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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re D.D. and J.D., Persons Coming
Under the Juvenile Court Law.**

**SOLANO COUNTY DEPARTMENT
OF HEALTH AND SOCIAL
SERVICES,**

Plaintiff and Respondent,

v.

D.M.,

Defendant and Appellant.

A135296

**(Solano County
Super. Ct. No. J41353, J41354)**

Appellant D.M. (mother) challenges an order under which the juvenile court assumed dependency jurisdiction over her daughters and removed them from her custody. (Welf. & Inst. Code, §§ 300, 361, subd. (c)(1).)¹ She argues that the judgment must be reversed because the evidence was insufficient to support the court’s jurisdictional and dispositional findings. We disagree and affirm the judgment.

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTS AND PROCEDURAL HISTORY

Mother has two daughters: D.D., who was born in 2004, and J.D., who was born in 2005. Prior to the events leading to these dependency proceedings, the family was the subject of three substantiated child welfare referrals in Solano County.

The first referral was in March 2004, when mother tested positive for marijuana while pregnant with D.D. and upon delivering the child. At that time mother admitted a history of drug use that included heroin and methamphetamine, though she said she had not used those substances during her pregnancy. Mother's level of bonding with D.D. was thought to be questionable because mother did not spend a lot of time with her and referred to her as "that fucking baby."

The second substantiated child welfare referral was in February 2006, when mother smoked marijuana in front of the children and blew the smoke in the face of one-year-old D.D. J.D. had grabbed the lit end of a marijuana cigarette in the past. Mother's boyfriend at the time spanked the children excessively.

The third referral was in September 2006, when police officers responding to another report noticed that the home where the family was living had a broken out front window and saw two small children sleeping on an unmade bed full of soiled clothes, dirty diapers, and cat feces. The home smelled of urine and feces, dirty diapers were on the floor and the kitchen was filthy, with the sink and counter full of dirty dishes growing mold. Four cats were in the residence and cat feces was found on the kitchen and bathroom floors. Empty cat food cans were all over the floor and sharp can lids were laying on the table, counters, and floors. The refrigerator and freezer were nearly empty.

The current case arose on March 4, 2012, when mother and her two daughters were living in a trailer in Fairfield with mother's boyfriend, a man she had known for about a month. Neighbors in the trailer park reported to the police that mother had dragged seven-year-old D.D. out of the trailer and hit her several times on her arm and leg with a white stick, saying, "If all these people weren't around, I would beat you." When police arrived, mother's boyfriend had his head out the window and was yelling at the neighbors to mind their own business. D.D. had a scrape on her right knee and

several scrapes and skin puncture wounds on her upper right arm consistent with fingernails poking her skin. A social worker employed by respondent Solano County Department of Health and Social Services (the Department) spoke to both girls that day and found them to be very dirty, with strong body odor and soiled clothing. D.D.'s teeth appeared to be decayed. Mother admitted that the children had never been to school.

The girls were taken into protective custody and mother was arrested on charges of child neglect, unlawful corporal punishment, child endangerment and contributing to the delinquency of a minor. (Pen. Code, §§ 270, 273d, subd. (a), 273a, subd. (b), 272, subd. (a)(1).) The Department filed a dependency petition alleging that D.D. and J.D. had suffered or were at a substantial risk of suffering serious physical harm or illness due to the mother's arrest on child abuse charges, her failure to provide the children with adequate shelter and provisions, her failure to enroll them in school, and her failure to make adequate provisions for them during her incarceration. (§ 300, subd. (b).) It also alleged that the children had been left with no provision for their support because mother was incarcerated and their father's whereabouts were unknown. (§ 300, subd. (g).)²

The social worker interviewed mother the day following her arrest. Mother explained that she had left the trailer to borrow a card to do laundry, leaving the girls in her boyfriend's care. D.D. "freaked out" because, according to mother, she had separation anxiety, and as a punishment for her outburst, the boyfriend took a DVD player from D.D. This led to a "screaming match" between the boyfriend and D.D. and when mother returned, she grabbed D.D. by the arm to pull her outside. D.D. fell, but mother denied hitting her with a stick or threatening to beat her. Mother indicated that she disciplined her children by giving them time-outs or taking their belongings away, and that she "may pop them in the mouth" when they talked back. She claimed that any bruises and marks on the girls were caused by normal play, and that the puncture wounds noticed on D.D.'s arms were caused by the family cat, who did not like being held.

² The presumed father of the children did not participate in the proceedings below and is not a party to this appeal.

When asked about the condition of the trailer, mother admitted that the kitchen was a mess but said the girls' room was clean. The toilet was not working, but they had located a replacement, and the trailer did have running water, electricity, and a portable heater. Mother acknowledged that the girls had never been enrolled in school because the family had not been stable. She described their father as a "sperm donor" whose threats had caused her to move from Turlock. She had previously left the children with their maternal grandmother because she traveled with a carnival and was told by police that they would call social services if she kept the children with her. Mother reported suffering from insomnia and depression, though she claimed that a psychiatrist she saw in 2011 told her she did not need medication for the depression. She had been arrested for trespassing about 10 years ago, for violating a no-contact order in 2003, and for threatening to kill her roommate in 2006; about the last offense, she later said, "I am not going to threaten to do something anymore. I am going to do it." Mother admitted drinking one to two beers a week and using marijuana once every two to three months.

The social worker interviewed the children together on two occasions. J.D. reported that during the incident that led to mother's arrest, mother had spanked D.D. and pulled her hair, causing her to fall out of the trailer. Both girls spontaneously denied that mother hit D.D. with a stick. D.D. said she had last taken a bath two weeks ago and J.D. said she had last bathed a year ago; both reported that because the toilet in their trailer was broken they had to "pee" in the bathtub and "poo" in a garbage can. J.D. explained that the neighbors got into an argument with mother because D.D. was screaming and a lady accused mother of beating the girls. D.D. interjected that mother did not beat them and then blurted out that mother almost beat her with a stick but did not actually beat her with it because she did not have a stick. The girls both told the social worker they felt safe with mother, and D.D. noted that she had "separation anxiety." J.D. said she would feel safe with mother's boyfriend but D.D. said she would not due to her "separation anxiety."

During a separate interview, D.D. told the social worker that on the day the police were called the mother's boyfriend had taken the DVD player away from her because she

did not clean her room. When she screamed in response, the boyfriend tried to hit her on the mouth but hit her eye instead. When mother returned, she hit D.D. on the back of her head with an open hand and the boyfriend commented that his own mother used to beat him with a stick. Mother pulled D.D. off the couch and took her outside, causing her to fall. D.D. denied that mother pulled her hair, though she acknowledged that mother had done so in the past. D.D. said that she went without food all the time, but when the family did eat they had sandwiches, macaroni, hamburger helper, hot dogs, and sausages. She did not remember the last time she took a bath and noted that her mother and aunt told her it was not good for the skin to bathe daily.

J.D. was also separately interviewed, and told the social worker that on the day of the incident, mother had pulled D.D.'s hair because D.D. had not cleaned her room, had not listened to the boyfriend, and had screamed. J.D. reported that she was disciplined by being yelled at or hit by mother or her boyfriend, but that mother "barely touched her" and did not leave marks. She said there was at least one time when the family did not eat because there was no food in the house.

The social worker interviewed the maternal grandmother, who reported that she had cared for the children for years while mother travelled with a carnival. After mother resumed caring for the girls, they all lived periodically with the grandmother, who did not have any concerns about mother's parenting. The grandmother claimed that she herself did not have a history with child welfare services, but when the social worker advised her that there had been one report involving the mother and the mother's brother when they were minors, the grandmother explained that she had called the police because mother, who was then 16 years old, would not stop hitting her brother. (The social worker's investigation in that case was deemed inconclusive for physical abuse, listing the grandmother as the alleged perpetrator.) A maternal aunt by marriage told the social worker that mother was a "wonderful" parent to the girls.

At a detention hearing held on March 7, 2012, the court ordered the girls detained outside the mother's home based on the foregoing information.

On March 22, 2012, the social worker for the Department filed a report for the jurisdictional/dispositional hearing, which concluded that the children would be subjected to a high risk of harm if they were placed in mothers' care due to (1) the several substantiated child welfare service referrals; (2) mother's failure to provide the children with medical and dental care; (3) mother's neglect of their educational needs; (4) the family's chronic instability; and (5) mother's unaddressed mental health and substance abuse issues, which mother minimized.

The report indicated that the social worker conducted an unannounced visit to the trailer where the family was living on March 7, 2012, three days after mother's arrest. The pantry contained an ample amount of food, though the trailer was messy and the bathroom smelled of feces. Mother and her boyfriend were present and said a new toilet would be installed later that day. The social worker visited again the following day and found the home clean and free of visible hazards, with an operating toilet. Mother told the social worker that the dependency petition and detention report were full of lies and that the neighbors could not have witnessed anything because the family was inside the trailer. She again denied hitting D.D. with a stick and explained that her home had been filthy because she had been ill, and that the girls had not bathed because all of their towels were dirty. Mother said they usually took baths every other day because baths every day were bad for the skin.

Mother told the social worker she did not seek regular medical care for the girls because the family had been unstable and she did not trust doctors, whom she described as "stupid." She thought the girls had completed their immunizations, but their medical records had been stolen. She had not taken D.D. for counseling to address her purported separation anxiety because she did not trust counselors. Mother acknowledged that the girls had Medi-Cal coverage.

Asked about her failure to enroll the girls in school, mother said that she had intended to enroll them in an online learning program but had not done so because of their unstable living situation. In any event, mother did not want them in public school due to the amount of drugs she believed were present in public elementary schools.

According to mother, she had been misdiagnosed with bipolar disorder as a child. She admitted suffering from depression and used to take Citalopram, but she was not on medication at the time because she could not get approval for this specific drug, which she had last taken two years ago.

Asked about her living situation, mother indicated that she had met her boyfriend about a month earlier and had moved into his trailer shortly afterward. They anticipated being evicted and were planning to move to Benicia or Vacaville. Mother and the girls had moved several times in the last year, and did not stay in any one place longer than two months. (Mother had failed to apply for housing through the Vacaville Family Unification Program, though the social worker gave her a referral for this service.) Mother supported herself through public aid and money that her boyfriend earned collecting scrap metal.

Mother stated that she loved her children and was open to participating in mental health services and resuming medication for her depression in order to get them back. After she was advised that the Department would be recommending out-of-home placement with reunification services, she became irate and said, "I will not cooperate with the department until my children come home to me. I am going into bitch mode." Mother sent the social worker a series of emails indicating she was "spiraling into depression" without her children and thought the foster family was hurting them.

Meanwhile, the children indicated to the social worker that they liked their foster family home and were thrilled to be enrolled in school for the first time. D.D. again claimed to have separation anxiety while she was away from mother, but then acknowledged she did not know what that meant and had heard mother use the term when speaking to a police officer. The girls had been taken for well-child examinations and required six immunizations each. The foster care provider thought D.D. showed no signs of separation anxiety and reported that both girls seemed happy.

Mother and the children had supervised visits between the time of their detention and the jurisdictional hearing. At the first visit, mother asked the girls, "How are these jerks treating you?" and "Are these bad people being nice to you?" She warned them,

“Do not get used to public schools. Do not touch the dirty kids or accept candy from them. Do not accept candies from teachers either. If the foster parents ask you to call them mom and dad, let me know, I will deal with them.” At the end of the visit, the children were very emotional and the visitation supervisor held D.D.’s hand on the way to the lobby. Mother ran over to them and exclaimed, “Do not force her, do not hold her hand!” and security was called. When D.D. continued to hold the supervisor’s hand, J.D. snatched her hand away and said, “You heard what mom said.”

Mother was asked to submit to drug testing and told the social worker on March 9, 2012 that she would test positive for marijuana because she had been at a friend’s house where other people were smoking and took a “big whiff.” She appeared at a drug testing center on March 12, but did not complete the test; mother told the social worker she could not urinate due to a kidney infection but a friend of mother’s said it was because the staff had laughed at mother and made her feel uncomfortable. The staff at the drug testing center reported that mother’s boyfriend had been with mother and made a “huge scene.” Mother told the social worker on March 14 that she did not see why she had to submit to hair strand drug testing, and that any such test she took would be “bad.” She said she didn’t smoke marijuana all the time but liked the smell of it and had made a mistake the other night by grabbing what she thought was an old cigarette at a friend’s house.

Mother acknowledged using methamphetamine in the past, but claimed to have been clean from this substance for nine years. At a substance abuse orientation meeting on March 19, 2012, mother stated that she smoked marijuana every other month to help her eat but did not have a problem. Although she was scheduled to begin group meetings on March 30, she said she would not be attending because she was confident her children would be returned at the next hearing. A representative of the substance abuse treatment center described mother as difficult, hostile, uncooperative, and in denial. Mother did submit to drug testing on March 27, 2012, and her test was positive for marijuana and negative for other substances.

Two witnesses testified at the jurisdictional/dispositional hearing held April 6, 2012: the social worker and a friend of mother's who claimed to have been present on the day she was arrested.

The social worker testified that she was concerned that mother had a "dual diagnosis," i.e., a combination of mental health and substance abuse problems. Mother had been diagnosed with bipolar disorder and her family members confirmed that diagnosis, but mother was not taking medication for that condition and, in the social worker's opinion, was using marijuana to self-medicate. Mother's mood and anger levels required follow-up mental health care, and her failure to avail herself of referrals for a mental health assessment, housing assistance, and a parenting course were worrisome.

The friend, J.J. testified that he was visiting the trailer where mother lived on the afternoon of March 4, 2012, when mother was arrested. Mother left to do something while D.D. and J.D. were playing in the yard and told the girls to go inside. D.D. refused and tried to run away, and fell when she tried to get away from mother. After mother left, D.D. threw a tantrum and neighbors came up to the trailer saying that if they would stop beating the girls they wouldn't scream. Police arrived soon after, though they did not want to talk to J.J. about what had happened. J.J. was not mentioned as a witness in the police report.

At the conclusion of the hearing, the court granted the Department's motion to amend the petition to confirm to proof. The amended petition alleged that D.D. and J.D. were at a substantial risk of suffering serious physical harm under section 300, subdivision (b) because mother had a history of mental health issues and substance abuse that has contributed to a transient lifestyle, as evidenced by (1) her arrest on March 4, 2012 for various child abuse charges; and (2) her failure to provide adequate care for the children, including the lack of adequate shelter and provisions, keeping the home in an unsanitary condition, failing to bathe the children, and failing to enroll the children in school. It also alleged that the girls had been left without provision for their support, because their presumed father had not had contact with them for five months. The court sustained the petition and removed the children from mother's custody, finding the

allegations true by a preponderance of the evidence and finding clear and convincing evidence that return at that time would create a risk of harm.

DISCUSSION

Mother argues that the order sustaining the dependency petition must be reversed because the evidence was insufficient to support a finding of jurisdiction under section 300, subdivisions (b) and (j). She alternatively claims that assuming the evidence was sufficient to support dependency jurisdiction, it did not support the dispositional order removing the children from her custody. We reject these claims.

Standard of Review

In considering mother's challenge to the jurisdictional and dispositional orders, we review the record under the deferential substantial evidence standard, drawing all reasonable inferences and resolving all conflicts in favor of the juvenile court's order. (See *In re Albert T.* (2006) 144 Cal.App.4th 207, 216.) We must affirm if the juvenile court's order is supported by evidence that is "reasonable, credible, evidence of solid value such that a reasonable trier of fact could make the findings challenged" in light of the record as a whole. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.) We view the record in the light most favorable to the order and may not reweigh the evidence or redetermine the credibility of witnesses. (*In re S.C.* (2006) 138 Cal.App.4th 396, 415.) Mother, as the appellant, has the burden of showing that the challenged orders were not supported by substantial evidence. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

Jurisdictional Order

Section 300, subdivision (b) allows the juvenile court to assume dependency jurisdiction when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or 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." A finding under this subdivision requires

proof of three elements by a preponderance of the evidence: (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 jurisdictional hearing the child is at substantial risk of serious physical harm in the future” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.)

Paragraph b-1 of the amended dependency petition alleged that mother “has a history of mental health issues and substance abuse, which have contributed to a transient lifestyle that has placed her children, [D.D.] and [J.D.] at substantial risk of serious physical harm as evidenced by the fact that on or about March 4, 2012, the mother [] was arrested for the following charges: inflicting injury to a child, failure to provide for a child, contributing to the delinquency of a minor and willful cruelty to a child.” Mother argues that this allegation is not supported by substantial evidence because the conduct leading to her arrest was not “sufficiently serious.” We disagree.

The family came to attention of the Department after neighbors called the police and reported that mother had hit D.D. with a stick and pulled her hair. Although mother and the girls denied that mother used a stick, D.D. told the social worker that mother’s boyfriend had hit her in the eye while mother was gone and that when mother returned, she hit D.D. on the back of the head with an open hand and pulled her outside, causing her to fall. J.D. told the social worker that mother had pulled D.D.’s hair, and explained that she herself was disciplined by being hit by mother or her boyfriend. Mother admitted to the social worker that she disciplined the girls by “pop[ping] them in the mouth.”

Though section 300, subdivision (a) recognizes that “age appropriate spanking to the buttocks” is not a basis for dependency jurisdiction when it does not cause serious physical injury, mother’s treatment of her children far exceeds the bounds of reasonable physical discipline. It is particularly troubling that mother’s boyfriend, whom she had known for only a month at the time of her arrest, struck the girls. Mother had been the subject of a 2006 substantiated child welfare referral concluding that mother’s boyfriend

at the time had “excessively disciplined” D.D. and J.D., who were then less than two years old. This suggests that mother has a pattern of subjecting her children to the authority of abusive and unrelated men. Under the circumstances, it was reasonable to conclude that D.D. and J.D. were at risk of serious physical harm. (See *In re Veronica G.* (2007) 157 Cal.App.4th 179, 185-186.)

Mother argues that the jurisdictional order must be reversed because the allegations under paragraph b-1 of the petition require a finding that she had a history of substance abuse and mental health issues, and there is no substantial evidence to this effect. We are not persuaded. Mother acknowledged that she had used methamphetamine in the past and still smoked marijuana occasionally, and her positive drug test and conversations with the social worker could lead a reasonable person to conclude that she used marijuana more often than she admitted. Similarly, mother told the social worker she suffered from depression that had previously required medication, and had been “misdiagnosed” with bipolar disorder. Mother’s family members told the social worker that mother suffers from bipolar disorder.

Mother is correct that neither substance abuse nor mental illness will support a jurisdictional finding under section 300, subdivision (b) absent a showing that the child’s safety is placed at risk as a result of those circumstances. (*In re James R., Jr.* (2009) 176 Cal.App.4th 129, 136-137.) But this is not a case in which jurisdiction was taken simply because mother smoked marijuana or had mental health issues. The conduct leading to the dependency (inappropriate and excessive physical discipline, maintenance of a filthy home, multiple moves within the previous year, a complete failure to enroll her children in school) shows that *something* was interfering with mother’s inability to parent. Though the Department did not present the testimony of a mental health expert who specifically drew a line between mother’s behavior on the one hand and a specific diagnosis on the other, it was not unreasonable for the juvenile court to conclude that mental health and substance abuse issues played a role in the family’s problems, as alleged in the petition. Mother’s hostile attitude and defensive conduct on a number of occasions also points to this conclusion.

Mother argues that the court erred in sustaining paragraph b-2 of the amended petition, which alleged that she had failed to provide the girls with adequate food, clothing, shelter, or medical treatment, and had failed to enroll the girls in school. She argues that the evidence was insufficient to establish that these issues, which had been resolved by the time of the jurisdictional hearing, placed the children at a *substantial* risk of future *physical* harm, as is required under section 300, subdivision (b).

As to the failure to enroll the children in school, mother cites *In re Janet T.* (2001) 93 Cal.App.4th 377, 388-389 (*Janet T.*), in which the appellate court reversed an order sustaining a petition under section 300, subdivision (b), based on the mother's failure to ensure her children's school attendance: "Failing to attend school regularly not only deprives the children of an education, but also of the social interaction and 'peer relationships necessary for normal growth and development,' as alleged in the petition. It is a very serious allegation and a factual circumstance which needed immediate correction. However, that is not the same as saying the failure to attend school created a 'substantial risk' of suffering 'serious physical harm or illness.'" (*Ibid.*)

We agree with the *Janet T.* court that the failure to send one's children to school, without more, would not ordinarily create a risk of *physical* harm. Here, however, mother was leading a very transient life and both she and her boyfriend were subjecting her daughters to inappropriate and excessive physical discipline. As the juvenile court noted when issuing its ruling, the girls' absence from school, where responsible adults could observe their condition and demeanor and intervene if necessary, increased the risk they would suffer physical harm under the particular circumstances of this case. Mother's statements about and attitude toward public elementary schools strongly suggest that she would not send the children to school if dependency jurisdiction were not asserted. Similarly, mother's failure to seek medical treatment for her daughters enhanced their risk of future physical harm in light of their relatively isolated circumstances. Given mother's attitude toward doctors, there is every reason to believe

that mother would have continued to forego medical appointments if the children were not declared dependents.³

The court also found that the plugged toilet in the family trailer and lack of regular baths created a risk the girls would suffer serious physical harm in the future, noting that mother's mental state made it likely the same conditions would repeat themselves. Even if we assume the "dirty house" issues would not themselves rise to the level of physical risk required for a finding under section 300, subdivision (b), they produced unsanitary conditions that are part of a pattern of neglect that warranted juvenile court intervention. Reversal of the jurisdictional finding is not required.

Mother also argues that the court should not have sustained the allegation under section 300, subdivision (g), which permits jurisdiction when "[t]he child has been left without any provision for support. . . ." Paragraph g-1 of the amended petition alleged that subdivision (g) was satisfied in this case because "The father [] of minors, [D.D.] and [J.D.], has not had contact with the minors since on or about five months ago. His whereabouts are currently unknown." Mother argues that the court may not assume jurisdiction under this subdivision when one parent is providing support, and because she was supporting D.D. and J.D., it did not matter that their father was absent from their lives.

The cases that mother cites for this proposition are distinguishable because they involve situations where the custodial parent was providing the children with the necessities of life. (E.g. *In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1065-1066 [minor was being cared for by mother and grandmother]; *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1319-1320 [insufficient evidence to support subdivision (g) finding

³ Mother argues in her reply brief that she did not receive adequate notice that dependency jurisdiction was sought based on her failure to secure medical and dental care for the children. Both the original and the amended petition alleged that the children had suffered or were at risk of suffering serious physical harm "by the willful or negligent failure of the child's parent or legal guardian to provide the child with adequate food, clothing, shelter, or medical treatment." In any event, the amended petition's remaining factual allegations were sufficient to support the court's finding of a risk of harm.

against absent father when there was no evidence of “malnutrition, deprivation of shelter, clothes or medical care” for the minor[.]) One court reasoned that it would be “anomalous” to predicate dependency jurisdiction upon the sole fact of an absent parent when the children are well cared for by the custodial parent and there would otherwise be no basis for asserting jurisdiction against the custodial parent. (*Janet T.*, *supra*, 93 Cal.App.4th at p. 392.) Here, mother was neglecting and abusing the girls when they were taken into custody, and father’s absence was not the sole basis for jurisdiction over a child who was otherwise being adequately cared for. (See *In re J.O.* (2009) 178 Cal.App.4th 139, 144, 153-154 [finding under § 300, subd. (g) against father was proper when mother, the custodial parent, had abused and failed to protect the children and father was unable to make provisions for their support at the time of the jurisdictional hearing].)

Even if we were to fault the court’s finding under section 300, subdivision (g), reversal of the jurisdictional order is not required because, as already discussed, jurisdiction was proper under section 300, subdivision (b). “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In 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.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; see also *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876.)

Dispositional Order

Section 361, subdivision (c) provides in relevant part, “A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances

[¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and

there are no reasonable means by which the minor's physical health can be protected without removing the minor. . . ." Mother argues that there was no substantial evidence to support the dispositional order removing the children from her custody because, at the time of the hearing, no clear and convincing evidence was presented that the children would be at a risk of harm if returned.

Mother claimed she had remediated the problems that led to the dependency proceeding, and argues that the removal order was "founded chiefly on [her] prior mistakes and fear and speculation that [she] would fail to ensure [that D.D.] and [J.D.] went to school or would be seen by a doctor if they needed to unless the mother is psychologically evaluated and treated." Mother overlooks that her past conduct is highly germane to predicting what she is likely to do in the future. "A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." [Citation.] The court may consider a parent's past conduct as well as present circumstances.' [Citation.]" (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.)

The evidence supported the juvenile court's conclusion that D.D. and J.D. would be at risk of suffering serious physical harm if returned to mother's care. The record established that mother and her boyfriend had subjected the girls to inappropriate and excessive physical discipline and that her transient lifestyle isolated the girls from adults who might intervene in the event of such abuse. The court could reasonably conclude that in light of her mental health issues and history of substance abuse, mother would need professional help to change, but her behavior between the time of detention and the jurisdictional/dispositional hearing showed recalcitrance toward seeking such help.

Mother emphasizes that a removal order requires application of the more rigorous "clear and convincing" standard. "[On] appeal from a judgment required to be based upon clear and convincing evidence, "the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's

evidence, however slight, and disregarding the appellant’s evidence, however strong.”
[Citation.]’ [Citations.] ‘We have no power to judge the effect or value of the evidence,
to weigh the evidence [or] to consider the credibility of witnesses. . . .’” (*In re Mark L.*
(2001) 94 Cal.App.4th 573, 580–581.)

DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

BRUINIERS, J.