

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B280088

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. DK19925)

Plaintiff and Respondent,

v.

M.P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County, Lisa R. Jaskol, Judge. Affirmed.

Nicole Williams, under appointment by the Court of  
Appeal, for Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Stephen D. Watson, Deputy  
County Counsel, for Respondent.

---

Appellant M.P. (hereafter Mother) appeals jurisdictional findings by the juvenile dependency court. We affirm.

### **FACTS**

Mother is a parent of three children by different fathers: Josiah P. (born in June 2007), J.F. (born in June 2010), and Adam P. (born in October 2013). None of the fathers are involved in the present appeal.

In July 2016, the Los Angeles County Department of Children and Family Services (DCFS) received a referral reporting that Mother abused alcohol for several years, and “drinks a lot on weekends with gang afflicted friends.” Further, the referrer reported that Mother sometimes left home and would “not show up for several days.” Mother would not tell others where she was going, or when she would be back, and would leave the children with their maternal grandmother. When Mother was at home, she would “lock herself in her room” and “all she would do is text her friends.” The children were “often dirty, unkempt and not fed.”

About a week after the referral, a DCFS social worker responded to the family home and interviewed the family members. Mother denied having an alcohol problem or disappearing for days, and claimed she always made sure the maternal grandmother cared for the children when she went out with her friends.

Josiah, then nine years old, told the social worker that he felt safe and happy at home, and denied Mother had an alcohol problem or left the home for days. He also denied all forms of abuse in the home, and said that he was punished by being sent to his room. Josiah said the maternal grandmother always supervised him and his siblings when Mother was not home.

Josiah said that Mother cooked, cleaned, and took good care of them.

J.F., then six years old, denied all forms of abuse and said he was happy at home. J.F. said that Mother and the maternal grandmother would punish him by spanking him with their hands or shoes, which hurt but did not leave bruises.

Adam, then two and one-half years old, was too young to make a statement, but the social worker observed him to be healthy and with no marks or bruises.

The day after the interviews of the family in the home, the social worker talked to Adam's father, Jose P. Jose P. stated that he was aware of DCFS's investigation because Mother "kept texting him" and accusing him of making the referral to the agency, which Jose P. denied. Jose P. stated that Mother was a "violent person" and "keeps texting him and telling him that she will kill him." He forwarded a number of text messages to the social worker. Jose P. said that, when Mother "is drunk and upset she can get 'crazy,'" and recounted an incident when she slapped his face in front of the maternal grandmother. On another occasion about a year earlier, Mother slapped Jose P. (in front of the paternal grandmother) while she had been holding Adam, and he slapped her back. Jose P. said he had obtained a restraining order after that episode, but it had expired.

A week after interviewing Jose P., the social worker interviewed the maternal grandmother. She said that Mother became "aggressive" when she drank and would yell at the children over small and insignificant things. The maternal grandmother thought Mother had been "doing better" since DCFS became involved with the family, and that Mother's behavior had "changed."

About two months after the interviews summarized above, in October 2016, DCFS filed a petition on behalf the children pursuant to section 300 of the Welfare and Institutions Code.<sup>1</sup> In general terms, the petition alleged under section 300, subdivisions (a) [serious physical harm], (b)(1) [failure to protect]; and (j) [abuse of sibling], that the children were at risk of harm due to a “history” of domestic violence between Mother and Jose P. Further, the petition alleged pursuant to subdivision (b)(1) that Mother had a history of substance abuse and alcohol abuse that rendered her incapable of properly carrying for the children.

On October 17, 2016, the juvenile dependency court found a prima facie case for detaining the children. The court released the children to Mother on condition that she and the children live with the maternal grandmother.

In November 2016, DCFS received a referral reporting that Mother had physically abused J.F. When interviewed, J.F. said that he and Josiah were playing football a few days earlier, and Mother got upset with them and began kicking him and hitting him with a shoe. J.F. indicated that he was struck on the side of his ribcage and hip. The social worker did not see any marks or bruises. J.F. stated that Mother spanked both of his brothers, and recounted an incident when Mother hit them because the maternal grandmother allowed them to ride around on their scooters. When the social worker talked to Josiah, he stated that Mother disciplined them by spanking them, and added that about a week earlier, she slapped him several times on his arm after repeatedly asking him to quiet down. Mother denied the allegations.

---

<sup>1</sup> All further section references are to the Welfare and Institutions Code.

In December 2016, DCFS filed an amended section 300 petition to add an allegation that Mother physically abused J.F., placing all three children at substantial risk of serious harm.

On December 9, 2016, the dependency court detained the children from Mother under the new allegations, and removed the children from Mother's custody and granted her monitored visits.

In December 2016, DCFS filed its jurisdiction report. DCFS reported that Josiah denied witnessing any physical altercations between Mother and Jose P., but acknowledged that they would "fight with words and yelling." Josiah denied that Mother used objects to discipline him, but admitted she had hit him with her open hand a long time ago. J.F. said there was domestic violence between Mother and Jose P., but it happened "[a] long time ago, not anymore." When asked to clarify, J.F. said, "never mind," and said that he was not aware of any physical fighting.

Mother denied physically abusing the children, and reiterated that she would spank them with an open hand. She maintained that the allegations about domestic violence were old because she and Jose P. had split up two years ago. Mother acknowledged that they ended their relationship due to jealousy and domestic violence, saying, "We both hit each other, it was really bad. He kept me from my family so I left him." She initially claimed that the last incident between them occurred when she was pregnant with Adam, but then stated that over a year ago, she went to Jose P.'s home after he accused her of vandalizing his car, and he struck her. Mother denied vandalizing Jose P.'s car or threatening to kill him. Mother denied that Josiah or J.F. were present during any of the

domestic violence between her and Jose P., and claimed the children were with the maternal grandmother when any of the domestic violence had happened.

Jose P. confirmed that he and Mother broke up two years ago, and admitted he was afraid of her. He said there were multiple times during their relationship when Mother became violent, recalled that she once left him with “purple eyes” from punching him in the face. He claimed that Mother had vandalized his car twice, sent him text messages threatening to kill him, and said that if she ever saw him with another woman, she would physically assault the woman. Jose P. clarified a slapping incident that had been reported earlier — Mother once came to Jose P.’s home upset and asked the paternal grandmother to hold Adam so Mother could hit Jose P., but the paternal grandmother refused, and Mother slapped Jose P. in the face while Mother continued to hold Adam. Jose P. stated that most of the domestic violence between him and Mother happened when they were together as a couple.

J.F.’s father, Gary F., denied any domestic violence with Mother and denied any knowledge of her physically abusing J.F.

At the jurisdiction hearing on December 19, 2016, Mother’s counsel argued that the dependency court should dismiss the petition, noting that Mother and Jose P. ended their relationship over two years ago and their text message exchanges amounted to private conversations that did not occur in front of the children. Jose P.’s counsel joined in urging that the petition be dismissed, arguing there was no showing of a current risk to their son Adam. Counsel for the children stated that she agreed with the parents’ position, and asked the court to dismiss the petition.

The dependency court accepted the reports into evidence, and, after considering the arguments of the lawyers, dismissed the allegations under subdivision (b)(1) regarding Mother's alcohol abuse. (Count (b)(1)-(2).) The court sustained petition's allegations that the children were at risk of harm due to domestic violence between Mother and Jose P. (Counts (a)-(1); (b)(1)-1; (j)-(1).) The court declared the children to be dependents of the court, and released them into Mother's custody with home of parent orders. The court ordered DCFS to provide services to Mother, including random on demand drug tests, and parenting and individual counseling programs.

Mother filed a timely notice of appeal.

### **DISCUSSION**

Mother contends the evidence is insufficient to support the dependency court's jurisdictional findings. We disagree.

When a parent challenges a dependency court's jurisdictional findings on appeal, the reviewing court applies the substantial evidence test standard of review. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Under this standard of review, the appellate court must examine the record in a light most favorable to the dependency court's findings, accepting its assessments of the credibility of the witnesses. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1427.) The dependency court's findings must be upheld when there is any substantial evidence that supports the findings, resolving all conflicts in support of the findings and indulging all reasonable inferences in favor of the findings. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.) Stated in other words, an appellate court will look only at the evidence supporting a finding, and disregard the evidence supporting a contrary finding. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1526.)

Under section 300, subdivision (a), the dependency court may exercise jurisdiction over a child when he or she “has suffered, or there is substantial risk that the child will suffer, serious physical harm” from a parent. A child need not have suffered actual harm for dependency court jurisdiction. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Under section 300, subdivision (b)(1), the dependency court may exercise jurisdiction over a child when “has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness” as a result of the failure of his or her parent to “adequately supervise or protect the child” or by the failure of the parent to “provide regular care for the child due to the parent’s mental illness, developmental disability, or substance abuse.”

Under section 300, subdivision (j), the dependency court may exercise jurisdiction over a child when a sibling “has been abused or neglected, as defined in subdivision [(a) and (b)], and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.” Section 300, subdivision (j), reflects the Legislature’s considered judgment that a parent who abuses or neglects one child potentially poses a risk of doing the same as to a second child. (*In re I.J., supra*, 56 Cal.4th at p. 774.)

On appeal, a dependency court’s decision to exercise jurisdiction will be affirmed when any finding on an alleged basis for jurisdiction is supported by substantial evidence. (*In re I.J., supra*, 56 Cal.4th at p. 773.) “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.” (*Ibid.*)



Here, we see substantial evidence in the record to support a finding that there “is substantial risk that [all three of Mother’s children] will suffer, serious physical harm” within the meaning of section 300, subdivision (a), as a result of Mother’s domestic violence issues. Specifically, Jose P. reported that there were multiple times when Mother had acted violently toward him. Jose P. reported that Mother was a “violent” person, and would act “crazy” when she drank, which, the record showed, occurred fairly frequently. The maternal grandmother reported that Mother was “aggressive” when she drank. Mother once left Jose P. with “purple eyes” from punching him in the face. She slapped his face in front of the maternal grandmother, and on another occasion in front of the paternal grandmother she slapped him while holding her youngest child. Further, she had vandalized his car twice, sent him threatening texts, and threatened to harm any woman who was with him. Mother herself acknowledged that she and Jose P. broke up in part due to their domestic violence, saying, “We both hit each other, it was really bad.”

While Mother and Jose P. no longer lived together, a reasonable trier of fact could reasonably infer from the history summarized above that Mother posed a substantial risk of harm to her children, thus justifying dependency court intervention for the children’s protection. The exercise of dependency court jurisdiction under section 300, subdivision (a), is warranted when the facts show a substantial risk that a child will suffer serious physical harm “inflicted nonaccidentally by the parent.” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-600.) Here, Adam was undoubtedly at risk of suffering serious physical harm nonaccidentally in that Mother engaged in domestic violence with Jose P. while Mother was holding Adam. The only an infant,

Adam could have been struck or fallen to the ground. There is also the evidence in the record showing that Mother began kicking and hitting J.F. and Josiah because they were riding their scooters. Therefore, the application of section 300, subdivision (a), is supported by substantial evidence.

For similar reasons, the court's finding under section 300, subdivision (b), is also supported by substantial evidence. "[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect . . . from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [affirming findings under section 300, subd. (a)].) Adam was directly involved in the domestic violence between Mother and Jose P. when Mother was holding the child. Further, J.F. stated that he witnessed domestic violence. This type of conduct placed all the children at risk, and supported jurisdiction under section 300, subdivision (b)(1).

We are not persuaded to reach a different conclusion based on Mother's reliance on *In re Daisy H.* (2011) 192 Cal.App.4th 713 (*Daisy H.*). In *Daisy H.*, the Court of Appeal reversed a finding that the children were described by section 300, subdivisions (a) and (b), where the evidence showed that domestic violence between the parents last occurred "probably seven years" before DCFS filed the section 300 petition, the parents had since separated, and there was no evidence that any of the children were physically exposed to the past violence between the parents. (*Id.* at p. 717.)

Here, it appears the bad blood between Mother and Jose P. was more of an ongoing issue than it was between the parents in

*Daisy H.* Indeed, at the time that the DCFS social worker was interviewing the parents, Mother was texting messages to Jose P. threatening to kill him. In many dependency cases, of course, the issue of risk of harm is a matter of degree. Here, we are satisfied that Mother's domestic violence issues justified dependency court jurisdiction here, while we can see why, in *Daisy H.*, the Court of Appeal came to a different conclusion.

We are similarly unpersuaded by Mother's arguments based on *In re Isabella F.* (2014) 226 Cal.App.4th 128. The general principle to be taken from *Isabella F.* is that, while a single act of hitting a child without injury may not amount to infliction of "serious physical harm" on a child within the meaning of section 300, subdivision (a), dependency court jurisdiction may still be appropriate when the evidence shows a problematic pattern with a parent's conduct. (*In re Isabella F.*, *supra*, 226 Cal.App.4th at p. 139, citing *In re N.M.* (2011) 197 Cal.App.4th 159, 162-163, 169 [although the father did not injure his daughter when he started to drive away while the girl was reaching into his truck's cargo area, the incident was part of a larger pattern of physical abuse].)

In the case before us today, as we have noted, we see a broader pattern of conduct in Mother's violent behavior, placing her children at risk. Mother's case thus falls more under the umbrella of *In re R.C.* (2012) 210 Cal.App.4th 930 (*R.C.*). In *R.C.*, the evidence showed that there had been multiple incidents of domestic violence between the parents, including death threats. Further, one of domestic violence incidents occurred in the presence of the parents' three-year-old child. (*Id.* at pp. 935, 942-944.) The Court of Appeal distinguished *Daisy H.*, noting that it was not faced with a record of a single act of domestic violence

that was not witnessed by the child. (*R.C.*, at p. 944.) As we noted above, dependency cases are often a matter of degree, and we find Mother's present case falls more on the side of *R.C.*, than *Daisy H.*

Finally, because we have found that the dependency court properly exercised its jurisdiction under section 300, subdivisions (a) and (b)(1), we need not address the court's finding under subdivision (j).

### **DISPOSITION**

The dependency court's jurisdictional findings are affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.