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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re SAMUEL P. et al.,  
Persons Coming Under the  
Juvenile Court Law.

B275724  
(Los Angeles County  
Super. Ct. No. DK15448)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

T.B.,

Defendant and Appellant.

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

Lelah S. Fisher, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Jessica S. Mitchell, Deputy  
County Counsel, for Plaintiff and Respondent.

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In this juvenile dependency case, defendant and appellant T.B. (Mother) appeals the juvenile court's sole jurisdictional finding against her, namely that she failed to protect her three children from their father's illicit drug use.<sup>1</sup> Mother also challenges the juvenile court's dispositional order to the extent it requires her to participate in individual counseling sessions to address "case issues" other than domestic violence victimization. Because we conclude substantial evidence does not support the juvenile court's finding that Mother failed to protect her children from their father's illicit drug use, we reverse the jurisdictional finding against Mother. To the extent the challenged dispositional order requires Mother's individual counseling to address issues other than domestic violence victimization, we reverse that as well.

### **BACKGROUND**

Mother and Father have three children together—two sons (S.P., who is 15 years old, and I.P., who is four years old) and one daughter (H.P., who is nine years old).

#### **1. Altercation Leading to Instant Petition**

On Saturday, January 9, 2016, Mother drove the children to their paternal grandmother's home to pick up a birthday gift

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<sup>1</sup> The father did not appeal any of the juvenile court's findings or orders.

for H.P. The children sat in the backseat of the car. On the way there, Father called, asking to see the children and to have them spend the night with him. Mother told Father the children could not spend the night with him, but he could go to paternal grandmother's home to see the children while they were there.

When Mother and the children were parked in front of paternal grandmother's home, Father came to the car and sat in the front seat. Paternal grandmother also came out to the car to give H.P. her birthday gift, at which time Father became upset because grandmother was interfering with his time with the children and Mother still would not allow the children to spend the night with him. Father hit Mother in her head about six times and pulled her hair. Mother yelled for the children to get out of the car. Everyone got out of the car except for I.P., who was asleep. S.P. and H.P. ran away from the car. Father chased Mother around the car. Eventually, a paternal uncle came out of the house and Father left. The children were not physically injured during the incident.

The police were called but could not find Father. After taking statements from Mother, S.P. and H.P., one of the responding officers reported the incident to the Los Angeles County Department of Children and Family Services (Department).

On Monday, January 11, 2016, the first available court day after the January 9, 2016 altercation, Mother filed for and obtained a temporary restraining order protecting herself and the children from Father. She also filed for custody of the children the same day.

A couple days later, a Department social worker interviewed Mother and the two older children at Mother's home.

The social worker had no concerns with the home and the children appeared happy, healthy, and well cared for. Mother indicated that, as of the previous year, she and Father were no longer in a relationship. She reported that Father had a history of domestic violence and substance abuse, including methamphetamine, which he had used “on and off” since 2003 or 2004. Although the last incident of domestic violence was in 2008, Mother had called the police in August 2015 when, unbeknownst to her and without her permission, one of the children let Father into the house and he would not leave. The police found Father under the car in the garage. He had methamphetamine with him. He was arrested for possession of a controlled substance.

Mother also told the social worker she allowed Father to see the children for about 10 to 15 minutes every two weeks. During those visits, Mother did not allow the children to get out of the car. She also did not allow Father to care for the children and denied that he used drugs in front of them. Mother denied using physical punishment for her children and denied using any drugs. At the request of the Department, she took a drug test, the results of which were negative. Mother reported she was employed as a technician in an operating room.

During their separate interviews with the social worker, S.P. and H.P. similarly reported that Mother did not use physical punishment. S.P. stated he had seen Father smoke marijuana and knew Father used other drugs as well. S.P. also claimed Father had provided care for the children while he was under the influence of marijuana. H.P. reported she had seen Father smoke marijuana outside, but denied seeing anyone sniff anything up their nose or give themselves a shot. The children did not give a

timeframe for their statements about Father's drug use. H.P. also indicated she was scared of Father but felt safe with Mother. Although I.P. was too young to be interviewed, he appeared happy and comfortable with Mother.

The social worker also spoke with paternal grandmother and the paternal uncle who was at the grandmother's home the evening of the altercation between Mother and Father. The paternal uncle did not know where Father was and had not seen him since the altercation. Paternal grandmother stated she did not have any concerns regarding the children while in Mother's care.

The social worker was unable to locate Father.

## **2. Section 300 Petition**

On February 4, 2016, the Department filed a petition under Welfare and Institutions Code section 300<sup>2</sup> on behalf of the children. The petition alleged three claims. The first fell under section 300, subdivision (a) and alleged Father's history of domestic violence against Mother and Mother's alleged failure to protect the children from that violence placed the children at risk of physical harm inflicted nonaccidentally. The second and third claims fell under section 300, subdivision (b). The b-1 claim alleged the same facts as those alleged under subdivision (a) and stated the children were at risk of suffering physical harm. The b-2 claim alleged the children were at risk of suffering physical harm in light of Father's illicit drug use and Mother's alleged failure to protect the children from Father's illicit drug use.

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<sup>2</sup> Subsequent undesignated statutory references are to the Welfare and Institutions Code.

In its detention report filed with the petition, the Department recommended the children be released to Mother. The Department stated “mother has acted appropriately and protectively in obtaining a TRO protecting the children and herself from father.”

At the detention hearing held the same day, the juvenile court detained the children from Father and ordered them released to Mother.

### **3. Adjudication and Disposition**

The juvenile court held the adjudication and disposition hearing on April 20, 2016. In its jurisdiction and disposition report, the Department reported that the children remained with Mother and that Mother had moved to a confidential address. The report also reflected interviews conducted by a Department social worker in early March 2016. During her interview, Mother admitted that she and Father had a history of domestic violence and that Father would threaten and harass her. She indicated that for a few years when she was in her early 20's, Father physically and verbally abused her on multiple occasions and that the children, especially S.P., witnessed some of those incidents. Prior to the January 9, 2016 incident, Mother had a restraining order against Father, but it had expired.

Mother explained that she and Father had been in and out of a relationship for 15 years. Mother stated that Father would be on and off of drugs and would disappear for various amounts of time, sometimes months. She used to allow him to return in order to avoid arguments with him. Mother also tried to help Father and used to go with him to Alcoholics Anonymous meetings. But Mother stated that, in the last year, Father had become worse. In order to stop Father from harassing her and

the children, Mother not only moved to a confidential address, she also sought and obtained a restraining order against him on the first available court day following the January 9, 2016 incident. Mother stated she was not interested in reconciling with Father.

During their separate interviews, S.P. and H.P. confirmed they had each seen Father hit Mother, as well as verbally abuse her. S.P. also knew Father smoked marijuana, and H.P. knew he drank alcohol. S.P. said he had seen Father hit Mother on at least nine occasions. The Department social worker noted that all three of the children appeared well groomed and appropriately dressed with no visible marks or bruises. The Department's report reflected that all three of the children were healthy and developing appropriately.

The Department was unable to interview Father, although in mid-February he contacted a Department social worker, stating he wanted to visit with the children. Father said he did not know how to find Mother and that she was refusing his phone calls.

In its report, the Department assessed the future risk to the children's safety as "high." With respect to Mother, the Department concluded she "clearly failed to protect her children and allowed father to have unlimited contact with the children even after he left the home, clearly knowing of father's history of abusive behavior and substance abuse."

In a last minute information for the court, the Department submitted the February 23, 2016 restraining order Mother had obtained. The restraining order protects Mother and all three children from Father for three years.

At the adjudication and disposition hearing, the Department moved to dismiss and the juvenile court dismissed the subdivision (a) count of the petition. The court sustained the two subdivision (b) counts as amended and declared the children dependents of the court. With respect to the b-1 count, the juvenile court deleted the portion stating Mother had failed to protect the children from Father's violence toward her. The court did not delete that same language, however, from the b-2 count with respect to Father's illicit drug use. The court stated, "I'm not taking mother out of that count." Thus, the only allegation sustained as against Mother was that she failed to protect the children from Father's illicit drug use.

In discussing the allegations against Mother, the juvenile court recognized that Mother had taken "quite some action to protect the kids, limiting the father's contact and access, arranging to meet him at the grandmother's house as a safety net. [¶] The two most recent incidents really were incidents that occurred while the mother had safety measures to some extent in place." The court also stated, "So the real question is was this just a temporary reprieve, or was the mother really once and for all at the point of protective capacity when the case came into the system?"

At the conclusion of the hearing, the juvenile court placed the children with Mother and ordered Mother to attend a domestic violence support group for victims as well as "individual counseling to address case issues." The juvenile court also entered an order modifying the February 23, 2016 restraining order to allow Father monitored visits with the children at least once a week.



On April 25, 2016, Mother filed a timely notice of appeal from the juvenile court's April 20, 2016 orders.

Six months later, in October 2016, the juvenile court granted sole legal and physical custody to Mother and terminated jurisdiction over the case.<sup>3</sup>

## DISCUSSION

### 1. We consider Mother's appeal on its merits.

The Department urges us simply to affirm the juvenile court's orders because dependency jurisdiction is proper based on the unchallenged findings of Father's violent conduct and illicit drug use. Although the Department is correct that dependency jurisdiction was proper in this case because of Father's conduct, we nonetheless exercise our discretion and consider Mother's appeal on its merits.

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency 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.) "However, we may also exercise our discretion to reach the merits of a challenge to any jurisdictional finding when the finding may be prejudicial to the appellant." (*In re Jonathan B.* (2015) 235 Cal.App.4th 115,

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<sup>3</sup> We granted the Department's motion to take judicial notice of the juvenile court's October 2016 minute orders. However, we denied the Department's concurrent motion to dismiss Mother's appeal as moot.

119.) Even after a juvenile court terminates jurisdiction, we may reach the merits of an appeal because the juvenile court’s jurisdictional findings, if erroneous, could have severe and unfair consequences to the parent in future family law or dependency proceedings. “For this reason it is irrelevant that the children would have remained under the court’s jurisdiction based on the court’s findings as to [one parent’s] conduct even if the findings as to [the other parent] were reversed.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716, fn. 4.) Because the finding that Mother failed to protect her children may be used against Mother in future dependency proceedings, we reach the merits of her appeal.

**2. Substantial evidence does not support the juvenile court’s jurisdictional finding as to Mother.**

Mother argues substantial evidence does not support the one jurisdictional finding against her, namely, that she failed to protect the children from Father’s illicit drug use. We agree.

**a. Applicable law**

Jurisdiction under section 300, subdivision (b)(1) requires proof that “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.” (§ 300, subd. (b)(1).)

“Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citation.] The court may consider past events in deciding whether a child presently needs the court’s protection. [Citation.] A parent’s ‘ “[p]ast conduct

may be probative of current conditions” if there is reason to believe that the conduct will continue.’ ” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215–1216.) Nonetheless, “[a]lthough evidence of past conduct may be probative of current conditions, the court must determine ‘whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.’ [Citations.] Evidence of past conduct, without more, is insufficient to support a jurisdictional finding under section 300. There must be some reason beyond mere speculation to believe the alleged conduct will recur.” (*In re James R.* (2009) 176 Cal.App.4th 129, 135–136.)

We review the juvenile court’s jurisdictional findings for substantial evidence. “Under this standard ‘[w]e review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible.’ ” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.) “‘However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, “[w]hile substantial evidence may consist of inferences, such inferences must be ‘a product of logic and reason’ and ‘must rest on the evidence’ [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].” [Citation.] “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” ’ ” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

**b. No substantial evidence**

The Department argues that Mother's "long-term failure to protect [the children] from father's unresolved history of illicit drug use" put the children at risk. The Department states that, while "commendable," Mother's efforts to protect the children were "very recent" and "just prior to [the Department] filing the section 300 petition on February 4, 2016." The Department claims Mother waited until after the January 2016 altercation before obtaining a restraining order against Father. The Department also reported in its jurisdiction and disposition report that Mother "clearly failed to protect her children and allowed father to have unlimited contact with the children even after he left the home, clearly knowing of father's history of abusive behavior and substance abuse."

The record does not support these statements. Although the record reveals that Mother knew of Father's illicit drug use for about 15 years and the two older children saw Father smoke marijuana at some unspecified time, that is not enough to warrant the jurisdictional finding against Mother. Indeed, it is unclear how much of that time the children and Mother were with Father or how much of that time Father was using illicit drugs. Mother stated Father would " 'disappear for days, weeks and months' " when using drugs and would " 'sober up' " for years at a time. Moreover, there was no showing that any of the children suffered serious physical harm, let alone that Mother's alleged failure to protect her children from Father's illicit drug use caused any serious physical harm. (See *In re James R.*, *supra*, 176 Cal.App.4th at p. 135.)

What is clear, however, is that for the past year Mother restricted Father's access to the children and took other steps to

protect the children. For example, Father had not been living with Mother and the children and Father did not provide care for the children. Mother restricted Father's visits with the children to short 10 to 15 minute visits every couple of weeks while the children remained in Mother's car. Mother also called police when, unbeknownst to her, one of the children let Father into their home. She also had previously obtained a restraining order against Father, but it had expired prior to the January 9, 2016 altercation. Indeed, by the next court date after the January 9 altercation, Mother had obtained a temporary restraining order and had filed for custody of the children. And, at the time of the adjudication hearing, Mother not only had moved with the children to a confidential address and was refusing Father's calls, but she also had obtained a three-year restraining order protecting her and the children from Father. Indeed, by all accounts, Mother took good care of her children and adequately protected them from Father's conduct.<sup>4</sup>

We conclude this record does not support a finding that the children were at substantial risk of suffering serious physical harm due to Mother's alleged failure to protect the children from Father's illicit drug use. As the court in *In re Jonathan B.* noted,

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<sup>4</sup> In fact, it appears the juvenile court also believed Mother was adequately protecting her children from Father's conduct. The court removed Mother from the b-1 allegation, which originally had alleged Mother failed to protect the children from Father's violence toward her. Apparently, the court found Mother adequately protected the children from that violence. As Mother points out, however, the juvenile court gave no reasoning, and we can think of none, as to why Mother's protective steps were adequate with respect to Father's domestic violence, but not with respect to his illicit drug use.

“a sustained jurisdictional finding against mother would, in effect, penalize her for having brought the [August 2015 and January 2016] incident[s] to the authorities’ attention when, in fact, this is the kind of response that should be encouraged.” (*Jonathan B.*, *supra*, 235 Cal.App.4th at p. 121.)

**3. To the extent it requires Mother’s counseling sessions to address issues other than domestic violence victimization, the dispositional order is unreasonable.**

Mother argues the juvenile court’s dispositional order requiring her to attend individual counseling to address “case issues” should be reversed to the extent it encompasses substance abuse or Mother’s alleged failure to protect the children from Father’s illicit drug use. The Department takes no position on this issue.

The dispositional order Mother challenges is vague because the juvenile court did not explain what it meant when it ordered Mother to address “case issues” in counseling. “Although a dispositional order may reach both parents, including a nonoffending parent, the order must nevertheless be ‘reasonable’ and ‘designed to eliminate [the] conditions that led to the court’s [still valid jurisdictional] finding.’ (§ 362, subd. (d); see *In re Nolan W.* (2009) 45 Cal.4th 1217, 1229.)” (*In re D.M.* (2015) 242 Cal.App.4th 634, 639.) Here, as Mother correctly concedes, to the extent the juvenile court’s order requires Mother to participate in individual counseling with respect to domestic violence victimization, the order is valid. In that case, the order is tied to the valid b-1 jurisdictional finding based on Father’s violence against Mother. However, to the extent the order requires Mother to address “case issues” beyond domestic violence

victimization, it is unreasonable and not designed to eliminate the conditions that led to the valid jurisdictional findings.

**DISPOSITION**

The jurisdictional finding that pertains to Mother's conduct is reversed. The order requiring Mother to attend individual counseling to address case issues is reversed to the extent it requires her to attend individual counseling to address issues other than domestic violence victimization.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.