnitude of the harm is potentially great. . . . [¶] . . . [¶] . . . Conversely, a relatively high probability that a very minor harm will occur probably does not involve a “substantial” risk. Thus, in order to determine whether a risk is substantial, the court must consider both the likelihood that harm will occur and the magnitude of potential harm’ [Citation.] In other words, the more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300. If the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary

to protect the child from even a relatively low probability of that abuse.” (*I.J., supra*, 56 Cal.4th at p. 778.)

B. JURISDICTION WAS PROPER PURSUANT TO
SUBDIVISION (J)

Here, substantial evidence supported the juvenile court’s jurisdictional finding. First, and perhaps most critically, the child’s half-siblings were abused and the abuse was not minor or insubstantial. Those children, while under mother’s care, were exposed in 2011 to drug use and drug trafficking in the family home and then, in 2014, they were exposed to a violent and bloody altercation between mother and O.H. which then escalated to O.H. using the children and mother as shields from the police and O.H. being tasered into submission. The severity of the abuse to the child’s siblings is of critical importance. As our Supreme Court has held with regard to jurisdictional findings under subdivision (j), “*the more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300. . . . [A]s the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.*” (*I.J., supra*, 56 Cal.4th at p. 778, italics added.)

Second, the evidence at the hearing demonstrated that mother had not successfully or fully come to terms with the issue of domestic violence that gave rise to DCFS’s two prior petitions. For example, although mother had attended eight domestic violence classes following the filing of the second

petition in December 2014, she denied being a victim of domestic violence or otherwise suffering any verbal or physical abuse at the hands of O.H. following DCFS's filing of the third and operative petition in February 2016. In addition, mother appeared at the hearing with one black eye and testified that a social worker had observed another, earlier facial injury.⁴

Third, mother was less than truthful, even "evasive," with DCFS. For example, she continued to maintain that she lived alone, yet when DCFS social workers visited her home they would either find a "house full of people" but not mother or evidence (work tools and men's clothing) that persons other than mother were living at that residence.

In addition, mother brought one of her boyfriends to visits with her children, even though DCFS had recommended against allowing the man in question to do so and because he had not been cleared by DCFS.

In short, when viewed in the light of the totality of the circumstances, the evidence showed that mother's judgment about the safety of the child, an infant, remained impaired. Mother's impaired judgment placed the child at substantial risk of harm. As a result, the juvenile court reasonably and properly found jurisdiction over the child. Because

⁴ At the hearing mother attributed her facial injuries to innocent causes—she testified that the earlier bruise had been caused by a soccer ball and that the black eye evident at the hearing was the result of her cell phone falling on her face.

jurisdiction was proper, and because mother does not challenge directly the dispositional order, we affirm the judgment.

DISPOSITION

The trial court is directed to amend its April 8, 2016, minute order so that it shows the dismissal of the drug abuse allegation asserted against mother. In all other respects the order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.