Filed 11/13/14 In re C.S. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re C.S. et al., Persons Coming Under the Juvenile Court Law.	B253831 (Los Angeles County Super. Ct. No. CK96880)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JASMINE H., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Tony L. Richardson, Judge. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant.

Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Jasmine H. (Mother) appeals from the jurisdictional findings and disposition order in this dependency proceeding regarding her three sons. She contends that the jurisdictional findings are not supported by substantial evidence and that the disposition order cannot stand in light of the deficient jurisdictional findings. We conclude that the findings and order are supported by substantial evidence and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother is the parent of three boys: C.S. (born Mar. 2006), C.W. (born May 2009), and C.H. III (born Dec. 2010, hereinafter C.H.). Mother currently is married to and resides with C.H. II (Father H.), the father of C.W. and C.H. The father of C.S., Casey S. (Father S.), resides in Michigan. Neither Father H. nor Father S. is party to this appeal.

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on December 6, 2012, when C.S., then six years old, arrived at school with a "purple quarter size bruise" on the left side of his face. C.S. told a DCFS caseworker that his stepfather had hit him the night before because he had not been paying attention in school. He stated that he had been hit nine times. C.S. further advised the caseworker that Mother and Father H. sometimes disciplined him and his younger brothers by slapping them with their hands or hitting them with a belt. C.W., who was interviewed separately, corroborated C.S.'s reports of slapping and hitting with a belt. C.W. also told the caseworker that he and his siblings get "Beat" by Mother and Father H. when they get in trouble at home.

In her interview with the caseworker, Mother admitted that Father H. told her that he needed to "Pop [C.S.] One" because he was having problems in school. Father H. told Mother that he had hit C.S. on the head a few times but that was all. Mother had not been home at the time of the incident; Father H. served as the primary caretaker for the children on evenings that she worked. Mother reported that it was unlike Father H. to act violently, and stated that she was not concerned about serious harm to C.S. She also stated that she would not allow Father H. to act violently toward her or the children in the

home and further stated that she would protect the children if the need arose. Mother denied current substance abuse in the home.

Father H. admitted to disciplining C.S. by hitting him on the back of the head approximately three times. He denied hitting C.S. hard enough to leave marks or bruises. Father H. acknowledged that it was a mistake to discipline C.S. in this fashion and denied regularly using physical force to discipline the boys. Both Mother and Father H. expressed willingness to participate in DCFS services.

The family had been referred to DCFS on two prior occasions. The first referral was made in July 2010 by Father S., who alleged that Father H. hit C.S. and placed C.W. at risk. This referral was determined to be unfounded. The second referral, made in early September 2012, alleged that Father H. was behaving erratically and threatening to kill the children and jump off the balcony. Law enforcement intervened, and Father H. was detained for a psychiatric evaluation at Harbor-UCLA Medical Center. (Welf. & Inst. Code § 5150.)[1] Although this referral also was determined to be unfounded, the caseworker asked both Mother and Father H. about it during their December 6, 2012, interviews. Mother denied that Father H. had threatened to harm anyone. She reported that Father H. sought treatment after his discharge from Harbor-UCLA Medical Center and was prescribed Abilify for anxiety. Mother further reported that Father H. no longer was taking any medication and had no current mental health issues that would preclude him caring for the family. Father H. also reported that he was doing well after his treatment in September 2012. He denied having any current issues with anxiety and further denied having depression or any other diagnosed mental health conditions. Father H. did report, however, that he had a current prescription for medical marijuana, which he later stated was for his anxiety. Father H. also reported that he previously had been hospitalized for anxiety in November 2011. He was not taking any psychotropic medication and was not receiving ongoing mental health services.

---

[1] All further statutory references are to the Welfare & Institutions Code unless otherwise indicated.

Section 300 Petition

DCFS filed a non-detained petition pursuant to section 300, subdivisions (a), (b), and (j), on December 11, 2012. The petition alleged that Father H. physically abused C.S. on December 5, 2012, by striking him and "inflicting bruising, redness, and a scratch to the child's face." The petition further alleged that Father H. struck C.S. with his hands and with a belt on prior occasions and that Mother knew of the abuse but failed to protect C.S. The petition also alleged that Mother physically abused C.S. and C.W. on prior occasions by striking them with her hands and with a belt. These alleged actions placed all of the children "at risk of physical harm, damage, danger, physical abuse and failure to protect." The petition also noted Father H.'s involuntary hospitalizations and alleged that Father H.'s "mental and emotional problems, including a diagnosis of Anxiety, . . . render[] the father incapable of providing regular care of the children" and "endanger[] the children's physical health and safety and place[] the children at risk of physical harm and damage."

Section 319 Detention Hearing

Mother and Father H. appeared for a section 319 detention hearing on December 11, 2012. At the hearing, the court found that Father S. was the alleged father of C.S. and that Father H. was the presumed father of C.W. and C.H. The court ordered all three children detained but released them to Mother and Father H. The court barred the use of corporal punishment and prohibited visits by anyone under the influence of drugs or alcohol. The court ordered DCFS to provide Mother and Father H. with referrals for individual counseling for anger management and to provide Father H. with a referral for psychiatric assessment. The court set the matter for a receipt of report hearing on January 14, 2013, and a mediation hearing on January 16, 2013.

Jurisdiction & Disposition Report

DCFS filed a jurisdiction and disposition report with the court on January 11, 2013. The report detailed January 3, 2013, interviews with C.W., C.S., Mother, and Father H. C.W., who was only three years old at the time of his interview, was not able

to make a meaningful statement. C.S. "appeared very guarded" during his interview and denied that Mother and Father H. ever hit or spanked him. The reporting caseworker noted that "it was unclear whether he was being honest." Mother admitted to "whooping" C.S. with a belt in the past but denied doing so "in over a year." She denied that Father H. ever hit C.W. and stated that she "usually" disciplined him, on "the bottom" or "top of the hand." She denied hitting C.W. with a belt. Father H. denied hitting C.S. in the face on any occasion and stated that he had hit C.S. "in the back of the head four or five times" on December 5, 2012. He denied ever hitting C.W., and echoed Mother's report that she had not hit C.S. or C.W. in about a year. He did state, however, that Mother had hit the children with a belt "a handful of times," "but not frequently." Both Mother and Father H. attributed the petition-prompting bruise on C.S. to an altercation he had with another child at school. C.S.'s school had no record of the purported fight between C.S. and another child, "contradicting the parent's [*sic*] explanation."

With regard to Father H.'s hospitalizations, Mother reported that the "first couple times were voluntary" and denied that Father H. had any mental health diagnoses. Mother indicated that Father H. "was anxious and feeling anxious and pacing around the time he was last hospitalized," but denied that he had ever threatened to harm himself or the children. Mother did not have any concerns about leaving the children in Father H.'s care and stated that she would not allow him to be around the children if she believed he would harm them. Father H. denied ever seeing a psychiatrist or having a history of psychiatric hospitalizations. He denied having a mental health diagnosis but reported that he was diagnosed with anxiety and prescribed medication for that condition during his hospitalization. Both Mother and Father H. denied drug and alcohol use.

Continued Hearing

All three parents–Mother, Father H., and Father S.–appeared for the hearing on January 16, 2013. The court sustained its prior orders and directed DCFS to prepare and file a supplemental report by March 14, 2013. The court further ordered DCFS to

interview Father S. about his paternity and to discuss visitation for C.S. and Father S. with Mother.

First Interim Review Report

DCFS filed an interim review report dated March 14, 2013. The report indicated that DCFS had made contact with Father S., who expressed concerns about C.S.'s safety. Father S. offered to connect DCFS with other relatives who could verify his efforts to locate and contact Mother and C.S. over the past four years. Father S. disclosed that he had a felony conviction for which he had received probation. Michigan authorities confirmed Father S.'s criminal conviction but found his home to be "very appropriate" for C.S.

The DCFS report also documented interviews with two of Mother's relatives, her grandmother Charlene S. (the children's great-grandmother) and maternal aunt Jade W.[2]

---

[2] At the November 13, 2013 jurisdictional hearing, Mother timely objected to the admission of Charlene S.'s, Jade W.'s and Libby Marsh's statements on hearsay grounds pursuant to section 355. "As a result, the hearsay statements were 'not render[ed] . . . inadmissible. Rather, the objection meant that uncorroborated, the hearsay statements did not constitute substantial evidence and could not be used as the exclusive basis for finding jurisdiction under section 300. [Citation.]' (*In re B.D.* (2007) 156 Cal.App.4th 975, 984.)" (*In re Christian P.* (2012) 208 Cal.App.4th 437, 448; see also § 355, subds. (c) and (d).) "'Corroborating evidence is "[e]vidence supplementary to that already given and tending to strengthen or confirm it. Additional evidence of a different character to the same point." [Citation.] In this context, corroborating evidence is that which supports a logical and reasonable inference that the act described in the hearsay statement occurred. [Citation.]' (*In re B.D.*, *supra,* 156 Cal.App.4th at p. 984.)." (*In re Christian P.*, *supra*, 208 Cal.App.4th at 448.) "[C]orroborative evidence, whether direct or circumstantial, (1) is sufficient if it tends to connect the allegedly offending parent with the alleged negligent act even though it is slight and '"entitled, when standing by itself, to but little consideration [citations], nor does it need to establish the precise facts"' in the hearsay statements; (2) is sufficient if it tends to connect the allegedly offending parent with the alleged negligent act and the parent's '"own statements and admissions, made in connection with other testimony, may afford corroboratory proof sufficient"' to find jurisdiction; (3) need not '"go so far as to establish by itself, and without the aid of the testimony of [the hearsay declarant], that the [allegedly offending parent] committed the [negligent act] charged[;]"' (4) may include the allegedly offending parent's '"own testimony and inferences therefrom, as well as the inferences from the circumstances

As is relevant here and amply corroborated elsewhere in the record, Charlene S. stated that Father H. uses marijuana and that Mother formerly used and may currently use marijuana. She further stated that Father S. had an appropriate home for C.S. and would provide C.S. with appropriate care. Jade W. also described Father S.'s home as "appropriate" for C.S.

DCFS attached to the report medical records regarding Father H.'s hospitalization in September 2012 that it had requested with Father H.'s consent and received from Harbor-UCLA Medical Center. The records stated that the hospitalization was prompted by a phone call from Father H.'s mother (Grandmother), who alerted law enforcement that Father H. had been displaying erratic behavior for three days and threatened to kill the family. The records further stated that Mother told the hospital that Father H. "threatened to kill [the] family if he doesn't get money to go to Michigan," tried to jump out the window, and had been displaying "highly erratic behavior starting in November [2011], where he would act unpredictably, and scream in the yard." Mother also reported that Father H. received some sort of treatment and was "asymptomatic" from January until July. The emergency psychiatric evaluation reflects that Father H. had a history of diagnoses including schizophrenia, paranoid type, PDNOS (personality disorder not otherwise specified), and MDD (major depressive disorder), as well as "5 [i]npatient hospitalizations since 11/16/2011."

Father H. reported to hospital personnel that he had previous hospitalizations "to relax." He denied making threats but "kept talking about going on a mission trip to Michigan" and "appeared agitated [and] tearful." He presented with a "highly labile affect," "demonstrate[d] very poor insight to condition and insist[ed] nothing happened." Father H. was given an initial diagnosis of PDNOS. Father H. tested positive for

---

surrounding the entire transaction[;]"'and (5) may consist of '[f]alse or misleading statements to authorities . . . or as part of circumstances supportive of corroboration.' [Citation.]" (*Ibid.*)

cannabis and reported smoking three marijuana cigarettes per day. At discharge, he was diagnosed with bipolar disorder, unspecified.

Mother and Father H. disputed the contents of the medical records during a phone conversation with DCFS. Mother denied telling Harbor-UCLA Medical Center personnel that Father H. threatened to harm the family. According to the DFCS caseworker, Mother said, "Fine but I did not say anything of that nature. As an adult I'm more than capable of telling when someone has a problem or an issue. I would take my kids and my self [*sic*] out of that situation if it were true." Mother further stated, "None of that's true. It's not that I'm not recognizing the problem, my husband did have anxiety but he never threatened to kill anyone. . . . If I felt like my husband's mental capacity was putting my family in danger I would have gone to the steps on my own to get him the help he needs.'" Mother indicated that the records' diagnoses of paranoid schizophrenia and bipolar disorder did not make sense to her. Father likewise disputed that he had been diagnosed with paranoid schizophrenia and bipolar disorder. Father also denied threatening to kill the family and dismissed the medical records as "opinion or observation."

Continued Hearing

DCFS filed its first interim review report with the court prior to the March 14, 2013, continued hearing. Father S. filed a Statement of Paternity requesting that the court find him to be C.S.'s father. Mother filed an affidavit of prejudice as to the presiding judge.

The court transferred the case to another department, and the new judge found that Father S. was nonoffending. After hearing argument, the court ordered C.S. released to Father S. for a 60-day visit to Father S.'s Michigan home with the proviso that Father S. would return C.S. to California if the visit did not work out. C.W. and C.H. remained released to Mother and Father H. Adjudication was put over to May 14, 2013, before which time DCFS was to file a supplemental report.

Second Interim Review Report

In its second interim review report, dated May 14, 2013, DCFS reported that C.S. had adjusted well to living with Father S. A caseworker in Michigan observed that Father S.'s home was very clean and neat and that Father S. had set up a room for C.S. Father S. reported that C.S. was enrolled in school and a basketball program and had visited with his extended family.

The report also stated that a DCFS caseworker visited Mother and Father H. at home on April 2, 2013. C.W. and C.H. appeared well dressed and appropriately groomed. Neither child had any visible marks or bruises. Mother and Father H. had not yet started the anger management classes that the court had ordered on December 11, 2012.

Continued Hearings

The matter was continued to May 15, 2013, due to a congested court calendar. At the May 15, 2013, hearing, the court ordered all prior orders to remain in effect and continued the matter to August 19, 2013.

On August 2, 2013, the court on its own motion placed the matter on the calendar and vacated the hearing scheduled for August 19, 2013. The court set the matter for a contested hearing on November 1, 2013.

Family Preservation Services

In May 2013, the family was screened for family preservation services, which it began receiving in July. The family preservation counselor, an intern outreach counselor training to become a marriage and family therapist, testified that she visited with the family a total of about eight times, including a meeting on July 29 and approximately three 50-minute appointments in September 2013. The counselor noted that the family's apartment smelled of marijuana and that Mother's eyes "appeared red and glossy" and she appeared to be under the influence during several of the September visits. The counselor further testified that over the course of her treatment of the family, Father H. "became progressively worse where it got to the place where [she] couldn't calm him

down or have a conversation at all with him." She described Father H. as "extremely agitated" during her visits, "excessively yelling and screaming and [using] profanity." C.W. and C.H. were quiet and on one occasion C.W. "was shaking and sort of breathing heavily" in response to Father H.'s yelling. The counselor further testified that during Father H.'s outbursts, the children "appeared to be sort of frozen" and "fearful." Sometimes they were "on punishment," restricted from their toys or activity. She never observed either parent physically abusing the children, however, and stated that the children "were physically okay."

According to the counselor, Mother was "not engaged" during Father H.'s outbursts. On one occasion, the counselor asked Mother if she had any input as to Father H.'s behavior, and Mother responded by saying, "What do you want me to say?" and turned her attention to her iPad. Sometimes she "would just stay silent" during the outbursts. The counselor never saw Mother take steps to calm Father H. down.

The family preservation counselor ceased her visits with the family after September 19, 2013, because "it had just progressively become worse in terms of having conversations or to work with the family," and "there were just barriers to working with the family." The counselor remained "afraid for the children," because "emotionally there was so much, you know, the outbursts were so outrageous and the profanity and the children were subjected to that in most of the sessions." She was also "possibly" afraid that the outbursts would escalate into physical harm.

A DCFS caseworker also made announced and unannounced visits to the family during the period in which family preservation services were provided. She testified C.W. and C.H. "appeared physically fine" during her August 2013 visits, in that they did not appear to have "any visible marks or bruises" that could be seen without disrobing. She also reported that "the boys always appeared clean, appropriately groomed, appropriately dressed for the weather and either napping . . . or in series [*sic*] of having recently woken up and being ready to be fed." Although she echoed the family preservation counselor's observation that the apartment smelled of "at least stale

marijuana" on "all but one" of her several visits, the DCFS caseworker testified that she did not "initially" get the same "impression" from Father H. that the family preservation counselor did. After learning of the family preservation counselor's concerns in August 2013, the two arranged a joint meeting with the family in late August. At that meeting, it "came to light" that Father H. had been hospitalized during the preceding weekend; he "was still in a fairly elevated state at the time [of the visit] and was pacing and very loud and using profanity." Mother and Father H. agreed to contact the hospital to attempt to get the records relating to Father H.'s most recent hospitalization so they could share them with DCFS and the family preservation counselor.

Father H.'s August 2013 Hospitalization

Father H. was admitted to the hospital on a section 5150 hold on August 23, 2013. Mother reported to the intake staff that over the previous two to five days, Father H. "actually was not sleeping, was very agitated, was loudly talking to himself, was excessively religious, constantly talking about some vague religious issues, and generally was not making any sense." Mother took him to the emergency room, where he behaved "in an extremely agitated way," was "combative," and was "easily getting violent." Hospital staff eventually had to sedate him with injections of Haldol and Ativan.

Father H. later told medical staff that he did not have any mental illnesses and "actually came to the hospital because he had pain in his stomach." He explained that he was agitated in the emergency room "because he was not given marijuana," which he advised that he "needs to smoke daily." The staff noted that a detailed cognitive examination of Father H. was "not possible because the patient gives strange answers or is answering in a bizarre way, talking about things that are actually not connected to the question at all," and his "speech was so overtly disorganized that very often it was not possible to get any real information from him, even though the patient was actually trying to answer questions and was not elusive or resistant." Father H. was able to inform staff that he felt depressed and that he had not slept for five nights prior to his admission.

The staff noted that Father H.'s judgment and impulse control seemed "severely impaired," and observed that he had been "utterly noncompliant" with his medication. At intake, the staff diagnosed Father H. with psychotic disorder, not otherwise specified, and marijuana dependency. At discharge, he was diagnosed with marijuana dependency and bipolar affective disorder type I, most recent episode manic, severe, with psychotic features. The discharging physician recommended that Father H. abstain from using marijuana and begin attending Marijuana Anonymous meetings. He also prescribed Father H. some psychotropic medication.

The records indicate that Mother "was supporting the idea that [Father H.] needs hospitalization" when she first brought him in. However, "after just two days in the hospital, when the patient was slightly calmer but still had quite significant excessively fast speech and possibly pressurized speech, [Mother] was insisting that he is ready and was insisting on taking him home." At the time of Father H.'s discharge three days after he was admitted, Mother "was happy to take him home and was promising that she would try to convince him to take medications." Father H. "was not absolutely happy about medication" but acknowledged that "medications possibly are going to be helpful and may prevent further admission to the hospital so they should at least be tried." The hospital recommended that Father H. "seek help immediately in the county mental health clinic," consider supportive psychotherapy, stop using marijuana, and "attend Marijuana Anonymous meetings for at least 90 days daily and frequently after that."

DCFS Referral & Investigation

On September 20, 2013, the day after the family preservation counselor concluded that barriers precluded the further provision of services, DCFS received a referral alleging caretaker absence/incapacity with respect to Father H., C.W., and C.H. "The referral indicated during therapy session, father [became] extremely aggressive and behaved oddly."

In response to the referral, a different DCFS caseworker conducted a home visit. She reported that Mother "appeared to be very agitated," "became confrontational and

argumentative," and told her that it is "time for DCHS to back off and leave them alone." Mother admitted, however, that Father H. was "loud" with the family preservation counselor during the September 19, 2013, visit, which she attributed to Father H.'s frustration "to hear that he was not doing anything and that he was not complying with his treatment plan." Father H. also "appeared to be increasingly agitated, excessively talkative and talking non stop." Father H. "became aggressive and loud" toward the caseworker. He admitted that he got loud with the family preservation counselor but characterized his tone as "'LOUD PROJECTION,'" not yelling, and explained that he was frustrated with the family preservation counselor because she did not believe his most recent hospitalization was voluntary and "accused him of not complying with his medications and treatment plan." Father H. "looked frustrated and he was rambling and cussing and using profanity at every one and everything." He admitted to smoking marijuana at home but claimed that he did so only when the children were not around. He further explained that he was taking the psychotropic medication that was prescribed to him during his recent hospitalization. Father H. pointed to the children, whom the caseworker described as "well groomed and happy with their father," and asked the caseworker, "look at them, do they look abused to you?"

The caseworker spoke to C.W. and C.H. Both denied any physical punishment by the parents. They also denied being afraid of Father H.

"After [the caseworker] talked to the children, [F]ather [H.] became extremely calm" and "apologized . . . for his inappropriate behavior." Mother and Father H. voluntarily agreed for the children to stay with Grandmother, who lived in the same apartment complex, pending results of drug tests they had taken. Father H. also agreed to comply with family preservation services, his medication, and other treatment services.

The DCFS caseworker discussed the referral with the family preservation counselor on September 24, 2013. The family preservation counselor relayed her "safety concerns for the children since father reports he is not following recommendations given

by [hospital] and that father is caregiver to minors when mother is at work." She also described Father H.'s outbursts and agitation.

On September 27, 2013, both parents' drug tests came back positive for cannabinoids. A DCFS caseworker telephoned the family. Mother admitted to smoking marijuana and claimed that she did so to relieve stress. Mother "became extremely loud and agitated during over [*sic*] the phone and stated that [m]arijuana was legal" in California. The caseworker informed Mother that DCFS wanted to schedule a meeting for the following Thursday. Mother "refused to be present in the TDM [Team Decision Making] meeting and stated that she is working and can not be in the meeting." Mother also "became outraged" at the caseworker's request that C.W. and C.H. remain in Grandmother's care. Father H. came on the line and was "extremely agitated and loud." He informed the caseworker that Grandmother had been evicted from her apartment and stated that C.W. and C.H. would remain in the parents' care. The caseworker spoke to Mother again and asked her if the family could attend the TDM meeting if it were moved to Monday. Mother stated that she could not participate in the meeting because she had to work on Monday. She hung up the phone.

On October 2, 2013, a caseworker called Mother and Father H. to see if the meeting scheduled for the next day could be moved up one hour. Mother told the caseworker that she could not meet any earlier because she had to work. The caseworker proposed another time, but Mother "stated that they needed to meet with their [family preservation counselor] for family preservation and that is more important than being interrogated by DCFS who is not their judge or their jury." Mother stated that she could not talk any longer because she needed to get ready for work and hung up the phone.

The caseworker called the family back to clarify that the family preservation counselor would be in attendance at the TDM meeting. Father H. answered the phone. He yelled at the caseworker and accused her of ruining the family's lives. The caseworker explained that the purpose of the TDM meeting was to discuss a way to keep the children with the family. Father continued to yell. When the caseworker asked him

to speak calmly, he stated, "Fuck that! You had your turn to talk. Now I'm going to talk! I have done everything you told me to! I ain't going to no fucking meeting! We are done! I got your evaluation! I went to anger management! I am doing family preservation! All that is left is for you to come take my fucking kids!" The caseworker reiterated that she was trying to take steps to mitigate a need to remove the children from the home, and Father H. said, "No. Fuck that! There will be no fucking meeting. There is nothing to talk about. Just come get my fucking kids! I am high. I'm smoking right now. My kids are with me. I have done everything. I got the psyc[h]. evaluation, I am doing family preservation. You are fucking up our lives. All that is left is for you to take my kids. Come get my fucking kids right now. Come and get them! Come right now! Come take my fucking kids! I am high, I'm smoking with them here and I'm not taking my medicine because it fucks me up. Come get these fucking kids right now."

After this conversation with Father H., DCFS determined that detention was necessary. DCFS removed C.W. and C.H. from the home with the aid of the Los Angeles Police Department later that afternoon. Grandmother expressed an interest in caring for the children, but DCFS denied her request after observing that her apartment smelled like marijuana. Grandmother explained that Father H. smoked marijuana there. C.W. told a caseworker that he had been at Grandmother's apartment while Father H. was smoking. The children, who smelled of marijuana, were placed in foster care that evening.

First Amended Section 300 Petition

DCFS filed a First Amended Petition on October 7, 2013. Like the original petition, the First Amended Petition alleged dependency of all three children pursuant to section 300, subdivisions (a), (b), and (j). The First Amended Petition retained all of the allegations made in the original petition and supplemented the allegations made under subdivision (b). DCFS augmented count (b-4), which alleged that Father H.'s mental and emotional problems rendered him incapable of providing regular care to the children, with allegations concerning Father H.'s August 2013 hospitalization. DCFS also added

counts (b-5), (b-6), and (b-7), which alleged, respectively, that Mother is a "current and frequent user of Marijuana," rendering her incapable of providing regular care for the children; that Father H. also is "a current and frequent user of Marijuana" and therefore incapable of providing regular care for the children; and that Mother created a "detrimental and endangering home environment for the children" by allowing Father H. to act as their primary caretaker notwithstanding her knowledge of his mental health and substance abuse issues.

Section 300 Hearing

Mother and Father H. appeared at a section 300 hearing on October 7, 2013. The court found that DCFS had established a prima facie case that C.S., C.W., and C.H. were persons described by section 300, subdivisions (a), (b), and (j), as alleged in the First Amended Petition. The court further found that substantial danger existed as to the physical and emotional health of C.S., C.W., and C.H. such that there was no reasonable means to protect them without removal. The court found that continuance in the home would be contrary to the children's welfare and ordered C.W. and C.H. into temporary placement with DCFS, in which it vested discretion to place the children with appropriate relatives or other custodians. C.S. remained released to Father S. The court ordered supervised visitation for Mother and Father H. and continued the matter to November 1, 2013.

Third Interim Review Report

DCFS filed an interim review report in advance of the hearing scheduled for November 1, 2013. The report reflected the following recent developments.

On October 3, 2013, a DCFS caseworker met with Grandmother. Grandmother reported that Father H.'s "frustration is keeping him unbalanced," and espoused the belief that "it is something out of his control when it happens and he loses it." Grandmother denied that she was being evicted and stated that her mother and sisters lived with her. Grandmother reported that her mother has had erratic behavior in the past and may have undiagnosed borderline schizophrenia.

On October 10, 2013, a DCFS dependency investigator spoke with Charlene S., Mother's grandmother. Charlene S. reported that C.S. was doing well with Father S. and visited her on the weekends to attend church. The DCFS dependency investigator also spoke with Father S. and advised him of the November 1, 2013, hearing. Father S. indicated that it would be financially difficult for him to assure his and C.S.'s presence but that he would do his best to get them there.

Mother and Father H. had monitored visits with C.W. and C.H. on October 11, October 18, and October 21. DCFS did not note any concerns during these visits.

Father S. called the dependency investigator on October 22. He informed the investigator that he was not opposed to C.S. visiting with Mother but did not want him to visit with Father H. Father S. requested that the case be closed as to C.S. C.S. also spoke with the investigator. He said that he was doing well and told the investigator that he spoke to Mother while at Charlene S.'s home. C.S. told the investigator, "I want to stay here."

The dependency investigator conducted telephone interviews with Mother and Father H. on October 24. Mother informed the investigator that she had a new medical marijuana card and agreed to provide a copy to the investigator. Mother denied that Father H. cared for C.W. and C.H. while under the influence of drugs. She explained that she and Father H. never "smoked [marijuana] while the children were here. We would when they were asleep." She denied that the children smelled of marijuana when they were detained. Mother stated that Father H. had submitted himself for his August hospitalization voluntarily because the family could not otherwise afford to obtain a psychiatric evaluation for him.

During his interview, Father H. denied yelling or acting agitated in the presence of the social workers handling the family's case. Father H. denied that he was under the influence of marijuana on October 2, 2013, when he told the caseworker to come get the children. He explained, "[I] told her I had been smoking at my mother's house outside the house and said the only thing she can do to [a]ffect my family is to take the children

away so she took it upon herself to take the children away." Like Mother, Father H. reported that his August hospitalization was voluntary: "I checked myself in because you guys wanted me to get an evaluation and no psych takes Medi-Cal."

Adjudication Hearing

The contested adjudication hearing scheduled for November 1, 2013, commenced on November 13, 2013, and continued through November 14, 2013. DCFS called two witnesses, the family preservation counselor and one of the family's caseworkers. The family preservation counselor testified as to her experiences with the family during her provision of services from July 2013 through September 2013. The caseworker testified about her visits to the family during the same time frame, including the joint visit with the family preservation counselor in August. She also testified about the phone calls that she had with Mother and Father. H. regarding the TDM meeting and Father H.'s invitation to DCFS to take the children. During cross-examination by the children's counsel, the caseworker testified that she had concerns about the children's emotional well-being in light of Father H.'s outbursts and the children's continued proximity to them in the family's small studio apartment. The court admitted into evidence the entirety of DCFS's proffered documents, including its interim review reports, detention reports, and Father H.'s hospitalization records.

Father H. testified that he had not used marijuana since C.W. and C.H. were removed from the home in early October. He explained on cross that he had used marijuana to calm his anxiety but disputed that he had been formally diagnosed with anxiety or any of the other mental illnesses that appeared in his hospitalization records. He denied using marijuana in the children's presence and testified that any smell of marijuana in the home was caused by his use when the children were not around. Father H. testified that he did not "personally feel like [he] should receive counseling" but was nonetheless seeking it because he was "trying to do whatever [he] can do to have the children return home." Father H. explained that he had been having some trouble setting up an appointment, however, because psychiatrists do not take the family's insurance and

he cannot afford to pay for counseling out of pocket. He also attributed his failure to refill his psychotropic medications to financial concerns. He testified that he would be willing to take his medication and attend counseling if he could afford to do so. Father H. maintained that his August hospitalization was voluntary.

Jurisdictional Findings

After hearing arguments from all parties, the court expressly found that DCFS proved "counts (a)(1), (a)(2), (a)(3), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (j)(1), (j)(2), and (j)(3) of the petition to be true as alleged." The court did not specifically comment on the allegations made in count (b-7), that Mother created a detrimental and endangering home environment for the children by allowing Father H. to act as their primary caregiver notwithstanding her knowledge of his mental health and substance abuse issues. The court's minute order also omits any mention of count (b-7).[3] The court orally stated, however, that DCFS's evidence was sufficient to "sustain the applicable counts," and that it would "sustain the counts that are before it," which we read to encompass a finding of jurisdiction on count (b-7). (See *In re A.A.* (2012) 203 Cal.App.4th 597, 603 fn. 5.) We further note that Mother devotes three pages in her brief to arguing that substantial evidence does not support sustaining the allegations contained in count (b- 7), further confirming that the parties understood the court to have sustained that count.

The court orally explained that "were there [section 300, subdivision] (c) counts I think, you know, we wouldn't be wringing our hands as much as we have over the past few days because it does appear that what has been transpiring at least as of late is enough to cause some emotional damage, if you will, to children of this tender age." In an "abundance of caution," given the age of the children, the totality of the

---

[3] It also contains an inaccurate statement of the court's ruling and the charges involved: "Subdivision: A count: 1,2,3 is sustained"; "Subdivision: B count: 1,2,3,4 is sustained": "Subdivision: J count: 123456 is sustained". The counts alleged in the first amended petition were (a-1), (a-2), and (a-3); (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), and (b-7); and (j-1), (j-2), and (j-3). Neither side has commented on these anomalies.

circumstances, and the "atmospherics" of the case, the court nonetheless found the evidence adequate to sustain DCFS's burden.

Disposition Order

The court immediately heard arguments on the question of disposition. In making its ruling, the court again indicated that it "could understand and appreciate the Department's positions a bit more" if DCFS had pursued allegations under section 300, subdivision (c), which concerns emotional damage. (*See* § 300, subdivision (c).) The court ruled that C.W. and C.H. were to remain in the custody of Mother and Father H., on the conditions that Grandmother assist Mother and Father H. with childcare during Mother's working hours, that Mother and Father H. submit to drug testing, and that Mother and Father H. participate in family preservation services. The court denied DCFS's request that it delay final disposition of C.W. and C.H. until Father H. received a psychiatric evaluation pursuant to Evidence Code, section 730. Over Mother's objections, the court tentatively awarded Father S. joint legal and sole physical custody of C.S. and directed Mother and Father S. to work toward a visitation agreement during the lunch recess. Upon their return, Mother and Father S. reported that they had scheduled a mediation for December 12, 2013, to work out the details. The court continued the disposition hearing as to C.S. until December 12, 2013, and set a section 364 hearing as to C.W. and C.H. for May 15, 2014. The court ordered that an Evidence Code, section 730, evaluation of Father H. be performed by January 14, 2014.

The clerk mailed copies of the court's final disposition order to Mother and Father H. on November 18, 2013. The notice of mailing was filed on November 22, 2013.

Agreement and Disposition as to C.S.

On December 12, 2013, Mother and Father S. agreed to the termination of court jurisdiction over C.S. and to entry of a family law exit order awarding sole legal and physical custody of C.S. to Father S. They agreed that C.S. would continue to have a minimum of 15 minutes per week of telephonic contact with Mother while visiting with

Charlene S. They further agreed that Mother's visitation with C.S. would be contingent upon her financial situation.

Due to calendar congestion, the court was unable to address the mediation agreement until the January 14, 2014, hearing. During that hearing, Mother asserted that she "misunderstood" the mediation agreement and requested that C.S. be placed in her physical custody. The court overruled her objections to the signed agreement, found that there was detriment to returning C.S. to Mother's physical custody under section 361.2, and adopted the agreement as an order of the court. The court further found that "conditions which would justify the initial assumption of jurisdiction under Welfare and Institutions Code section 300 no longer exist" as to C.S. and "are not likely to exist if supervision is withdrawn." The court accordingly terminated jurisdiction over C.S. "pending receipt of the family law order which will encapsulate what is reflected in the mediated agreement before the court."

Evidence Code, Section 730, Exam and Hearing as to C.W. and C.H.

Father H. had his Evidence Code, section 730, exam on December 20, 2013. The examining psychologist interviewed Father H. and performed several assessments. The psychologist noted that Father H. scored a zero on the self-report tests for depression and anxiety; he cautioned that these scores were "of questionable validity" because "even with most individuals who do not experience depression, their score is higher than 0." Despite Father H.'s presentation during the interview and assessments as "having no significant psychological problems in any manner whatsoever," the psychologist concluded that "it is highly likely that the disturbed behavior that is reported in the files is a valid description of [Father H.] having episodic breaks with reality, involving bizarre ideations and behavior." The psychologist also found it likely that Father H. "understated his use of marijuana" and concluded that it was "likely" that Father H. "has underlying psychiatric issues that may be exacerbated by marijuana usage and/or significant stress." He found that Father H. was abstaining from marijuana "as a result of the fear of losing his children" and recommended that the situation be carefully evaluated because Father

H.'s apparent motivation to stop using primarily was extrinsic. The psychologist recommended that Father H. participate in Marijuana Anonymous and be permitted only monitored visits with the children if he tested positive for marijuana or otherwise manifested "bizarre and/or aggressive type acting out behavior." The psychologist concluded that it "would be in the best interest of the children that a close family adult frequently be in contact with" Father H. "when he is alone with his children." The psychologist further recommended that DCFS make "frequent unannounced home visits" and that Father H. participate in psychotherapy and be evaluated to determine whether psychotropic medication would be of assistance to him.

The psychologist's report was submitted to the court at the January 14, 2014, hearing. The court also received a last-minute information noting that Mother and Father H. were complying with the court's orders to participate in 12-step meetings and parenting classes and had passed two drug tests in December 2013.

In light of the report and the last-minute information, the court modified its disposition order "to reflect a couple things." Specifically, the court ordered DCFS to "follow up to ensure that [Father H.] is referred to individual counseling to address the case issues as reflected in the psychiatric evaluation" ordered Father H. to participate in a psychiatric evaluation to see if psychotropic medication would be of value, and modified its requirement that Father H. participate in Alcoholics Anonymous meetings to clarify that Father H. should participate in a Narcotics Anonymous program that focuses on the use and abuse of marijuana.

Mother filed a notice of appeal on January 14, 2014.[4]

---

[4] We denied DCFS's motion to dismiss as untimely Mother's appeal as to the orders concerning C.W. and C.H. We do not revisit that decision here.

DISCUSSION

I. Standard of Review

At the jurisdictional hearing, the dependency court's finding that a child is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355, subd. (a); *In re I.J.* (2013) 56 Cal.4th 766, 773.) "'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].'" [Citation.]" (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)' [Citation.]" (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) "Substantial evidence is evidence that is reasonable, credible, and of solid value." (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

"'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 re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)" (*In re D.P.* (2014) 225 Cal.App.4th 898, 902.)

II. Analysis

Here the petition was sustained under section 300, subdivisions (a), (b), and (j). Mother contends that substantial evidence was lacking as to all of the counts. We disagree.

A. Substantial evidence supported the exercise of jurisdiction under section 300, subdivision (a).

Mother first argues that substantial evidence does not support the exercise of jurisdiction under section 300, subdivision (a). This subdivision provides that a child may be adjudged a dependent if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, 'serious physical harm' does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury."

It is uncontroverted that Father H. struck C.S. in the head multiple times, which he casually described as "Pop[ping C.S.] One," because C.S. was having some trouble at school. Mother admitted to hitting C.S. and C.W. with a belt and with her hands, and then-three-year-old C.W. told DCFS that his parents "Beat" him and his siblings with their hands or a belt when they misbehaved. The court could have inferred from Mother's statement that she "usually" confined her physical discipline of the children to their buttocks and hands that she struck them elsewhere on occasion. This court has held that "[i]n the context of a three year old," a beating with a belt on the stomach and forearms may be serious enough to support a finding of jurisdiction under subdivision (a). (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438.)

Even if the striking of C.S. and reported striking of C.W. were not enough to support a jurisdictional finding standing alone, "other actions by the parent or guardian . . . [amply] indicate that the child is at risk of serious physical harm." Mother concedes in her brief that she was "not upset" by Father H. striking C.S. in the head, and both parents attributed the bruising on C.S.'s face to an altercation, although his school had no record of such an incident. The record also reflects that despite her assurances that she stood ready to protect the children, Mother allowed Father H. to scream at them until they physically trembled in the presence of a family preservation counselor and did not seek psychiatric treatment for Father H., the children's primary caretaker, until he had been behaving erratically and not sleeping for several days. Father H.'s "combative" and "volatile" outbursts were so severe that medical staff needed to sedate him, and Grandmother indicated that Father H. was prone to "los[ing] it" and had little control over his outbursts. These facts constitute substantial evidence that support a finding of jurisdiction under section 300, subdivision (a). They further support a finding of jurisdiction under section 300, subdivision (j), which grants jurisdiction over one child when his or her sibling is found to come within the ambit of subdivision (a).

B. Substantial evidence supported the exercise of jurisdiction under section 300, subdivision (b).

Mother also contends that jurisdiction is improper under section 300, subdivision (b), because (1) the children were never found to be abused or neglected; (2) DCFS failed to demonstrate that the children had been harmed or were likely to be harmed by Father H.'s mental illness; (3) there was no evidence that Mother and Father H.'s use of marijuana placed the children at risk of abuse or neglect; and (4) DCFS failed to show how the children had been or would be harmed when left alone in Father H.'s care. None of these contentions is availing.

Section 300, subdivision (b) permits a finding of jurisdiction where "[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, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." Put more simply, "'[t]he three elements for jurisdiction under section 300, subdivision (b) are: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) serious physical harm or illness to the [child], or a substantial risk of such harm or illness.'" (*In re John M.* (2012) 212 Cal.App.4th 1117, 1124, quotations omitted.)

Mother first asserts that there was no evidence to support a finding of serious harm to the children or the risk thereof. This contention dovetails with her last, that DCFS failed to show that the children were likely to be harmed in Father H.'s care. For the reasons already discussed above, we reject both contentions. Contrary to her assertions that she and Grandmother "were at all times present in the home to care for the children during [F]ather [H.]'s times of mental health need," and that they were "both available to care for the children," the record contains evidence that Father H. served as the children's primary caretaker while Mother was at work and that his outbursts came about unpredictably and were beyond his control. Mother knowingly left the children in Father H.'s care despite her knowledge (and continued denial) of his mental illness and the explosive outbursts it provoked, including threats to kill the family. She did not "engage" or take steps to calm Father H. when he was directing his rage at the children, even in the presence of the family preservation specialist. And she knew that Father H. struck C.S. in the head several times and was not upset by it. All of this evidence is substantial and collectively supports a finding that the children were at risk of serious physical harm.

Mother also raises the similar argument that Father H.'s mental illness did not place the children in harm's way. Regardless of the lack of a specific diagnosis, and both

parents' dogged insistence that Father H. was not mentally ill, the record is replete with evidence that Father H. was prone to erratic and volatile behavior that was beyond his control. His behavior escalated to the point that he had to be sedated, and he failed to comply with any type of psychotropic medication regimen. Mother's reliance on *In re A.G.* (2013) 220 Cal.App.4th 675, 686, is misplaced. Unlike the non-mentally ill parent in *In re A.G.*, and despite her assurances to the contrary, Mother has not "shown remarkable dedication to the minors and that [s]he is able to protect them from any harm from [Father H.]'s mental illness." (*In re A.G.*, *supra*, at p. 684.) Mother did not "ensure[] that there was adult supervision, other than [Father H.], of the minors at all times." (*Ibid*.) She delayed in seeking treatment for Father H., taking him to the hospital only after Grandmother alerted law enforcement that he had threatened the family or after his health had deteriorated to the point that he remained awake for several days and "generally was not making any sense." Mother also denied that Father H. had any sort of illness and minimized his symptoms. Moreover, C.H. and, to a lesser extent, C.W. are "of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety" (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 [noting that children six years of age or younger are of "tender years"]); they are not able to recognize potential hazards to themselves or reliably alert Mother or Grandmother if Father H. acts "bizarrely." For all of these reasons, we reject Mother's contention that the evidence failed to support a nexus between Father H.'s mental illness and a risk of harm to the children.

We likewise reject Mother's final contention, that there was no evidence that Mother and Father H.'s use of marijuana placed the children at risk of abuse or neglect. A 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 harm" to children under the age of six. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767; *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219.) The *Drake M.* court held that "a finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient

to (1) show that the parent or guardian at issue had been diagnosed as having a current substance abuse problem by a medical professional or (2) establish that the parent or guardian at issue has a current substance abuse problem as defined in the DSM-IV-TR. The full definition of 'substance abuse' found in the DSM-IV-TR describes the condition 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., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; 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).' (DSM-IV-TR, at p. 199.)" (*In re Drake* M., *supra*, at p. 766.) We recently have clarified that a parent may be found to have abused a substance even if they do not strictly satisfy these criteria. (*In re Christopher R.*, *supra*, 225 Cal.App.4th at 1218.)

Father H. was diagnosed by a medical professional as having a marijuana dependency. A medical professional also opined that Father H.'s marijuana use likely was precipitating or exacerbating his mental health issues. C.W. reported that Father H. smoked marijuana while he was present, Father H. told a DCFS caseworker that he was smoking around the children, and the children smelled of marijuana when they were removed from the home. Mother's use of marijuana appears to have been more casual–and outside the parameters set forth in *In re Drake M.* Nevertheless, the family preservation counselor observed Mother in an inebriated state, with "glossy" red eyes and dissociative behaviors. Mother failed a drug test and failed to prevent Father H. from

smoking around the children. In short, there is substantial evidence to support the dependency court's finding that the parents' marijuana use was sufficiently problematic as to place their very young children at risk of serious harm.

Mother does not raise any independent argument that the court's disposition order was improper; she argues only that "[s]ince the court had no basis to find that the children were described under section 300, subdivisions (a), (b), and (j), it also had no basis to declare the children dependents of the court." As we have rejected her contentions regarding the jurisdictional findings, we accordingly also reject her contingent argument that the court's disposition order must be reversed.

DISPOSITION

The order of the dependency court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.