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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re S.H., et al., Persons Coming  
Under the Juvenile Court Law.

B277798

(Los Angeles County  
Super. Ct. No. DK05630)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

BRIAN H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. John W. Parker, Judge. Affirmed.

Christopher R. Booth, 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.

No appearance for Minors.

\* \* \* \* \*

Brian H. (father) challenges the juvenile court's exertion of dependency jurisdiction over his two children (and its subsequent order removing the children from his custody). We conclude that substantial evidence supports the court's jurisdictional finding, and accordingly affirm the court's jurisdictional and dispositional orders.

### **FACTS AND PROCEDURAL BACKGROUND**

Father and Kimberly H. (mother) have two children, S.H. (born 2006) and her younger brother, G.H. (born 2011).

In 2013 and 2014, father and mother used various controlled substances, including heroin, "Xanie bars," and marijuana. They did so in front of the children; indeed, S.H. was able to describe in detail how her parents ingested heroin. During that same time period, father and mother fought almost every day and occasionally broke objects; again, they did so in front of the children, prompting S.H. to hide under her bed in her bedroom. Father and mother also did not ensure that the children had enough food to eat, and on one occasion lost track of G.H., who wandered out of their house, down the street and onto nearby railroad tracks. Father was convicted of being under the influence of narcotics in 2011; mother has a 2014 conviction for the same offense.

In 2013, the Los Angeles County Department of Children and Family Services (Department) filed a petition asking the juvenile court to exert dependency jurisdiction over the children

on the basis of (1) maintaining an unclean home, and (2) father's history of DUI convictions. The juvenile court exerted jurisdiction on those bases. We reversed, concluding that "the Department did not prove what it alleged, and did not allege what it tried to prove."

The Department thereafter filed a first amended petition with the following new and different allegations that, in its view, warranted the exertion of dependency jurisdiction over the children: (1) father and mother engaged in domestic violence in front of the children, thereby placing the children at "substantial risk" of "serious physical harm" (a) "inflicted nonaccidentally" (within the meaning of Welfare and Institutions Code section 300, subdivision (a)),<sup>1</sup> and (b) "as a result of" the parents' "failure or inability . . . to adequately . . . protect the child[ren]" (within the meaning of section 300, subdivision (b)); (2) father and mother each possessed and used illegal narcotics in the children's presence and suffered related convictions, thereby placing the children at "substantial risk" of "serious physical harm" due to the parents' failure to "adequately . . . protect the child[ren]" (within the meaning of section 300, subdivision (b)); (3) father and mother each had a history of illicit drug and/or alcohol abuse, thereby placing the children at "substantial risk" of "serious physical harm" due to the parents' "inability . . . to provide regular care for the child[ren]" (within the meaning of section 300, subdivision (b)); (4) father and mother have a "history" of drug and/or alcohol abuse and a criminal history involving substance abuse, thereby placing the children at "substantial

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

risk” of “serious physical harm” due to the parents’ “inability . . . to provide regular care for the child[ren]” (within the meaning of section 300, subdivision (b)); and (5) father and mother “failed to provide the children with the basic necessities of life, including . . . food, clothing, shelter, and medical care,” which (a) placed the children at “substantial risk” of “serious physical harm” (within the meaning of section 300, subdivision (b)), and (b) left the children “without any provision for support” (within the meaning of section 300, subdivision (g)).

At a hearing on July 29, 2016, the juvenile court sustained all of these allegations and placed the children, for the time being, in the custody of the maternal grandparents. In making this ruling, the court noted “both parents[] . . . long history of drug abuse”; their failure to appear for any drug tests; father’s prior drug use conviction; and the “nexus” between father’s and mother’s drug use and their “lack of supervision” of the children, including their inattentiveness that allowed G.H. to wander onto train tracks. The court found that “there is a current risk” “returning” the children “to the parents based on the fact that . . . father is incarcerated, mother’s whereabouts are unknown, and there’s no evidence that they’ve done anything to address these issues that have brought the children to the court’s attention.” The court rejected the parents’ argument that the children were no longer at risk of harm because they were currently safe in the maternal grandparents’ house, explaining that the children were placed there “by the court and the Department, . . . which cannot be credited to the parents.”

At a hearing on September 13, 2016, the juvenile court removed the children from father and mother, and ordered family reunification services for both parents.

Father thereafter filed a timely notice of appeal.

## **DISCUSSION**

In this appeal, father argues that the juvenile court's finding that his children are currently at risk of harm is not supported by substantial evidence, such that the court erred in asserting dependency jurisdiction and in removing the children from his custody. Because father's challenge to the juvenile court's removal order is based entirely upon the alleged invalidity of the court's jurisdictional order, we confine our analysis to the jurisdictional order. In so doing, we review that order for substantial evidence, which means we must affirm as long as there is enough evidence in the record that is reasonable, credible, and of solid value that a reasonable trier of fact could reach the same conclusion as the juvenile court. (*In re K.B.* (2015) 239 Cal.App.4th 972, 979-980.)

### **I. Propriety of Father's Challenge**

As a preliminary matter, the Department urges that we need not reach father's argument at all because mother has not challenged the juvenile court's assertion of jurisdiction, such that a successful challenge by father will have no effect on the propriety of the juvenile court's jurisdictional order. Although a juvenile court's assertion of jurisdiction over children is valid if it is sustained as to *either* parent (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397), we have the discretion to decide the merits of one parent's appeal—even when the other parent whose conduct also underlies the juvenile court's jurisdictional findings does not appeal—when, among other times, the challenged jurisdictional finding “serves as the basis for [the] dispositional orders that are also challenged on appeal” or “could be prejudicial to the [appealing parent] or could potentially impact the current

or future dependency proceedings.” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) In this case, the allegations sustained against father are largely identical to the allegations sustained against mother; a ruling by this Court that there is insufficient evidence to support the truth of those allegations would have the effect of upsetting jurisdiction on the basis of *both* parents’ conduct. In these circumstances, we elect to exercise our discretion to reach the merits of father’s challenge.

## **II. Merits of Father’s Substantial Evidence Challenge**

A juvenile court may exercise dependency jurisdiction over a child under subdivision (a) of section 300 only 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.” (§ 300, subd. (a).) Dependency jurisdiction lies under subdivision (b) of section 300 only if, in pertinent part, “[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” (1) “the failure or inability of his . . . parent . . . to adequately supervise or protect [him],” (2) the “negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment,” or (3) “the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.” (§ 300, subd. (b)(1).) And dependency jurisdiction lies under subdivision (g) if “[t]he child has been left without any provision for support; . . . the child’s parent has been incarcerated . . . and cannot arrange for the care of the child” or “the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.” (§ 300, subd. (g).) Under both subdivisions (a) and (b), the child must face the requisite risk of suffering harm ““at the time of the

[jurisdictional] hearing.’” (*In re M.M.* (2015) 240 Cal.App.4th 703, 719; but see *In re J.K.* (2009) 174 Cal.App.4th 1426, 1435-1436.)

Father does not challenge the sufficiency of the evidence underlying the juvenile court’s findings that he and mother engaged in domestic violence, that he and mother possessed and used narcotics in front of the children, that he and mother suffered convictions for their drug use, that their drug abuse rendered them unable to regularly care for the children, that he and mother failed to provide the children with the basic necessities of life, or that he was incarcerated at the time of the jurisdictional hearing or that mother’s whereabouts were unknown. Instead, father focuses his argument on a single challenge—the placement of the children with the maternal grandparents (1) eliminates all current risk to the children (thereby precluding jurisdiction under subdivisions (a) and (b) of section 300), and (2) leaves the children with a provision for support (thereby precluding jurisdiction under subdivision (g) of section 300).

Father is correct that a guardianship with a “suitable custodian [who is] able to protect [a] child from the risks posed by the parent’s behavior” can be “sufficient to ensure the child’s safety, protection and well being,” thereby obviating any risk to the child and, ostensibly, providing for the child’s support. (*In re Kaylee H.* (2012) 205 Cal.App.4th 92, 106.) Thus, “parents may seek a short-term or a long-term probate guardianship to avoid the involvement of the county welfare agency.” (*Adoption of Myah H.* (2011) 201 Cal.App.4th 1518, 1536.) But where, as here, the question is one of jurisdiction, we must focus on whether the parents have eliminated the risk to their children “at the time of

the jurisdictional hearing.” (*In re J.O.* (2009) 178 Cal.App.4th 139, 153-154; *In re Aaron S.* (1991) 228 Cal.App.3d 202, 209-210.) At the time of the jurisdictional hearing in this case, S.H. and G.H. were temporarily placed in the custody of the maternal grandparents by the juvenile court, not pursuant to any short-term or long-term guardianship. It does not suffice, as father seems to suggest, that he could apply for a guardianship at some point in the future. He has yet to do so, and until a guardianship is created, the maternal grandparents lack the rights of legally appointed guardians, and the children remain at risk of being placed back with mother and father, a situation that father does not dispute is fraught with risk.

Father also cites *In re A.G.* (2013) 220 Cal.App.4th 675, 684-685, but that case held that children were not at risk within the meaning of section 300 when their nonoffending parent was “able to protect them from any harm from [the other parent’s] mental illness.” Here, however, father and mother are *both* offending parents, and the maternal grandparents are neither parents nor guardians.

More fundamentally, father’s argument would mean that a juvenile court’s temporary placement of a child with custodians capable of ensuring the child’s safety—which is precisely what the juvenile court *should* do—would eliminate all risk to the child and thereby eliminate the basis for dependency jurisdiction. But this reasoning would consequently eliminate the juvenile court’s power to remove or otherwise detain the child from his or her parents and require the court to place the child right back with the offending parents who put the child at risk in the first place. The logic underlying father’s argument would gut the entire



dependency system. We cannot, and will not, endorse such an absurd result.

**DISPOSITION**

The orders are affirmed.

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\_\_\_\_\_, J.  
HOFFSTADT

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
CHAVEZ