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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re D.J. et al., Persons Coming Under the
Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

B.J.,

Defendant and Appellant.

A131956

(San Francisco City & County
Super. Ct. Nos. JD10-3274,
JD10-3274A, JD10-3274B,
JD10-3274C)

B.J., the mother of four sons aged nine to 16, appeals from the dispositional order of the juvenile court declaring the sons to be dependent children.¹ Her sole contention is that substantial evidence does not support the court's findings sustaining the allegations of the petition filed by the San Francisco Human Services Agency (Agency). We reject this contention, and we affirm.

¹ These are the ages of the children at the start of the dependency. Several of them advanced a year before the dispositional order was entered. Because of concern for the minors' privacy, their first names cannot be used here. Abbreviating the minors' names to initials is no improvement because there would be two "J.J.'s and two "D.J.'s. The minors will therefore be designated by their age at the commencement of the dependency.

BACKGROUND

The Agency alleged in its petition that the children came within subdivision (b) of section 300 of the Welfare and Institutions Code² in that appellant “failed to provide for the educational needs of the children” (allegation b-4) and “leaves the children under the care and supervision of the maternal grandmother who is unable to provide appropriate care and supervision that the children require” (allegation b-5). The Agency further alleged that the children were suffering serious emotional damage and thus came within subdivision (c) of that statute in that the 12-year-old had an “anger management problem” (allegation c-1), and the nine-year-old had “out of control behavior in school” (allegation c-2). Finally, the Agency alleged that the children came within subdivision (g)—failing to support—because “the identity and whereabouts of the alleged father are unknown at this time” (allegation g-1).

In her jurisdictional/dispositional report, the Agency’s caseworker, Theresa Weeks, stated in her “assessment/evaluation”:

“At this time, the mother has done the minimum amount to cooperate with the Department. The undersigned has received calls from FCMH providers stating that the mother’s voicemail is full and they have been unable to reach the mother to set up therapy services for the minors. On 10/12/10, the undersigned received a call from Laurel Enzo of Seneca Wrap Around services, stating that she has been unable to get a hold of the mother for the past two weeks. As of this writing, the CANS assessment for [the 16-year-old] has not been completed because the minor rarely attends Ida B. Wells where he is enrolled.³

² Statutory references are to the Welfare and Institutions Code unless otherwise indicated. References to a particular subdivision are to section 300.

³ CANS is an acronym for Child and Adolescent Needs and Strength assessment. In her addendum to this report, Ms. Weeks reported that such an assessment was attempted for the oldest minor, prepared by “CANS worker Debra Safren, Ph.D.,” and that as a result “a therapist was located for him through CANS, but the mother never followed through with his treatment.” At another point in her addendum, Ms. Weeks told

“While it is concerning that the mother minimizes the behavior of [the nine-year-old], he does appear to be doing well thus far in his new NPS (non-public school) placement of Erikson School. He officially started school on 9/28/10 so it seems important to see how this educational placement will work out before placing him in a more restrictive environment. Part of his continued success at this school will have to do with the mother’s cooperation with services i.e.: getting him ready for school on time, working with Seneca WRAP on his behaviors at home and at school.

“It will be critical for the mother to cooperate with services for the children. In particular, [the nine-year-old] will need the support of therapy and behavioral intervention (Seneca WRAP) to address his needs. Unfortunately in the past, the mother stated that she would follow through with Child Crisis for [the nine-year-old], but then she never followed through. Now that these services are required, hopefully she can get the help she needs so that the minors can all remain in the home with her.”

Ms. Weeks concluded: “There is a need for Court intervention . . . because: The mother has failed to follow through with recommended services in the past. . . .” And she informed the court: “This has been a difficult case to assess. The mother has not been forthcoming in her cooperation and participation with the Department. She always seems to have excuses for why the children are always missing school or why she has missed appointments. It took the undersigned some time to arrange a meeting at the home in order to see the home and see the minors. [¶] . . . [¶] At this time, the mother has done the minimum amount to cooperate with the Department.” Moreover, appellant “has refused to give the Department any information on the fathers of the children.”

Ms. Weeks submitted a proposed case plan that would require appellant to:
(1) “undergo individual therapy which addresses concerns regarding her anti-social behaviors”; (2) “complete a parenting education program focusing on parenting teenagers”; (3) “undergo a psychological evaluation and follow any recommended

the court that a “CANS assessment was done for all of the children in this case.” If a CANS assessment was completed, it is not in the record.

treatment”; (4) “obtain appropriate medical and dental care for the children”; (5) “ensure the children’s regular attendance at therapy”; (6) “maintain a clean and safe home for the children”; and (7) “provide adequate supervision for the children.”

In an addendum, Ms. Weeks reported that appellant “continues to evade the undersigned worker,” explaining as follows:

“The undersigned was unable to make the scheduled appointment for 2/11/11 due to personal illness. Supervisor Deborah Goldstein left a voicemail message for the mother that the appointment had to be cancelled and the supervisor requested that the mother contact the undersigned to reschedule a home visit to see the minors and mother. The undersigned did not hear back from the mother so the undersigned left a voicemail message for the mother on 2/7/11, telling her of the undersigned’s available times. As of this writing, the undersigned has not heard back from the mother. The undersigned attempted to meet with the mother on January 6, 2011 at a Seneca Wrap services meeting regarding [the nine-year-old], but the mother failed to show for the meeting.

“According to principal Shelly Lobell, of Erikson School, . . . [the nine-year-old] has been doing quite well academically and behaviorally since he entered the program The teaching staff have noted that [the nine-year-old] tends to get upset when questions about his family or home life come up. For example, one of his teachers wanted to do a project with the children about their families. [The nine-year-old] became very upset and told the teacher that it is private information that he is not allowed to talk about. Also, the school staff were informed that mother . . . is due to have her baby in early February this year. When one of the teachers asked [the nine-year-old] if he has a new brother or sister, [the nine-year-old] became upset and again said he cannot talk about it.

“Apparently the mother . . . informed the school staff at an IEP meeting that she is pregnant and due in early February 2011. [The nine-year-old] did not know his mother was pregnant [circumstantial evidence that mother did not live with him] and [he] expressed anger to his teachers that his mother did not tell him about it. Somehow, [the nine-year-old] feels that he cannot talk at all about his home life. Additionally, [the

nine-year-old] has indicated that his mother does not live in the home with the boys. He told this to a staff member but then rescinded what he said. He told his teacher that he is not supposed to tell anyone or talk about it. Service providers working with the family (Seneca) and school personnel were reluctant to tell the undersigned these things because of their fear of retaliation of some sort by the mother (such as removing [the nine-year-old] from his school for disclosing personal information about the family or the mother not allowing him to go on his outings with Seneca staff). However, the reporting parties also have concern that [the nine-year-old] is not allowed to talk about his family or the things that are important to him. The undersigned has concerns that [the nine-year-old] has to carry this information around as a secret; it seems like a large burden for a small boy to carry.

“According to Seneca Wrap staff, Laurel Anzele, the mother has not met with her regarding [the nine-year-old’s] case since sometime in December 2010. The undersigned attended a Seneca Wrap meeting on January 6, 2011, where the mother . . . was supposed to attend. The mother did not show for the meeting, even after Ms. Anzele called her to remind her and offer her a ride Ms. Anzele is concerned that Seneca may not be able to keep the case open because the mother is not involved and it appears that the mother does not live in the home with the boys. On the occasions that Seneca staff go to the home, usually the mother is not at the house; the maternal grandmother is at the home but Seneca does not have a release to talk to her. On one occasion, Support Counselor Sai Douangsawang went to the home on a Saturday to pick [the nine-year-old] for an outing. Mr. Douangsawang heard much scurrying behind the door when he rang the doorbell to the home. He rang the doorbell several times before he called the mother’s phone number. The mother did not answer and no one answered the door, so [the nine-year-old] was not able to go on the outing with the Support Counselor. Then mother called the Support Counselor much later in the day. According to Laurel Anzele, Seneca Wrap will not be able to continue because the mother is not the primary care provider for [the nine-year-old], the maternal grandmother appears to be, and Seneca does not have a

release to work with MGM. Seneca needs the primary caregiver for the child to be actively involved in the case in order to be effective.

“[The nine-year-old’s] school sends home a progress report daily that needs to be signed by the mother. Because [the nine-year-old] is unable to get the daily progress report signed, he loses points in school, which makes him upset. If [the mother] is not living in the home, she is not able to sign the progress reports for [the nine-year-old]. The undersigned has no way to determine if the mother is not living in the home with the boys.

“On 12/6/10, the undersigned spoke to Frank Jones, who is the new power of attorney for . . . the boys’ great grandfather, whose home the family resides in. . . . Mr. Jones does not believe the mother . . . stays at the house with the children because the mother, when she had power of attorney over [the great grandfather’s] estate, used her grandfather’s money/account to purchase some pieces of furniture that she had delivered to an address that was not [the great grandfather’s] home. Mr. Jones has been trying to get the address where the furniture was delivered . . . , but has been unable to do so (phone call with Frank Jones on 12/6/10)

“Mr. Jones could not confirm allegations about the maternal grandmother . . . using drugs. The undersigned believes that the grandmother may be using drugs, given her erratic behavior on the few times that workers have actually been in the house. There has been no way for the undersigned to confirm this fact, but the undersigned wonders if this might be part of the reason that the mother . . . does not want the undersigned to know that she is not staying in the home with the boys

“. . . Dr. Debra Safren connected [the 12-year-old] to a . . . male therapist at the Royal program but the mother failed to follow through with the referral, so [the 12-year-old] was dropped. The entire family was referred for family therapy at Royal, but they have been dropped due to the mother’s lack of follow through. . . . Royal Counseling closed the case later in the month after the mother failed to respond to their numerous phone calls and letters

“[The 15-year-old] is still enrolled at Burton High School His case was sent to the DA’s office regarding his lack of attendance at school. The DA’s office has yet to hear back from the mother, or any responsible adult on his matter.”

Ms. Week’s assessment was as follows:

“This case has presented quite a conundrum to the undersigned worker. The undersigned has spoken to staff at Seneca . . . and Erikson School who work closely with [the nine-year-old]. Both have expressed that they do not want repercussions against [the nine-year-old] for disclosing information to them; many of those service providers, school staff have asked the undersigned if there is anyway the undersigned can reveal the information without disclosing how they received the information. If the caregivers are concerned about repercussions against [the nine-year-old], one can only imagine how much anxiety it causes [the nine-year-old] when he talks about his family.

“There are many allegations in this case about the mother, the maternal grandmother and the treatment of the maternal grandmother as well as the children. The undersigned has been unable to prove that the mother lives outside of the home where the minors reside. The undersigned has been unable to assess the appropriateness of the maternal grandmother to care for the children, if the mother is not living in the home and the MGM is the primary caregiver. The undersigned believes that the mother does not reside in the home based on several factors that have emerged throughout the case, including her extreme secrecy and evasiveness. The children have disclosed that the mother does not live in the home, but then they take it back out of fear of retribution. It is unknown what the mother tells the children will happen to them if they disclose anything.

“While the minors are receiving the basic necessities, receiving a minimum sufficient level of care, the undersigned worries about the family secrets and the lengths the mother goes to in order to maintain those secrets; she expects her children to keep her secrets. The school staff and services providers all referred to ‘the secrets’ of the family when talking to the undersigned about this case. It seems abnormal to expect children not to talk about their home lives. The undersigned feels that this may be a huge contributor

to [the nine-year-old's] behavior in the past. The school reported that [the nine-year-old] will not even talk to his therapist (at Erikson school) about his home life.

“The mother . . . has not been cooperative with the undersigned worker. For the longest time, the mother blocked any incoming calls from the undersigned worker so that the worker was not even able to leave messages. . . . While the children do have basic provisions and the case does not rise to the level of removal, the undersigned is unsure what an ‘In-Home’ services case will do for the family, given the mother’s serious lack of cooperation. . . . It is apparent to school staff that [the nine-year-old’s] secret-keeping causes him anxiety CANS . . . felt that all the minors had significant issues that should be addressed through therapy. . . .”

The jurisdictional hearing commenced on February 28, 2011, and was continued to May 9. On May 9, the court concluded the jurisdictional hearing and moved immediately into the dispositional hearing. Appellant was present at both hearings.

Proceedings on February 28 opened with counsel for the children advising the court that “the children do not believe that there should be jurisdiction in this case.” Only the 12-year-old was present in court. The youngest, the nine-year-old, “did not want to come today.” As for the two oldest children, counsel told the court: “[They] are teenagers who I have not really been able to be in contact with. They are not in school.”

After ruling on appellant’s objections to various portions of the reports submitted by caseworkers Timothy Laird (who prepared the “Initial Petition/Jurisdiction Report”) and Theresa Weeks (who prepared the jurisdictional report and addendum),⁴ the court

⁴ Almost half of the first hearing was devoted to the court considering appellant’s numerous hearsay objections to various portions of the reports. The court repeatedly ruled that it would make its decision in conformity with section 355, which generally prohibits challenged hearsay in caseworker reports from being the sole evidentiary basis for a jurisdictional finding. (§ 355, subd. (c)(1).) However, the hearsay is admissible if, among other reasons: (1) it is within an exception to the hearsay rule; or (2) if it comes from a specified professional such as a peace officer, social worker, teacher, or “health practitioner.” (§ 355, subd. (c)(1)(C)); or (3) if it has some slight corroboration. (See *In re R.R.* (2010) 187 Cal.App.4th 1264, 1280-1281.) All three reports were received in evidence. The court also ruled that Dr. Safren (see fn. 3, *ante*), and Shelly Lobell, the

heard brief testimony from Mr. Laird. Apart from authenticating his report, the only pertinent testimony from Mr. Laird was that he determined the nine-year-old “is eligible for special education services based on emotional disturbance.”

After authenticating her reports, Ms. Weeks was asked why she believed the nine-year-old should be a dependent. Her answer was that “I have concerns about [the nine-year-old’s] behaviors that have been exhibited at school. Most recently I spoke to the school principal, Shelly Lobell, who stated that since the mother announced to the school that she was pregnant, that [the nine-year-old’s] behavior has, he started to act out again” Asked the same question about the 12-year-old (the one who was present at the hearing), Ms. Weeks testified that he should be made a dependent because “I believe that he would benefit from certain services such as therapy.”

On cross-examination by the minors’ attorney, Ms. Weeks testified that she did not believe appellant “at this time” was living with the minors at the maternal grandmother’s house. Ms. Weeks did not believe the minors “are at imminent risk at this time,” even though the minors’ maternal grandmother “might be using substances,” but she did have “concerns about behavioral issues.” Ms. Weeks testified that the behavioral problems of the nine-year-old “are pretty severe,” and included threats to injure animals.⁵

Further cross-examination of Ms. Weeks disclosed that the information in the addendum report about the nine-year-old’s behavior at his school originated with the school’s principal, Shelly Lobell, and therefore qualified for admission under section 355. When Ms. Weeks was asked about the passage in the addendum about her “worr[ying]

principal of the school attended by the nine-year-old, qualified as one of the professionals mentioned in section 355. In her brief, appellant does not mention this aspect of section 355, which we take to be an implicit concession that the court did not make improper use of any hearsay material in those reports.

⁵ At this point the court warned the 12-year-old “one more time and I am going to have to ask you to leave the courtroom. Young man, I am talking to you. Do you understand what I am saying? Don’t be such a smart alec. There is no reason for you to be doing that. You are in a courtroom. Just take it easy, take it easy and be quiet” The minor then stormed out, followed by appellant. The minor later returned to the hearing. He did not attend the May 9 hearing.

about the family secrets,” she testified that it was based in part on “the way the children act[ed] around me.” According to Ms. Weeks, the 12-year-old “is having a lot more trouble in school recently.”

Counsel for the minors prefaced his arguments by noting that “I haven’t spoken” with the two oldest minors “in many months.” Two of the four minors were not in school. Counsel continued: “I think we have just scratched the surface of the needs of these children and I really think they’d benefit from services.

“I am concerned that if the Department does not have an open CPS case, that there will not be any follow-through on the services that have begun to . . . at least get the kids starting to be on track.

“I think there is evidence that the mother is not living in the home, and we are uncertain whether the grandmother is an appropriate caregiver. There’s been evidence that the grandmother might have a substance abuse problem. In addition, there’s been significant amount of evidence that the mother doesn’t live in the home.

“[The 12-year-old] has significant anger management problems, and if they don’t get addressed I believe they are going to escalate. I believe we witnessed it here last time we were in court. And I have also spoken to the Court and they were concerned.

“I think it’s a difficult case because the family, the children are so bonded with their mother that it’s an in-home dependency, . . . but at the same time we are kind of being kept at arm’s length, and I don’t think that is a reason to not have dependency because we are kept at arm’s length. I think once we have jurisdiction in this case we might be able to have significant progress in getting the family engaged in services with or without the support of the mother.”

Counsel for mother “beg[ged] to differ,” and elaborated:

“I think there’s been some contradictory evidence about whether mother lives in the home. Mother has certainly reported to the Agency that she does live in the home And even if it that were true, it does not rise to the level of neglect.

“Some of the allegations were late to school. I think the case *In re Janet T.*⁶ is dispositive on that issue. Not insuring the children’s regular attendance at school is not grounds for jurisdiction.

“Also, while there’s been some evidence that [the nine-year-old] and [the 12-year-old] have some emotional issues, there’s been no evidence regarding the cause of those issues. In fact, the evidence now is that [the nine-year-old] is in an appropriate school, he is doing a lot better.

“Also I think the Court has probably noticed that certainly the last time worker [i.e., Ms. Weeks] went to the home it was a lot cleaner. That was one of the allegations in the petition, it was about the cleanliness of the home, and that was a few months ago. Unfortunately, there isn’t any clear information one way or the other about the status of the home.

“And certainly the reports are that [the 12-year-old] is involved in therapy, and [the nine-year-old] is also involved through the school, through his nonpublic school setting. So I think in terms of the 300(c) counts there is simply not a clear nexus and . . . I would certainly argue that the CANS assessment is not enough to demonstrate the . . . severe emotional damage referenced by that statute. [¶] . . . [¶]

“. . . [U]nfortunately there is not a lot of evidence in this case supporting any of the allegations. The children present with some problems but are getting treatment for those problems. And I would ask the Court find there is not sufficient evidence for jurisdiction in this case.”

Counsel for the Agency asked the court “to find true [allegations] B-4, B-5 and the two C counts.

“With the C counts there doesn’t have to be a nexus. Actually I don’t care if the Court checks the first box or the second box saying the parent isn’t capable of providing

⁶ *In re Janet T.* (2001) 93 Cal.App.4th 377 stands for the proposition that a parent’s failure to ensure a minor’s attendance at school did not amount to a substantial risk of serious physical harm that would justify the assumption of jurisdiction under subdivision (b).

appropriate care. It wasn't mom who got [the nine-year-old] into Erikson School, it was the child welfare worker after the Department was involved.

“The child welfare worker just testified that Seneca services may be out if the child is not a dependent.

“And the Court saw [the 12-year-old's] behavior, and the Court also saw mom's inability to deal with it.

“So those two C counts are true. Those two C counts are counts about the children that we are most interested in at the Department.

“[The two oldest minors] do not want anything to do with us, and I frankly don't see anything we can do to help them.

“So I would ask the Court to find, as I said, B-4, B-5 and C-1 and C-2 true.

“As to *Janet T.*, *Janet T.* is true. First of all, it's a case that is odd in its line of cases about school. But also *Janet T.* is about school when school is the only issue. *Janet T.* does not apply in this case. As mom's counsel just said, when [the nine-year-old] got in a proper school placement he started to improve. So this is about children that need to go to school, not the *Janet T.* child who does or does not need school, very different case than that.”

The juvenile court then ruled as follows:

“One of the most stunning things about this case is the lack of current and specific evidence that I have for this family, which makes it extremely difficult to make orders of one sort or another.

“I am going to find jurisdiction in this case. I think this family needs services. I don't think this family will be in the dependency system for a long period of time, but I think that for now court-ordered services must be put in place for at least the near future.
[¶] . . . [¶]

“On all four children. I think that's going to change. But I am very concerned about a lack of current and specific information. There is a lot of speculation and could be and might have. I can't withdraw a petition based on that.

“And again I feel confident that this family will not be in the dependency for a long period of time. . . .”

The court then sustained the allegations noted at the beginning of this opinion, dismissed the remaining allegations, and ordered all the minors placed in the mother’s home.

Over the mother’s objection, the court ordered that she undergo a psychiatric evaluation, as recommended by the Agency: “I am also concerned about the whole relationship of the mother’s parents to this case and the whole situation of the home ownership, and the whole situation with the family not cooperating with the Agency. [¶] Of course no parents want to cooperate with the Agency if their children are taken away or if their children are kept in the home, and that’s totally understandable. But I think the level of noncooperation in this case has really risen to an alarming level, and that the culture of secrecy is very alarming to me.” “And just to be clear, the psychological evaluation is of course meant to suggest any treatment if it’s recommended, and also to tailor services to [the mother].”

REVIEW

Principles Guiding Our Analysis

“The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to all appeals. If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251; accord, *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) “[A]n appellate court does not reassess the credibility of witnesses or reweigh the evidence. [Citation.] Conflicts in the evidence must be resolved in favor of the juvenile court’s findings, and the evidence must be

viewed in the light most favorable to the judgment, accepting every reasonable inference that the court could have drawn from the evidence. [Citations.] Thus, we must uphold the juvenile court’s factual findings if there is any substantial evidence, whether controverted or not, that supports the court’s conclusion.” (*In re S.C.* (2006) 138 Cal.App.4th 396, 415.) Those findings can be express or implied on appeal. (*In re Arturo D.* (2002) 27 Cal.4th 60, 77; *In re S.G.* (2003) 112 Cal.App.4th 1254, 1260; *In re Rebekah R.* (1994) 27 Cal.App.4th 1638, 1652.)

Section 300, subdivisions (b) and (c) provide in pertinent part:

“Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

“[¶] . . . [¶]

“(b) The 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. . . .

“(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. . . .”

“Jurisdiction is appropriate under section 300, subdivision (b) where the court finds ‘[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 willful or negligent failure of the

parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment’ . . . [T]hree elements must exist for a jurisdictional finding under section 300, subdivision (b): ‘(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness.’ (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) ‘The third element “effectively requires a showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]” ’ (*In re David M.* (2005) 134 Cal.App.4th 822, 829, quoting *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.)” (*In re J.O.* (2009) 178 Cal.App.4th 139, 152.)

With respect to subdivision (c), it “ ‘sanctions intervention by the dependency system in two situations: (1) when parental action or inaction causes the emotional harm, i.e., when parental fault can be shown; and (2) when the child is suffering serious emotional damage due to no parental fault or neglect, but the parent or parents are unable themselves to provide adequate mental health treatment.’ ” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329, quoting *In re Alexander K.* (1993) 14 Cal.App.4th 549, 557.)

The Court’s Findings Are Supported By Substantial Evidence

At the outset, two points must be made.

First, any one of the five jurisdictional findings, if validly made by the juvenile court, will support the assertion of dependency jurisdiction. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.)

Second, “a jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minors] within one of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent.” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; accord, *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16; *In re Joshua G.* (2005) 129 Cal.App.4th 189,

202.) Thus, in order to quash the dependency, appellant must persuade us to overturn not only the findings against her, but also the finding against the father(s).

Nevertheless, we will address appellant's arguments as to why there is no substantial evidence to support the Agency's allegations.

Appointed counsel for appellant adroitly plays the cards dealt him by the record, placing considerable emphasis on what the juvenile court characterized as the "stunning . . . lack of current and specific evidence" before the juvenile court at the February-May hearings. Thus, counsel concludes: "There was no sufficient evidence that Mother had been neglectful. There was no evidence connecting the mother to any harm suffered by the minors," merely "a lot of speculation." Counsel also sees considerable value in Ms. Weeks's testimony that she did not discern "imminent risk" the minors "at this time," as a concession that no statutory basis existed for juvenile court jurisdiction. Citing *In re Janet T.*, *supra*, 93 Cal.App.4th 377 (see fn. 6, *ante*), counsel reiterates the argument made to the juvenile court—that any failure to ensure the minors attended school does not justify a dependency under subdivision (b). Recognizing its importance, counsel maintains there is no substantial evidence that appellant left the minors in the care of their maternal grandmother.

Ultimately, appellant's position comes down to this: There is no evidence that any of her sons suffered any actual physical harm or emotional damage. Neither is there proof, in the absence of up-to-date information, that any of her sons are likely to suffer serious physical or emotional harm. What we have here is a situation where the juvenile court simply concluded the only way this family could get the services the court believed they needed was if the minors were made dependents, even if they did not meet the criteria of subdivisions (b) and (c).

Appellant's position is ably advanced and stoutly defended. In particular, counsel does a particularly effective job in attacking the two allegations based on subdivision (b), which appear distinctly problematic. However, because the sustained subdivision (c) allegations have the support of substantial evidence, counsel's efforts are not sufficiently persuasive to secure a reversal.

At the outset, appellant is incorrect that the record will not support an implied finding by the juvenile court that appellant left her children with their grandmother. There is ample circumstantial evidence for such a finding. The inability of social workers to reach appellant because her voicemail box was full suggests someone who is not present to check her waiting messages. The matter of appellant's inability to sign the nine-year-old's daily progress reports supports the same inference. So does the information furnished by Frank Jones, someone who had specifically investigated appellant's whereabouts. Finally, by the time she testified, Ms. Weeks's suspicions on this point had hardened into a firm conclusion. Her testimony alone constitutes substantial evidence. (Evid. Code, § 411; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.) Finally, it was also the conclusion reached by the nine-year-old.

Like the juvenile court, we are troubled by the sparse record. But where appellant sees this paucity as impeaching the court's dispositional order, we do not, particularly as there is a strong basis for attributing the absence of "the lack of current and specific evidence" to appellant. Ms. Weeks stated in her jurisdiction/disposition report that "The mother has not been the most forthcoming in her cooperation" and "has done the minimum amount to cooperate" with the Agency.

Appellant insists "there was zero evidence that the Mother was the cause of either of her son's emotional disabilities." In the sense of explicit testimony by a mental health professional, appellant may be correct. Nevertheless, there is an unmistakable miasma that appellant's behaviors are tied to the minors' current difficulties.

Principal Lobell spotted one manifestation—the nine-year-old's regression once he discovered that appellant was pregnant. The regime of silence imposed on that child also worried Ms. Weeks, who thought "a large burden for a small child to carry." Appellant's penchant for secrecy about the family obviously has an adverse impact on the likelihood of succeeding with his services: Principal Lobell was concerned that the nine-year-old "is not allowed to talk about his family or the things that are important to him."

Appellant does not seem actively engaged in improving her sons' conditions. Even assuming that she resides with them on a consistent basis, she is chronically unable to keep in touch with the Agency and persons trying to help the minors. She has put at risk the nine-year-old continuing to benefit from Seneca services and Child Crisis services. She has put at risk all of her sons benefitting from therapy and services at the Royal program because of what Ms. Weeks termed "lack of follow through." There was no immediate prospect of appellant's situation improving, and it might even worsen with the added responsibilities of a new baby. All of this constitutes substantial evidence that some or all of the minors were at risk "of suffering serious emotional damage . . . as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care." (§ 300, subd. (c); *In re Megan S.*, *supra*, 104 Cal.App.4th 247, 251; *In re Shelley J.*, *supra*, 68 Cal.App.4th 322, 329.)

While evidence of past conduct may be probative of current conditions, "[t]he question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.' " (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1104 quoting *In re Rocco M.*, *supra*, 1 Cal.App.4th 814, 824.) Those circumstances were present here.

DISPOSITION

The dispositional order of the juvenile court is affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Lambden, J.