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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

HUMBOLDT COUNTY DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

F.H.,

Defendant and Appellant.

A134684

(Humboldt County Super. Ct.  
Nos. JV-110092, JV-110106)

F.H. (Father) appeals dispositional orders entered by the Juvenile Division of the Humboldt County Superior Court on December 29, 2011. He challenges the jurisdictional findings underlying these orders, which determined his children, C.H. and L.H., were children described by section 300, subdivision (b).<sup>1</sup> In Father's view these findings are not supported by substantial evidence. We conclude otherwise and affirm.

**BACKGROUND**

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

Father and J.D. (Mother) never married, but lived together during the period between the birth of their son, C.H., in November 2008 and birth of their daughter, L.H., in November 2009. The Humboldt County Department of Health and Social Services (Department) received several referrals regarding both parents during this period. The initial referral, on November 24, 2008, occurred soon after C.H.'s birth, and involved unsanitary conditions in the home: a hole in the bathroom floor, rot, dog feces, and general "dirtiness." The Department's investigation was "inconclusive," but the Department nevertheless offered, and the parents accepted, ART services.<sup>2</sup>

Another referral, received on November 17, 2009, involved Mother's substance abuse—she had tested positive for methamphetamines at the birth of L.H. (L.H. had not). There were also concerns about conditions of the home. The investigating social worker (SW) found them to be unsafe for the young children. There was animal waste, garbage, rotting food, clutter, and hazardous objects in the home such as broken glass, wall molding with (presumably protruding) nails, and missing floor boards. The outside property, too, was unsafe for the children, with "vast amounts" of trash, extension cords, tires, scrap metal, and other debris throughout. After substantiating this referral, the Department initiated a plan for voluntary family maintenance services. (See § 301, subd. (a).)

The parents separated in early 2010, although for a time afterward they continued to live on the same property. C.H. lived primarily with Father in one trailer, and L.H. lived primarily with Mother in a separate trailer. In February and March 2010 the Department substantiated two additional referrals regarding the parents' general neglect. At some point during, or after, March 2010, Mother and L.H. moved to a new address in

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<sup>2</sup> It appears that, at the time, the Alternative Response Team (ART) is designed to provide services to at-risk families with children eight years of age or younger, in order to correct problems at an early stage and avoid ongoing Department intervention.

Eureka. L.H. continued, however, to have visits with Father and C.H. at the trailer on Father's property in Fortuna.

The Department twice extended the initial six months of voluntary family maintenance services. (See §§ 301, subd. (a), 16506.) In doing so it issued "updates" to the voluntary plan, primarily calling for Father to "clean[] up" the home and property "again," so these would be safe for C.H., and for L.H. during visits. During the period this voluntary plan was in place, beginning on November 17, 2009, and continuing in place until the juvenile court's jurisdictional hearing two years later, the assigned SW expressed to his supervisor his ongoing and "serious" concerns about the safety risks posed to the children by the reoccurring unsanitary and unsafe conditions that persisted or reoccurred in Father's home and property. The SW saw these conditions as an ongoing "hoarding situation" on Father's part.

During this period, when C.H. grew from one to three years of age, the assigned SW visited regularly, and reportedly found C.H. unsupervised on several occasions, either in the yard or in one of the trailer's rooms. The Department provided several dumpsters for Father's use during this time, yet the assigned SW found that Father allowed unsanitary and unsafe conditions to return, and other, persisting conditions became increasingly hazardous to C.H. and L.H. as they grew into a more actively explorative developmental stage. Both the assigned SW and others repeatedly had to prompt Father to correct such conditions.

There were other instances reported during this period when Father failed to ensure C.H. received medical treatment when necessary, or when he missed or had to be prompted to keep scheduled pediatric examinations or immunizations. Although prompted during this period to have C.H. evaluated at the Redwood Coast Regional

Center<sup>3</sup> and to engage C.H. in local Early Head Start services, Father failed or declined to do so until July 2011.

During the period of some two years that the voluntary plan for family maintenance services was in place after its initiation in November 2009, Father reportedly refused to participate in or failed to cooperate with the plan in several respects: he refused to allow a Public Health Nurse into his home, refused to engage C.H. in Early Head Start sessions, and refused to have a psychological evaluation absent a court order.

On April 18, 2011, the Department received another referral that Father's home was unsanitary and dangerous for then two-year old C.H. Two SWs went to Father's home two days later. There they found a film crew in the process of making an episode of "Hoarders: Buried Alive," a cable-television "reality" show produced by The Learning Channel (TLC). The SWs declined repeated requests by the film crew to be interviewed.

Instead, the SWs met with Father, who invited them inside his home. They described it as a "small, old deteriorating very crowded two bedroom trailer." They observed the trailer's kitchen was dirty and unusable, with a clogged sink and dirty dishes and pans covering the counters, and mud, food debris, and trash on the floor. A leak in the roof had caused mould to grow on cabinets and part of the ceiling. The yard outside was filled with garbage bags, old appliances, and numerous collections of other items and debris. It appeared the film crew had demolished and partly removed a second trailer on the property—bits of wood, broken glass, and other debris still littered the area where it had been. Father said the film crew had moved things around to make conditions look even worse, and the SWs saw some indications of such movements.<sup>4</sup> These conditions

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<sup>3</sup> Redwood Coast Regional Center is a facility in Eureka designed to evaluate and provide services for individuals with developmental disabilities. (See <<http://redwoodcoastrc.org>> (as of December 5, 2012).)

<sup>4</sup> In a subsequent meeting with Father, on July 14, he told SWs he regretted having agreed to allow the filming of the television episode, explaining that a family

raised significant safety concerns for C.H. and L.H.—one of the SWs later said an “unrealistic” level of constant adult supervision would have been necessary to ensure the safety of such young children amid the conditions they observed.

One of the SWs asked Father if he had “substance abuse issues,” and he said he did not. When the SW asked if he would be willing to take a drug test, however, Father refused, and in excuse said that, if he were to submit to a drug test, it would likely result in a false positive for methamphetamine use because he had recently been taking cough medicine. He then changed his excuse, saying he had probably been exposed to methamphetamine smoke originating from a homeless camp above his home.

Father also told the SWs he suffered from a traumatic head injury (THI) that made it difficult for him to focus and stay organized. He said he had been getting support from Making Headway for this condition, and added he was taking Zoloft to help with “anger issues.”<sup>5</sup> He did not feel that his brain injury posed a “barrier” to his ability to care for C.H.

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member had suggested the idea and he had thought at the time the \$3,000 fee he would receive in exchange would help his efforts to “fix things up around his house.” One SW reported that the episode—entitled “I was Gonna Gag”—was scheduled to be shown in mid-August, and had been synopsized on TLC’s Internet site as follows: “ ‘The unsafe conditions in and around the home of extreme hoarder [F.H.] have been brought to the attention of child protective services[, and n]ow he must clear his hoard or risk losing his three year-old son.’ ”

<sup>5</sup> Making Headway, Center for Brain Injury Recovery, is a support facility for persons suffering from THI and their families, located in Eureka. (See <<http://www.mhwcenter.org>> (as of December 5, 2012).) Zoloft® (generic Sertraline), according to the 2012 edition of the Physician’s Desk Reference, is among a class of medications used to treat depression and obsessive-compulsive disorder, among others, by increasing the amount of serotonin, a substance naturally occurring the brain that helps to maintain mental balance. Father later told another SW—who was assigned to Father’s case three months after the visit on April 20, 2011—that he “gets confused about things” because of his THI, that he had stopped going to Making Headway after a cut in Medical benefits, and that he was taking Zoloft to treat depression.

At the conclusion of the SWs visit to Father's home and property on April 20, 2011, Father agreed to a safety plan, whereby C.H. would stay with a family friend while Father cleaned up the trailer and property. When two SWs revisited the home on April 29, they determined Father had cleaned the home in a sufficient manner and allowed C.H. to return home. They advised Father, however, the Department would be initiating a proceeding to institute a court-ordered plan for family maintenance services to replace the existing voluntary plan.

The Department's contact with Father continued under the voluntary plan for family maintenance services. On May 3, 2011, the assigned SW visited Father and C.H. at home, and noted C.H. appeared to be sick. Mother, who was present at the time, said C.H. seemed to have a fever. The SW directed Father to take his son to the emergency room, but Father declined to do so, because of the wait in the ER and the cost he would incur there. He told the SW he would instead take C.H. to Redwood Pediatrics. On that same date a plan was made for the Department to provide Father with another dumpster.

Later in May 2011, Mother told an SW Father had abused methamphetamines with her before her efforts to achieve sobriety. Around the same time, an SW visiting Father's home observed that he had sores "consistent with methamphetamine use." Father denied such use but declined either to drug test or to provide a release of information concerning any medical treatment he had received for the sores.

A Public Health Nurse visiting Father's home in June 2011 observed C.H. playing with dog feces located behind a chair in the trailer's living room.

It was not until mid-August 2011 that visiting SWs began to report that Father was maintaining the home in an acceptable condition. This was apparently due to regular assistance he began receiving from friends or other third parties, whom SWs encountered on the premises when visiting on two occasions in August and September.

Meanwhile, on June 8 and July 7, 2011, the Department filed section 300 petitions as to C.H. and L.H., respectively, initiating the present proceedings. Neither child was detained. Amended petitions for both children, filed on October 20, alleged two bases for jurisdiction: “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, . . . by the willful or negligent failure of the parent . . . to provide the child with adequate . . . shelter[] or medical treatment,” or alternately “by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . mental illness, developmental disability, or substance abuse.” (See § 300, subd. (b).) As to Father, the amended petitions alleged these supporting facts: “[Father] has a pattern of repeatedly allowing his home to reach conditions that are unsafe for his young children. [He] has received voluntary family maintenance services since November 2009 to ensure the safety of [C.H.] and [L.H.]. [The Department] has paid for multiple dumpsters and made safety plans when the conditions of the home became unsafe. [Father] has the ability to clean up the residence with assistance and when prompted. There is a cyclical pattern of the conditions of the home becoming unsafe, the [D]epartment prompting [F]ather to improve the conditions, and then the conditions of the home improving. This pattern of [F]ather’s inability to recognize when the conditions of the home become a safety concern, places the children at serious risk of physical harm and/or illness. It is not known what the barrier is for [F]ather that impacts [his] ability to recognize when the conditions become unsafe. As [Father] has neither complied with [D]epartment’s request for mental health evaluations and substance abuse testing, nor has he signed releases of information for agencies where [he] has reportedly received services.”<sup>6</sup>

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<sup>6</sup> The supporting facts alleged as to Mother stated essentially that she had a history of substance abuse and, after achieving sobriety, had suffered a relapse in October 2011 and had afterwards left the sober living house where she been living with L.H., and now resided with her boyfriend. Mother submitted to this allegation without contest.

On November 15, 2011, the juvenile court sustained the foregoing jurisdictional allegations. At the dispositional hearing on December 29, the court did not adjudicate the children as dependants of the court, but ordered a case plan for both parents pursuant to section 360, subdivision (b).<sup>7</sup>

Father's court-ordered plan called for him to participate in a psychological parenting evaluation designed "to help identify any barriers that exist in [Father's] ability to recognize safety hazards for his children and any barriers that exist in [Father's] working with service providers." Father was also required to keep his home and property free from safety hazards, to provide consent to the release of from medical and psychological service providers, and to submit to drug testing if requested. The court continued the dispositional hearing, pending the Department's evaluation of the parents participation in their court-ordered plans after six months of services.

Father's appeal followed.

## **DISCUSSION**

### ***I. The Appeal May Be Adjudicated***

The Department contends the appeal should be dismissed because Father has not established practical or legal adverse consequences resulting from the challenged jurisdictional findings, and because the juvenile court continued the dispositional hearing and hence did not, on December 29, enter final, appealable orders.

Subsequent to the briefing in this appeal, the Department additionally filed a request for judicial notice and a motion to dismiss the appeal. The request for judicial notice, filed July 3, 2012, and hereby granted, concerns subsequent orders of the juvenile

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<sup>7</sup> At a dispositional hearing, if the juvenile court "finds the child is a person described by Section 300," it "may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent . . . under the supervision of the social worker for a time period consistent with Section 301." (§ 360, subd. (b).)

court. Specifically, on June 26, 2012, the juvenile court concluded the dispositional hearing it had continued on December 29, 2011, and dismissed the petitions as to both C.H. and L.H. In its motion to dismiss, the Department urges that these orders render Father's appeal moot and require us to dismiss his appeal.

An order for services and supervision made pursuant to subdivision (b) of section 360 (see fn. 7, *ante*), is to be construed as a dispositional order appealable under section 395, when, as here, the appeal from that order is by a parent challenging underlying jurisdictional findings that have not been dismissed. (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1260-1261.) In addition, the jurisdictional findings challenged by Father could affect him adversely in the future, if dependency proceedings are ever initiated, or even contemplated, with regard to his children. This, in itself, provides a sufficient basis for us to adjudicate Father's appeal on the merits notwithstanding the juvenile court's dismissal of the petitions in these proceedings. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432; see also *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.)

We thus conclude the dispositional orders of December 29, 2011, are appealable, and deny the Department's motion to dismiss Father's appeal as moot.

## **II. *Substantial Evidence Supports the Jurisdictional Finding***

In sustaining the jurisdictional findings alleged as to Father, the juvenile court effectively determined that C.H. and L.H. were subject to its jurisdiction because there was a "substantial risk" they would suffer "serious physical harm or illness," resulting from Father's failure to provide them with adequate shelter or medical treatment, or, alternately, from his inability to provide them with regular care due to his mental illness or substance abuse. (§ 300, subd. (b).) Father contends this determination is unsupported by substantial evidence establishing, at the time of the jurisdictional hearing, a substantial risk of serious physical harm or illness to C.H. or L.H.

The “substantial evidence” test is the appropriate standard of review for jurisdictional findings. (*In re J.K., supra*, 174 Cal.App.4th at p. 1433.) “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.” (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333.)

The facts previously summarized are drawn from the evidence admitted at the jurisdictional hearing. These show the Department offered Father voluntary services for a period of some *three years*, first through its ART, and later under a section 301 family maintenance plan. These services, as to Father, focused on the unsafe and unsanitary conditions in his home. It is apparent such conditions were preexisting and notorious to an extent sufficient to prompt a referral immediately following C.H.’s birth, which led to the Department’s initial offer of ART services in November 2008. The Department expressed to Father its concerns about the safety of his home for young children not only when it initiated ART services, but also when it initiated section 301 family maintenance services after L.H.’s birth one year later, and repeatedly afterwards. Although Father responded when the Department prompted him to correct specified items of concern, he repeatedly allowed unsafe and unsanitary to recur after such clean-ups. During the period of the voluntary family maintenance plan, Father apparently made no attempt for the sake of his children to correct unsafe conditions other than those the Department specifically identified as concerns. It was the Department, not Father, that attempted to identify those additional unsafe conditions in his home and property which most urgently needed

correction, as his children's development enlarged their explorative scope. The SW assigned to Father's case during this period, whom we may reasonably presume to have had appropriate training and experience, characterized Father's behavior as a "hoarding situation." Despite the initiation and continuation of voluntary family maintenance services, the Department continued to receive, and substantiated, several referrals about the unsafe conditions in Father's home. The last of these, on April 18, 2011, prompted the Department to abandon its efforts under the voluntary plan and seek the juvenile court's intervention. Father began to maintain acceptable conditions in his home after mid-August 2011, several months before the jurisdictional hearing, but only after the commencement of these proceedings and, apparently, only with the regular help provided by others.

During the period of voluntary services the evidence shows that Father, on several occasions, refused to cooperate with the Department's attempts to learn *why* he allowed these unsafe and unsanitary conditions to recur and persist: he refused requests for drug tests, a psychological evaluation, and releases of information regarding medical treatment for the apparent or self-disclosed physical or psychological problems that potentially contributed to the "hoarding" behavior and led to the repeated recurrence of home conditions that were unsafe and unsanitary for C.H., and his younger sister when she visited Father's home.

In our view, this evidence provides substantial support for the jurisdictional allegations specific to Father and sustained by the juvenile court. Father did, indeed, demonstrate a "a pattern of repeatedly allowing his home to reach conditions that are unsafe for his young children." He showed as well an "ability to clean up [his] residence with assistance . . . when prompted." It is eminently reasonable to infer from the foregoing evidence, showing the repeated recurrence of unsafe conditions in his home, that Father did indeed have an "inability," equivalent with unwillingness, "to recognize

when the conditions of [his] home bec[a]me a safety concern.” The evidence also clearly supports an inference that some “barrier,” not affecting other parents of young children under these circumstances, was causing or contributing to Father’s apparent “inability.” This “barrier” was, indeed, unknown to the Department, and hence not subject to possible services for treatment, because Father had not so far complied with requests for “mental health evaluations[,] substance abuse testing, [and had not] . . . signed releases of information” from self-disclosed treatment providers.

Thus, we focus on the ultimate jurisdictional fact sustained by the juvenile court: essentially that Father’s “pattern of . . . inability to recognize when the conditions of [his] home bec[a]me a safety concern,” was conduct that placed C.H. and L.H. “at serious risk of physical harm and/or illness.” As to this point Father, citing *In re Paul E.* (1995) 39 Cal.App.4th 996, contends his “past inability to keep his home clean” is not, by itself, sufficient to show such a substantial risk of future physical harm to C.H. or L.H., in the absence of evidence that either of them ever suffered any “actual ill effects” as a result of these “past” conditions. Father also cites to the evidence indicating that he kept his home clean and safe for several months preceding the jurisdictional hearing in mid-November 2011. In his view, there was consequently only speculation, not evidence, to support the juvenile court’s finding that Father’s past “pattern” of inability to recognize when conditions became unsafe, gave rise to a substantial risk to the children of serious physical harm or illness, as of the time of the jurisdictional hearing.

First, Father’s reliance on *In re Paul E.*, *supra*, is misplaced. In that case, the juvenile court adjudicated the minor to be a dependent child largely based on a determination that the parents’ home was “both dirty and unsanitary,” did not remove the minor, and imposed a court-ordered family maintenance plan. After seven months, visiting SWs found the parents had made improvements in the home’s condition: they had remedied the unsanitary conditions, although the home remained “messy and dirty.”

The SWs gave the parents 30 days to remedy identified concerns, and the parents did so within eight days. Nevertheless the SWs sought to remove the minor through a supplemental petition. (*In re Paul E.*, *supra*, 39 Cal.App.4th at pp. 999-1000.) The reviewing court held that “mere chronic messiness in housekeeping, *absent unsanitary conditions* or resulting illness or accident, is not the clear and convincing evidence of a substantial risk of harm to a child which may justify the child’s removal from his or her parents under section 361.” (*Id.* at p. 999, italics added.) In this instance, the question whether the evidence supports a removal finding made by clear and convincing evidence is not before us. Rather, we consider whether the evidence supports a jurisdictional finding made by a preponderance of the evidence. (See *In re A.S.* (2011) 202 Cal.App.4th 237, 244.) Moreover, the facts of this case are distinguishable. Instead of a seven-month period of improvements remedying the unsanitary conditions, the evidence shows a repeated recurrence of both unsafe and *unsanitary* conditions over a much longer period of ART and voluntary family maintenance services.

As for the evidence that Father was able to maintain his home adequately for a period of months prior to the jurisdictional hearing in November 2011, we do not consider such evidence to determine whether it would have supported a different conclusion, but whether substantial evidence as a whole supports the conclusion the juvenile court did draw. (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 194-195.) It is true that past evidence of harmful acts is not sufficient by itself to support a finding that circumstances “*at the time of the hearing* subject the minor to the defined risk of harm;” there must also be “ ‘some reason to believe the acts may continue in the future.’ ” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Nevertheless, the evidence of Father’s past conduct is “probative” of the conditions existing at the time of the jurisdictional. (*Ibid.*) It shows a long-standing pattern, whereby Father allowed his home and property to become unsafe and unsanitary, again and again, absent prompting from the Department

and other service providers. Clearly the voluntary plan was ineffective, particularly in light of Father's refusal to submit to drug tests or an evaluation, in order to determine the cause of his persistent inability to recognize on his own when conditions became unsafe and unsanitary. The children may not have yet suffered actual injury or illness, but they were "children of such tender years," even by the time of the jurisdictional hearing, that the conditions Father had allowed to recur "[p]osed an inherent risk to their physical health and safety." (*Ibid.*) Given the length of time that Father allowed unsafe conditions to recur in spite of the voluntary plan, the evidence that he had subsequently maintained adequate conditions for a few months before the hearing—with the Department's supervision and the regular assistance of others—did not render speculative the court's determination that Father's pattern constituted, in effect, a ongoing, negligent failure to provide his children with adequate shelter, one that still posed a substantial risk to C.H. and L.H. of serious physical harm or illness in the absence of the court's protection and intervention. We conclude substantial evidence supports the court's finding that the C.H. and L.H. were children described by section 300, subdivision (b), on this jurisdictional basis.

Father's final point relates to the alternate jurisdictional basis sustained by the juvenile court, involving a substantial risk of serious physical harm or illness arising from a parent's inability to provide a child with regular care due to his or her own mental illness or substance abuse. (§ 300, subd. (b).) He argues there is no substantial evidence showing he suffered from a mental illness or substance abuse problem that rendered him unable to provide his children with regular care, pointing to the principle that the mere possibility of substance abuse or mental illness, by itself and without any causal evidence linking it to an inability to provide adequate care, cannot support a finding of jurisdiction on this basis. (See, e.g., *In re David M.* (2005) 134 Cal.App.4th 822, 830.) We deem it unnecessary to reach this issue, however, in light of our conclusion that

substantial evidence supports the finding of a substantial risk of harm or illness to the children arising from alternate jurisdictional basis of Father's ongoing, negligent failure to provide adequate shelter.

**DISPOSITION**

The jurisdictional findings concerning F.H. are affirmed.

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Banke, J.

We concur:

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Marchiano, P. J.

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Margulies, J.