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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B280499

(Los Angeles County
Super. Ct. No. CK87825)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Tonya M.,

Defendant and Appellant.

APPEAL from jurisdictional and dispositional findings and orders of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephanie Jo Reagan, Deputy County Counsel for Plaintiff and Respondent.

I. INTRODUCTION

Tonya M. (Mother) appeals from the December 23, 2016 jurisdictional and dispositional findings and orders. She argues there is no substantial evidence to support the jurisdictional findings under Welfare and Institutions Code section 300, subdivisions (a), (b)(1) and (j) based on her failure to protect her children from domestic violence and her history of substance abuse.¹ She also asserts there is insufficient evidence to support removal of the children from her physical custody under section 361, subdivision (c). Further, she contends the monitored visitation order was an abuse of discretion. We affirm the jurisdictional and dispositional findings and orders.

II. PROCEDURAL HISTORY

On September 8, 2016, the Los Angeles Department of Children and Family Services (the department) filed a section 300 petition on behalf of five children: A.T., age 10; Alicia O., age 4; Torri M., age 3; Myron O. Jr., age 2; and Donnie M., age 1.

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

Counts a-1 and b-1 of the petition alleged Mother and Myron O. Sr. had a history of domestic violence including Mother being choked on one occasion.² Furthermore, Myron Sr. had criminal convictions for corporal injury to a spouse or cohabitant. On prior occasions, Mother and Myron Sr. violated a criminal protective order put in place to protect her. In addition, the three oldest children had been dependents of the court because of the prior domestic violence. Mother knew of Myron Sr.'s violent behavior but allowed him to reside in the home with the children. Myron Sr.'s violent conduct and Mother's failure to protect the children endangered their physical health and safety, created a detrimental home environment, and placed the children at risk of serious physical harm, damage, danger and failure to protect.

The petition also alleged Mother and Myron Sr. had substance abuse problems. Count b-2 alleged Mother had an unresolved 20-year history of substance abuse. The mother possessed, used and was under the influence of marijuana while the children were in her care. The children, A.T., Alicia and Torri, were prior dependents of the court due to Mother's substance abuse. Count b-3 alleged Myron Sr. had a history of illicit drug abuse and was a current abuser of methamphetamine and marijuana. Mother failed to protect the children because she knew or should have known of Myron Sr.'s drug abuse but allowed him to reside in the home with the children.

Mother and Myron Sr. did not attend the September 8, 2016 detention hearing. At the hearing, the juvenile court detained the children and issued protective custody warrants for

² The juvenile court found Myron Sr. is the presumed father of Alicia, Torri, and Myron Jr. The maternal grandmother reported Myron Sr. also is Donnie's biological father.

the four youngest children. The oldest child, A.T., remained placed with the maternal grandmother, Daisy M., pending the next hearing. The juvenile court issued arrest warrants for Mother and Myron Sr. The next day, Mother went to the department's office with the four youngest children. The juvenile court recalled the warrants after the children were taken into protective custody and placed with the maternal grandmother.

On September 23, 2016, the juvenile court ordered the children detained with the maternal grandmother. The juvenile court found Ai. T. was the presumed father of A.T., Myron Sr. was the presumed father of Alicia, Torri and Myron Jr., and Donnie's father was unknown. The court ordered family reunification services and monitored visits for the parents.

On November 9, 2016, the department filed a petition under section 300, subdivisions (a), (b)(1) and (j) on behalf of April M., who was born that month. Counts a-1, b-1 and j-1 of the petition alleged domestic violence between Mother and Myron Sr. and Mother's failure to protect April's siblings. Counts b-2 and j-2 alleged Mother had an unresolved 20-year history of substance abuse and was under the influence of marijuana while caring for April's siblings. In addition, A.T. was a prior dependent of the court because of Mother's substance abuse.

At the November 9, 2016 detention hearing, the juvenile court found Keenen L. was April's presumed father. April was detained in shelter care with the department having discretion to release her to an appropriate relative. The mother was granted family reunification services and monitored visits for a minimum of two times a week for three hours each visit with the department having discretion to liberalize visitation.

At the December 23, 2016 jurisdiction and disposition hearing, the juvenile court sustained the allegations in the September 8 and November 9, 2016 petitions. The court declared A.T., Alicia, Torri, Myron Jr., and Donnie were dependents under section 300, subdivisions (a) and (b)(1), and April was a dependent under subdivisions (a), (b)(1), and (j). The children were removed from their parents' physical custody pursuant to section 361, subdivision (c). The court ordered family reunification services for Mother and denied reunification services for Myron Sr. under section 361.5, subdivision (b)(1). The juvenile court ordered Mother to undergo random or on demand drug testing, and if she missed or failed a test, she was to participate in a full drug rehabilitation program with random testing. Mother was ordered to attend a domestic violence support group for victims, parenting classes, and individual counseling to address case issues. Mother was granted monitored visits with the department having discretion to liberalize visitation.

III. FACTUAL BACKGROUND

Mother and Myron Sr. had an extensive domestic violence history. Myron Sr. had criminal convictions for domestic violence with three incidents in 2008 and one incident in 2009. The department reports indicated A.T., Alicia, and Torri had been dependents of the court because of Mother's failure to protect the children from prior domestic violence.

On July 5, 2011, the juvenile court found A.T. was a dependent under section 300, subdivision (b) and sustained allegations that: Myron Sr. hit A.T. in the buttocks and legs with

a belt; Mother and Myron Sr. engaged in a violent altercation; and Mother used marijuana, which rendered her unable to care for A.T. On April 6, 2012, a four-year restraining order was issued, requiring Myron Sr. to not contact and stay away from Mother, the maternal grandmother, A.T., and Alicia. On June 4, 2012, the juvenile court terminated jurisdiction with a family law order awarding the father, Ai. T., sole physical and joint legal custody of A.T. and monitored visitation for Mother.

On April 8, 2013, the juvenile court found A.T. and Alicia were dependents under section 300, subdivisions (a) and (b) and sustained allegations that: Myron Sr. inflicted lacerations on Mother's face with a hanger and choked her until she lost consciousness in the presence of the children; Myron Sr. grabbed and twisted Mother's arm; Myron Sr. and Mother violated a restraining order; and Ai. T. failed to protect A.T. by allowing Mother to have unmonitored visits with the child. Further, on November 20, 2013, the juvenile court found Torri was a dependent under section 300, subdivision (j) and sustained allegations that: Myron Sr. hit A.T. with a belt; Mother and Myron Sr. had a history of engaging in violent altercations in the presence of the child's siblings; and Mother violated court orders by having contact with Myron Sr. and allowing him to have unmonitored visits with the child's siblings. On July 15, 2014, the juvenile court returned the children to Mother's physical custody. On February 23, 2015, dependency jurisdiction was terminated with a juvenile custody order.

In 2015 and 2016, there were six calls to the police concerning domestic violence between Mother and Myron Sr. at a Beach Street address. The police call logs showed four domestic violence calls in January, March, October, and November 2015.

In addition, there were two domestic violence calls in January 2016.

On August 15, 2016, the department received a referral alleging general neglect by Mother. She and the five oldest children were homeless and had been living at Union Rescue Mission since August 5, 2016. The caller reported Donnie got out of his stroller and almost fell because Mother was not paying attention. In addition, Torri was accidentally burned by a flat iron in January 2016 and had walked down the street unattended. Mother was pregnant and had tested positive for marijuana use on August 5, 2016. She admitted to smoking marijuana since she was 13 years old. Mother was asked to leave the shelter because she violated its zero tolerance drug policy.

A shelter social worker reported Mother denied any current domestic violence but admitted Myron Sr. harassed her and threatened her and the children. Mother indicated she had a restraining order against Myron Sr. and feared for her life. She had abandoned her low income housing on Beach Street after Myron Sr. took over the apartment and had been back and forth at the maternal grandmother's home and various shelters. Mother appeared overwhelmed and relied heavily on 10-year-old A.T. for help.

On August 16, 2016, Mother left Union Rescue Mission and went to the maternal grandmother's home. According to the maternal grandmother, Mother left the shelter because the children were getting colds and bug bites. Mother and the children then stayed with the maternal grandmother but they left after the maternal grandmother's landlord threaten to evict her if she continued to house the family. Mother left A.T. with

the maternal grandmother and returned to her Beach Street apartment with the four youngest children.

On August 19, 2016, social worker Lissette Chappel visited the Beach Street apartment and heard children laughing and playing in the home. A woman answered and said she was Mother's sister and Mother was at the doctor's office. A male then approached the apartment and yelled expletives at Chappel to get her to leave. He refused to identify himself and said he was contacting law enforcement. When he called law enforcement, he identified himself as Myron Sr. Chappel told Myron Sr. she wanted to speak with him but he left after his call with law enforcement. About an hour later, law enforcement escorted Chappel to the apartment. A woman greeted them and said her name was Tanisha M., but she did not provide any identification. She refused to let Chappel see the children and told her to come back when Mother returned. Later, the maternal grandmother identified the woman as Mother by her physical description. The maternal grandmother stated Mother was likely avoiding the social worker because Myron Sr. was "getting in her head and she doesn't want to get beat up."

On September 2, 2016, Chappel interviewed the maternal grandmother, the maternal aunt T.M., and A.T. Mother did not tell maternal grandmother where she and the other children were currently staying. Mother was afraid to meet with Chappel because she believed her children would be removed from her. According to the maternal grandmother, Mother tried to get away from Myron Sr. but he kept coming back. Mother had gotten the door locks changed but Myron Sr. came and broke into her apartment. The maternal grandmother stated Mother continued to allow the children to have contact with Myron Sr. because "she

wants them to know their dad.” She reported about two months prior she observed Mother with a bruise on the side of her face. She said Myron Sr. had come to her house looking for Mother but he did not make it into the building because she called law enforcement. With the exception of a two-week shelter stay, A.T. had resided with the maternal grandmother since her dependency case closed. The maternal grandmother wanted A.T. to remain in her care and believed the child could benefit from counseling because she had anger management issues.

The maternal aunt denied she resided at the Beach Street apartment and said she lived elsewhere with her spouse. She reported Myron Sr. was a heavy methamphetamine user. He was disrespectful, had anger management issues, and had physically abused Mother on several occasions. According to the maternal aunt, Mother tried to get away from Myron Sr. but he would “sweet talk her and tell her he misses his kids.” Mother told the maternal aunt Myron Sr. had choked her. In addition, the maternal aunt had seen Mother with bruises on her legs and with black eyes. About two months prior, Mother had a swollen jaw and a bruise on her face. Mother left Myron Sr. and resided with the maternal grandmother but during her stay Mother spent most of her time on the phone with him. The maternal aunt reported whenever Mother visited the maternal grandmother, the children would cry and scream when told they had to return to the Beach Street apartment.

A.T. stated she lived with the maternal grandmother after her shelter stay. She denied that Torri was found down the street unattended and that Donnie fell out of the stroller. A.T. did not see Mother smoke any substance or observe any unusual behavior. A.T. sometimes did not like staying at the Beach Street

apartment because Myron Sr. was in the home and it was a bad neighborhood. The last time A.T. saw Myron Sr. abuse Mother was about five years ago. She indicated Myron Sr. was not a good person and her siblings were not safe with him but did not explain why. A.T. was very reserved and not forthcoming with her responses.

On September 5, 2016, Mother's niece called the police to report a domestic violence incident after Mother texted her. The niece reported Myron Sr. had threatened Mother and the four children, all of whom were under the age of five. A second caller reported Mother called her and told her to call 911 because Mother's boyfriend was assaulting her. Police officers arrived at the Beach Street apartment and spoke with Mother and Myron Sr. Mother stated she asked Myron Sr. to take out the trash but he refused. After the argument, he pushed down on her upper chest area with both hands. Then he grabbed her in her jaw area, applying pressure with his fingers. The children were present during the incident and Mother was six months pregnant at the time. Mother said she was afraid of Myron Sr. She had attempted to leave him several times but he always came back and she did not know how to stay away from him. Myron Sr. was arrested and Mother accepted an emergency protective order that was effective until September 12, 2016. Myron Sr. said he had been smoking marijuana and drinking malt liquor before his argument with Mother.

In October 2016, a dependency investigator interviewed Mother, the maternal grandmother, and Mother's landlord about the allegations in the September 2016 petition. Mother stated she was in Las Vegas when the social worker came to her apartment. She denied any current domestic violence. She

stated Myron Sr. had never spent the night at her home. Mother said she did not test positive for marijuana at the shelter and denied she had a 20-year history of drug use. Mother tested negative for drug and alcohol use on October 11, October 24, November 24 and November 28, 2016.

The maternal grandmother reported Myron Sr. had beaten Mother for years but Mother kept letting him come back. Mother and Myron Sr. had been violating a restraining order since 2012 and he had resided in the apartment for years. Mother's landlord wrote a letter for Mother to take to the police but she never gave it to them.

Mother's landlord reported Myron Sr. was not on the lease but resided at the apartment with Mother. Since April 2016, there had been several domestic violence incidents where Myron Sr. had hit Mother leaving bruises on her body. Mother told the landlord that Myron Sr. had hit her in the face because he did not think she was pregnant with his child. The landlord reported Myron Sr. had kicked the apartment door in several times. In addition, he had been arrested for hitting Mother on Memorial Day.

On November 4, 2016, the department received a referral alleging general neglect of baby April M. by Mother. The caller reported Mother's hospital room reeked of marijuana. Mother was accompanied by a man whom she introduced as the child's father but later claimed was her brother. She refused to disclose the identity of April's father. Mother was guarded and vague in her answers and some of her responses did not make sense. A hospital nurse reported when she checked on April, she found the baby lying facedown underneath Mother's breast. When the nurse went to pick up April, she noticed the baby's face was blue.

According to the nurse, Mother dismissed her concerns and appeared nonchalant about the baby's safety. Mother denied the incident and stated no one told her the baby was in distress. She denied drug or alcohol use during pregnancy. No drug test was done when Mother gave birth because it was not the standard practice of the hospital and Mother's drug tests were negative during her prenatal care.

At the December 23, 2016 adjudication hearing, Mother testified she had lived at the Beach Street apartment since August 15, 2016. Since the prior dependency closed in 2015, Mother had not allowed Myron Sr. to have unmonitored visits with the children and protected the children from him. She was not currently in a relationship with him. Mother stated her niece called the police on September 5, 2016 to remove Myron S. from the front of her home. Mother had been drug testing for the department and the results had been negative. She admitted using marijuana in the past for back pain but denied current use of it. Mother was aware that Union Rescue Mission reported she tested positive for THC on August 5, 2016, but she did not remember smoking marijuana around that date. She also denied being asked to leave Union Rescue Mission. The juvenile court found Mother lacked credibility.

IV. DISCUSSION

A. The Jurisdictional Findings

Mother argues there is insufficient evidence to support jurisdiction under section 300, subdivisions (a), (b)(1), and (j). As discussed below, we conclude the children's exposure to domestic

violence and Mother's history of substance abuse supported jurisdiction.

The juvenile court has jurisdiction over a child if the department establishes by a preponderance of the evidence that allegations made pursuant to section 300 are true. (§ 355; *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 118-119 (*Jonathan B.*)). Section 300, subdivision (a) authorizes jurisdiction when "[t]he child has suffered, or there is substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent." Jurisdiction under section 300, subdivision (b)(1) applies when "[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." Section 300, subdivision (j) authorizes jurisdiction when "[t]he child's sibling has been abused or neglected, as defined in subdivisions (a), (b), (d), (e), or (i), and there is substantial risk that the child will be abused or neglected, as defined in those subdivisions."

We review the juvenile court's jurisdictional findings for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Substantial evidence is relevant evidence which adequately supports a conclusion. It is evidence which is reasonable in nature, credible, and of solid value. (*In re R.C.*, *supra*, 210 Cal.App.4th at pp. 940-941; *In re E.B.* (2010) 184 Cal.App.4th 568, 575.) We draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court and adhere to the principle that issues of fact and credibility are the province of the juvenile court. (*In re R.T.*, *supra*, 3 Cal.5th at p. 633; *In re R.C.*, *supra*, 210 Cal.App.4th at p. 941.)

1. The Children's Exposure to Domestic Violence

Mother argues the evidence does not support the juvenile court's finding that she failed to protect the children from domestic violence by allowing Myron Sr. to reside with the family. Exposure to domestic violence may support jurisdiction under subdivision (a) or (b) of section 300. (*In re M.M.* (2015) 240 Cal.App.4th 703, 720; *In re R.C.*, *supra*, 210 Cal.App.4th at p. 941; *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599 (*Giovanni F.*); *In re E.B.*, *supra*, 184 Cal.App.4th at pp. 575-576; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) "[T]he application of section 300, subdivision (a) is appropriate when, through exposure to a parent's domestic violence, a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent." (*Giovanni F.*, *supra*, 184 Cal.App.4th at pp. 598-599.)³ Jurisdiction under section 300, subdivision (b)(1) applies when a parent fails, or is unable, to protect the child from a substantial risk of serious physical harm because of exposure to domestic violence. (*In re R.C.*, *supra*, 210 Cal.App.4th at p. 941; *In re E.B.*, *supra*, 184 Cal.App.4th at p. 576.) Jurisdiction is appropriate under subdivision (a) or (b) of section 300 since "[c]hildren can be 'put into a position of physical

³ Mother asserts *Giovanni F.* is an outlier case because it affirmed jurisdiction under section 300, subdivision (a) while three other cases, *In re R.C.*, *In re E.B.* and *In re Heather A.*, affirmed jurisdiction under section 300, subdivision (b). Although many dependency cases based on exposure to domestic violence are filed under section 300, subdivision (b)(1), this does not preclude jurisdiction under section 300, subdivision (a). (*In re M.M.*, *supra*, 240 Cal.App.4th at p. 720 [affirming § 300, subd. (a) jurisdiction based on domestic abuse exposure].)

danger from [spousal] violence’ because, ‘for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg. . . .’ [Citation.]” (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 576.)

Mother argues *Giovanni F.* is distinguishable because it based jurisdiction under section 300, subdivision (a) on the father’s physical abuse of the mother while she and the infant were in a moving car. The father drove with one hand on the steering wheel while using his other hand to hit and choke the mother until she lost consciousness. (*Giovanni F.*, *supra*, 184 Cal.App.4th at p. 600.) Afterwards, the parents struggled over the child’s car seat while he was still in it. (*Id.* at p. 601.) Mother asserts unlike in *Giovanni F.*, there is no substantial risk her children would suffer serious physical harm inflicted nonaccidentally based on domestic violence.

Mother relies on *Jonathan B.*, *supra*, 235 Cal.App.4th at pages 120 through 121, which found *Giovanni F.* distinguishable. But nothing in *Jonathan B.* suggests jurisdiction under section 300, subdivision (a) is limited to substantial risk of serious physical harm resulting from domestic violence occurring in a moving vehicle. In *Jonathan B.*, the mother lived apart from the father prior to the May 2014 domestic violence incident and immediately reported it to the police. (*Id.* at p. 117.) The only other domestic violence incident occurred five years prior. (*Ibid.*) Based on those facts, Division Three of this court held there was no substantial evidence to support the jurisdictional finding against the mother under section 300, subdivision (a) or (b)(1). (*Jonathan B.*, *supra*, 235 Cal.App.4th at pp. 119-121.)

Unlike the situation in *Jonathan B.*, Mother and Myron Sr. have an extensive history of domestic violence, with the last

incident occurring on September 5, 2016. The two oldest children were prior dependents because of domestic violence that occurred in their presence. Myron Sr. had criminal convictions for domestic violence with three incidents in 2008 and one incident in 2009. He was arrested in 2013 after he attempted to strangle Mother. In addition, the police were called on four separate occasions in 2015 and twice in January 2016 concerning domestic violence between Mother and Myron Sr. The maternal grandmother reported Myron Sr. had beaten Mother for years. Mother would try to leave him but then let him come back. Mother's landlord stated several domestic incidents had occurred since April 2016, including one that led to Myron Sr.'s arrest on Memorial Day. The landlord, the maternal grandmother, and the maternal aunt reported seeing Mother with bruises and black eyes. Mother told the maternal aunt that Myron Sr. also had choked her. In addition, the maternal grandmother and the maternal aunt observed Mother had a swollen jaw and a bruise on the side of her face in July 2016.

There is substantial evidence to support the finding that Mother exposed the children to a risk of non-accidental parental harm by allowing Myron Sr. to reside in the home with them. Mother claims after the previous dependency case closed in 2015, she allowed Myron Sr. to have only monitored visits with the children; but, the juvenile court found her testimony was not credible. She told the police she was afraid of Myron Sr. but admitted she did not know how to stay away from him. She told the shelter staff that he had threatened her and the children. Mother had a four-year restraining order to protect her and the children from Myron Sr., but she continued to allow him to live with the family. Mother's landlord confirmed Myron Sr. lived at

the Beach Street apartment even though he was not on the lease. The police responded to six domestic violence calls at the Beach Street address in 2015 and 2016. The landlord gave Mother a letter to give to the police but she never provided it to them.

Although Mother made attempts to leave Myron Sr., she kept returning to him. The maternal aunt reported in July 2016, Mother left Myron Sr. and stayed with the maternal grandmother. But during the stay, Mother spent most of her time on the phone with him. After stays at shelters and the maternal grandmother's home, Mother went back to Myron Sr. when she returned to the Beach Street apartment with the four youngest children in mid-August 2016. When social worker Chappel visited the apartment on August 19, 2016, Mother pretended to be the maternal aunt to avoid her and refused to let Chappel see the children. Mother claimed she was in Las Vegas at the time, but the maternal grandmother indicated Mother was present during Chappel's visit. While Chappel was waiting outside the apartment, Myron Sr. approached her and shouted expletives to make her leave. Mother continued to allow Myron Sr. to reside with the four youngest children until the September 6, 2016 domestic violence incident. During that incident, Myron Sr. pushed down on Mother's chest and grabbed her in the jaw area while she was six months pregnant. The incident occurred while the children, ages 4 and under, were home. The juvenile court properly exercised jurisdiction pursuant to section 300, subdivisions (a) and (b)(1) based on these facts.

In addition to jurisdictional findings under section 300, subdivisions (a) and (b)(1), the juvenile court found April M. was a dependent under subdivision (j) of that section based on her

siblings' exposure to domestic violence. "[Section 300,] [s]ubdivision (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." (*In re I.J.* (2013) 56 Cal.4th 766, 774.) Here, April's siblings suffered neglect and substantial risk of physical abuse as defined in section 300, subdivisions (a) and (b). Furthermore, there was substantial risk of harm to baby April given Mother's extensive history of domestic violence with Myron Sr. and her repeated willingness to allow him to live with the family. We conclude the juvenile court properly exercised jurisdiction over April under section 300, subdivisions (a), (b)(1), and (j).

2. The Mother's History of Substance Abuse

Mother argues there is insufficient evidence to support a jurisdictional finding under section 300, subdivisions (b)(1) and (j) that she had a 20-year history of substance abuse. We need not discuss this jurisdictional finding because the juvenile court properly exercised jurisdiction based on Mother's failure to protect the children from domestic violence. Where multiple grounds for dependency jurisdiction are alleged, we may affirm the jurisdictional findings if any of the statutory bases for jurisdiction is supported by substantial evidence. (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 ["As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate."]; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

However, “[c]ourts may exercise their ‘discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation].’ (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.)” (*In re D.P.* (2015) 237 Cal.App.4th 911, 917; accord, *In re D.M.* (2015) 242 Cal.App.4th 634, 639.) Here, we exercise our discretion and consider the jurisdictional finding concerning Mother’s substance abuse. We do so because it serves as a basis for the removal order which she also challenges on appeal.

Mother contends the jurisdictional finding of substance abuse made under section 300, subdivision (b)(1) and (j) were not supported by substantial evidence. Mother asserts she was not under the influence of drugs when social worker Chappel visited the home on August 19, 2016, and when the police responded to the domestic violence call on September 5, 2016. Furthermore, she tested negative for drug and alcohol use while pregnant with April and had four negative drug tests in October and November 2016.

But Mother ignores ample evidence supporting the allegations in counts b-2 and j-2 that she had an unresolved 20-year history of substance abuse. In July 2011, the juvenile court exercised jurisdiction over A.T. based in part on Mother’s marijuana use, which rendered her unable to care for the child. More recently, she tested positive for marijuana on August 5, 2016 while pregnant with April. Mother told shelter staff she had been smoking marijuana since she was 13 years old. At the

December 23, 2016 adjudication hearing, Mother testified she smoked marijuana in the past to relieve back pain.

Some courts have held that a parent's drug use, without more, does not bring a child within the jurisdiction of the juvenile court. (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 727-728; *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003.) But here there is substantial evidence to support jurisdiction under section 300, subdivisions (b)(1) and (j) because Mother's marijuana use rendered her unable to care for the children. She smoked marijuana while pregnant with April and living at a shelter with her children. During the family's stay at the shelter, staff were concerned with Mother's lack of supervision. They reported one-year-old Donnie got out of his stroller and nearly fell on the floor. Further, three-year-old Torri walked down the street unattended and a staff member had to go bring the child back. Mother appeared overwhelmed and relied heavily on 10-year-old A.T. to help her. Later, Mother was asked to leave the shelter because she violated its drug policy by using marijuana. Her decision to use marijuana at the shelter left her little choice but to move back to the Beach Street apartment with Myron Sr. after the maternal grandmother could no longer house the family.

At the time Mother tested positive for marijuana use in August 2016, her four youngest children were under the age of five. When children under the age of six are involved, a finding of substance abuse is prima facie evidence of the inability of a parent to provide regular care resulting in a substantial risk of physical harm. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219-1220; *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 767.) Mother failed to rebut that evidence. She used marijuana at the shelter and had to leave because she violated its drug

policy. She then exposed the children to domestic violence in September 2016 by moving back with Myron Sr. Substantial evidence supports jurisdiction under section 300, subdivision (b)(1) based on Mother's unresolved history of substance abuse.

Likewise, there is substantial evidence to support the juvenile court's jurisdiction over April under section 300, subdivision (j). April's siblings suffered neglect as defined in section 300, subdivision (b)(1) because of Mother's substance abuse. In addition, there was substantial risk of harm to April because Mother used marijuana while pregnant with her. Furthermore, there was evidence that suggested Mother may have used marijuana at the time of April's birth. Her hospital room reeked of marijuana. Hospital staff reported some of Mother's responses did not make sense. In addition, hospital staff were concerned about Mother's ability to care for April. A nurse found April lying facedown underneath Mother's breast and when she went to pick up the baby, she saw the baby was blue in the face. Mother appeared nonchalant about the baby's safety and dismissive of the nurse's concerns. Based on the foregoing, we conclude the juvenile court properly exercised jurisdiction over April under section 300, subdivisions (b)(1) and (j) based on Mother's unresolved history of substance abuse.

B. The Removal Order

A dependent child may not be removed from the parent's physical custody unless the juvenile court finds, by clear and convincing evidence, there is substantial danger to the child's physical health, safety, protection or physical or emotional well-being if returned home, and there are no reasonable means by

which the child can be protected without removal. (§ 361, subd. (c)(1).) “The jurisdictional findings are prima facie evidence the minor cannot safely remain in the home. [Citations.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 135-136; accord, *In re J.S.* (2014) 228 Cal.App.4th 1483, 1492.) The juvenile court may consider both the parent’s past conduct and the present circumstances. (*In re F.S.* (2016) 243 Cal.App.4th 799, 813; *In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) We review the dispositional order removing a child from the parent for substantial evidence. (*In re F.S.*, *supra*, 243 Cal.App.4th at pp. 811-812; *In re Noe F.* (2013) 213 Cal.App.4th 358, 367.)

Mother argues her history of domestic violence and substance abuse did not warrant removal of the children from her physical custody. Not so. Mother asserts she no longer lived with Myron Sr. at the time the juvenile court made the dispositional orders. But the juvenile court did not find her testimony credible. Furthermore, there is no assurance that Myron Sr. has moved out of the Beach Street apartment. He and Mother violated the April 2012 restraining order by residing together at the apartment. In addition, he broke into the apartment after the landlord changed the locks and has kicked in the door on several occasions.

Mother further contends she has not had a domestic violence incident since April’s birth in November 2016. But this is of little significance given Mother’s extensive history of domestic violence with Myron Sr. dating back to 2011 and her inability to stay away from him. The two oldest children, A.T. and Alicia, were prior dependents of the court because of their

exposure to domestic violence and Mother's violation of the April 2012 restraining order. The maternal grandmother took Mother to get another restraining order but she did not follow through. Mother also refused her landlord's help by failing to provide the police with the landlord's letter regarding domestic abuse by Myron Sr. Although she left Myron Sr. in July 2016 to stay with the maternal grandmother, she spent most of her time on the phone with him. She returned to him the next month after she was asked to leave the shelter because of her positive drug test.

Mother argues the juvenile court failed to consider the alternatives including unannounced visits, in-home parenting and counseling services, and ordering Myron Sr. to not live in her home. But given Mother and Myron Sr.'s past conduct, these alternatives did not eliminate the need for removal. She, A.T. and Alicia had a four-year restraining order against Myron Sr. but during that period she and the children resided with him. Furthermore, she violated juvenile court orders by having contact with Myron Sr. and allowing him to have unmonitored visits with A.T. and Alicia. In addition, Mother was uncooperative and lied to social worker Chappel when she made an unannounced visit on August 19, 2016. There are no alternatives to removal given Mother's repeated refusal to abide by court orders and her lack of cooperation and honesty.

C. The Visitation Order

A dispositional order granting reunification services must provide for visitation "[i]n order to maintain ties between the parent . . . and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to

the custody of his or her parent” (§ 362.1, subd. (a); *In re T.M.* (2016) 4 Cal.App.5th 1214, 1218.) Section 362.1, subdivision (a)(1)(A) provides, “Visitation shall be as frequent as possible, consistent with the well-being of the child.” An order setting visitation terms is reviewed for an abuse of discretion. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356; *In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.)

Mother contends the juvenile court abused its discretion by requiring monitored visits. She asserts nothing indicates she posed a risk to her children’s safety. We disagree. Mother violated a four-year restraining order made for her and the children’s protection by allowing Myron Sr. to live with the family. She also violated a prior juvenile court order by permitting Myron Sr. to have unmonitored visits with A.T. and Alicia during the 2013 dependency case. Given Mother’s repeated failure to protect the children from Myron Sr.’s violent behavior, the monitored visitation order was not an abuse of discretion.

V. DISPOSITION

We affirm the jurisdictional and dispositional findings and orders.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

RAPHAEL, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.