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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re MARCO W. et al., Persons Coming
Under the Juvenile Court Law.

B238471
(Los Angeles County
Super. Ct. No. CK87811)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

KAREN W.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Anthony Trendacosta, Juvenile Court Referee. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant
and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County
Counsel, and Peter Ferrera, Senior Deputy County Counsel, for Plaintiff and Respondent.

Karen W. (“Mother”) appeals the juvenile dependency court’s orders sustaining the jurisdictional allegations in the juvenile dependency petitions concerning her son Marco W. and daughter M.W. under Welfare and Institutions Code¹ section 300. Before this court, Mother asserts a number of errors. First she claims that the court erred in denying her request for discovery of the social worker’s case activity logs, as well as her request to have the social worker present at the jurisdiction/disposition hearing. Mother also claims insufficient evidence supported the court’s exercise of jurisdiction under section 300, subdivision (b), both with respect to the allegations concerning her and those allegations pertaining to the children’s father. For the reasons stated herein, we conclude that the court did not err in denying Mother’s discovery request and the request that the social worker attend the hearing was untimely. Further, we conclude that sufficient evidence supported the jurisdictional findings. Accordingly, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Child Welfare Involvement with the Family

In July 2010, the Department of Children and Family Services (the “Department”) received a referral after Mother gave birth to pre-mature twins born 24 weeks after gestation. At the time the twins were born, Mother was incarcerated for a heroin possession conviction.² Mother identified Marco W., Sr. (Father) as the father of Marco W.³ Mother described Father as a “one night stand” and a “random sex partner.” Mother

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

² Mother had multiple drug-related arrests including possessing/purchasing cocaine base for sale, and transporting/selling narcotics.

³ Father is subject of the dependency proceedings, but not a party to this appeal.

and Father both had extensive criminal histories including drug-related felony convictions.⁴

One of the twins died shortly after birth, while the surviving twin, Marco W., had a diagnosis of low birth weight and serious medical and developmental ailments including, chronic lung disease and a brain condition. Marco W. had surgeries to repair his heart and a hernia. The infant was also prescribed half a dozen different medications and remained in the hospital.

The Department determined that Mother was incapable of providing proper and adequate care for the child. It appeared that Mother suffered from a substance abuse problem as well as mental and emotional challenges. In November 2010, the Department and Mother entered into a Voluntary Family Reunification (VFR) contract on behalf of Marco W. Under the terms of the VFR contract, Mother agreed to comply with a drug treatment plan as well as with the terms and conditions of her probation. It was also agreed that Marco W. would be placed in a specialized foster home upon his discharge from the hospital.

According to the Department, Mother did not comply with the terms of the VFR contract. In December 2010 after only a month in residence, Mother left her transitional housing program. According to the Department, mother was unable to secure stable housing. Her last address was a hotel in Gardena known for prostitution. Mother also stopped attending therapy, she had not completed mental health evaluation, nor had she provided information regarding her probation.

Mother had only visited Marco W. three times since he had been in placement. The baby was stable and had been referred for physical and occupational therapy to address problems with his motor skills. It was also suspected the child had hearing

⁴ Mother's probation officer reported that Mother currently had four active cases with the Department of Probation relating to four separate criminal charges, and that she had been noncompliant with the terms of her probation. Mother had been required to participate in random drug-testing as her criminal charges were drug-related. Mother had participated in residential treatment in the past and had been known to have dual diagnoses relating to mental health problems.

deficits. The Department believed Mother could not provide for Marco's multiple medical needs.

In May 2011, the Department received a second referral for Mother after she gave birth to a premature baby girl, M.W.⁵ It was reported that Mother had failed to seek prenatal care during her pregnancy and also that Mother tested positive for marijuana at the time of M.W.'s birth.⁶ M.W. was "micro-preemie," born at 24-weeks gestation, and weighing a little over one pound at birth. The baby could not breathe on her own and was intubated and on a ventilator.

Mother admitted using marijuana on a regular basis while she was pregnant and suffering from schizophrenia and bipolar disorder and phobias. According to hospital staff, Mother admitted to having a history of mental health problems and previously taking psychotropic medication. She stated that she experienced visual and auditory hallucinations relating to past experiences. The hospital reported that mother's behavior was volatile, erratic and often confrontational. She would instantly and unpredictably change from being cooperative and friendly one minute, and to irate, erratic and uncontrollable the next instance. An "Up Front Assessment" completed on Mother in October 2010 diagnosed her as having a conduct disorder.

The Department determined the children were at "very high" risk for future abuse based on the parents' inability to provide for the children's needs, their histories of drug-related charges and incarcerations, and the children's prematurity and numerous medical

⁵ Father was also identified as the biological father of M.W.

⁶ M.W. did not test positive for exposure to drugs at birth. Mother claimed she had a medical prescription for medicinal marijuana. She was not, however, able to provide any proof of the prescription at the time. After she was discharged, she returned to the hospital with a recommendation letter for marijuana dated after the child's delivery date. Mother told the social worker that she smoked marijuana to treat her depression and a post traumatic stress disorder related to Marco W.'s birth and the death of his twin.

needs. Mother had also failed to apply for Medi-Cal or Social Security for Marco W. despite numerous requests by the agency for her to do so.

Dependency Petitions

On May 13, 2011, the Department filed a section 300 petition on behalf of Marco W. The petition alleged the child was at risk as a result of the parents' inability to provide proper care and supervision of the child due to his medical condition, from mother's history of drug use and drug-related criminal activity, and father's failure to provide for the child.⁷ The court ordered Marco W. detained and ordered supervised visits for the parents. Mother appeared at the hearing and was represented by her court-appointed counsel.

Thereafter, on May 19, 2011, the Department filed a section 300 petition on behalf of the infant M.W. The petition contained the same allegations of risk as Marco W.'s

⁷ The sustained section pertaining to Marco W. alleged as follows:

“[Count] b-1: The child Marco D. [W.] Jr. suffers from Chronic Lung Disease, Ventriculomegaly and Gerd. The child's mother, Karen D. [W.] and father, Marco D. [W.], are unable to provide appropriate care and supervision of the child, due to the child's medical condition. The parent[s'] inability to provide appropriate care and supervision of the child endangers the child's physical health and safety and places the child at risk of physical harm and damage.

“[Count] b-2: The child Marco D. [W.] Jr.'s mother, Karen D. [W.] has a history of illicit drug use and is a current user marijuana [sic], which renders the mother unable of providing regular care of the child. The mother has a criminal history of two convictions of Possession of Narcotic Control Substance and Possession Purchase Cocaine Base For Sale. Remedial Services failed to resolve the family problems, in that the mother failed to regularly participate in a substance abuse treatment program and random drug testing. The mother's use of illicit drugs endangers the child's physical health and safety and places the child at risk of physical harm and damage.

“[Counts b-3 and g-1]: The child Marco D. [W.] Jr.'s father, Marco D. [W.] has failed to provide the child with the necessities of life including food, clothing, shelter and medical treatment. The father's whereabouts is unknown. Such failure to provide for the child on the part of the father endangers the child's physical health, safety and well being and places the child at risk of physical harm and damage.”

petition, and additionally alleged mother had a history of mental and emotional problems.⁸ Baby M.W. was ordered detained. M.W. remained hospitalized where she was constantly monitored and remained on oxygen. The newborn also had feeding difficulties.

In the combined jurisdictional and dispositional report for the hearing regarding the section 300 petitions, the Department indicated that it had made multiple attempts to

⁸ The sustained petition pertaining to M.W. alleged:

“[Count] b-1: The child, [M.W.]’s mother, Karen D. [W.] has a history of illicit drug use and is a current user of marijuana, which renders the mother unable of providing regular care of the child. The mother used illicit drugs during the mother’s pregnancy with the child [M.W.] On 05/01/2011, the mother had a positive toxicology screen for marijuana. The mother has a criminal history of two convictions of Possession of Narcotic Control Substance and a conviction of Possession Purchase Cocaine Base For Sale. The mother’s use of illicit drugs, endangers the child’s physical health and safety and places the child at risk of physical harm, damage and danger.

“[Count] b-2: The child, [M.W.]’s mother, Karen D. [W.] has an admitted history of mental and emotional issues, including a diagnosis of Post-Traumatic Stress Disorder and Depression for which she treats by use of marijuana, which renders the mother unable of providing regular care of the child. The mother failed to take the mother’s psychotropic medication, as prescribed. Such mental and emotional problems on the part of the mother endanger the child’s physical health and safety and place the child at risk of physical harm, damage and danger.

“[Count] b-3: The child, [M.W.]’s sibling, Marco D. [W.] Jr., suffers from Chronic Lung Disease, Ventriculomegaly and Gerd. The child’s mother, Karen D. [W.] and father, Marco D. [W.], are unable to provide appropriate care and supervision of the sibling, due to the sibling’s medical condition. The parent[s]’ inability to provide appropriate care and supervision of the sibling endangers the child’s physical health, and safety and places the child at risk of physical harm and damage.

“[Counts b-4 and g-1]: The child, [M.W.]’s father, Marco D. [W.] has failed to provide the child with the necessities of life including food, clothing, shelter and medical treatment. The father’s whereabouts is unknown. Such failure to provide for the child on the part of the father endangers the child’s physical health, safety and well being and places the child at risk of physical harm and damage.”

reach mother to interview her regarding the petitions, but those efforts had been unsuccessful, and that Father's whereabouts were not known.

At the time, Marco W. was receiving services from the Regional Center where he received occupational therapy services to address motor skills, muscle tone and feeding skills. It was further recommended that he be placed in an "infant program with high risk specialty to address development and parent education." The Regional Center reports described Marco W. as an "Extreme Premie (24 weeks) with . . . multiple medical problems requiring multi-specialty medical follow up." Regional Center indicated that "[i]t's important that his caregiver pay close attention to feeding/nutrition needs." Marco W. had feeding issues, including not regularly demanding his own feedings, slow weight gain, and multiple medical problems.

It was reported that Mother had limited participation in Marco W.'s treatments and appointments. Mother's whereabouts were said to be unknown and she had not been consistent in visiting her children or calling to inquire about their welfare. According to the director of the Marco W. placement, Mother was "unable to care for [Marco W.] One, she had no stable home life. If she doesn't like the doctor or doesn't like what they tell her, she will stop going there and [Marco] can't afford that. He's not a normal child. If he misses a few appointments here and there, it will affect him. She'll say, 'I can't take care of him because I don't have stable housing.'" The director stated that they attempted to keep Mother apprised of Marco W.'s appointments, but she attended only one and often could not be located. It was further noted that Mother would call only when she needed something from the placement. "I absolutely don't feel she's anywhere near ready to take care of Marco. Mom's very inconsistent." It was also reported that Mother's mental health issues caused her to act erratically while at the center.

In June 2011, Mother visited baby M.W. in the hospital but security had to escort her out of the hospital after she made verbal threats to the staff. After that, Mother was only allowed to visit with a security escort.

In the jurisdictional/disposition report the Department concluded that Mother had made minimal effort to learn proper medical care for the children, thus placing them at

great risk if placed with her. The Department recommended that the children be suitably placed and Mother be offered family reunification services.

A Multidisciplinary Assessment Team report was also completed regarding the family and submitted to the juvenile court. The report noted Mother had previously acknowledged using psychotropic medication to treat her mental health symptoms. The report indicated that as Mother appeared to have co-occurring mental health and substance abuse issues, she would benefit from participating in a dual diagnosis treatment program.

Jurisdiction/Disposition Proceedings

On August 9, 2011, Mother appeared for the scheduled adjudication/disposition proceedings, which had previously been continued at the request of counsel. Mother indicated she wanted to hire a private attorney to represent her, and asked for a continuance. The court granted the continuance of the adjudication hearing, but indicated to mother that, in regard to the continuance date, “you better have that attorney here. And that attorney better be ready to proceed.” Mother complained that she had been unable to reach her court-appointed attorney, who responded by indicating she had been unable to reply to Mother’s messages because Mother’s telephone number was not working.

On September 9, 2011, Ronald Yoosefian, Mother’s privately retained counsel, filed a substitution of attorney. Mr. Yoosefian requested the proceedings be continued for 180 days to allow him to prepare for the jurisdictional/dispositional hearing. Thereafter at the September 14, 2011, court hearing, the juvenile court stated it was concerned regarding the number of times the matter had been continued and made reference to the statutory mandate for matters to reach disposition within sixty days from filing of a petition. However, the court agreed to continue the adjudication six weeks, until October 27, 2011, to allow Mr. Yoosefian time to prepare and indicated there would be no further continuances.

On September 30, 2011, the juvenile court authorized California Hospital Medical Center to insert a feeding tube into baby M.W. because of the baby’s persistent poor

feeding and inadequate food intake by mouth. The hospital's efforts to obtain consent from Mother to insert the tube had not been successful. According to M.W.'s care providers, the feeding problem was serious and urgent.

On October 27, 2011, the Department reported that Mother had not been participating in services, classes or therapy since June 2011, though she had attended a group therapy session in late September. Also in October 2011, it was further reported Mother had not visited Marco W. in more than a month, nor had she called his placement to check on the child. Baby M.W. had been discharged from the hospital and placed in the same placement as Marco W., but Mother had not contacted the placement to inquire as to the baby's welfare or schedule a visit.

At the October 27, 2011, adjudication hearing, Mr. Yoosefian indicated he and Mother had "irreconcilable differences," and therefore requested to be relieved as her attorney of record. The court noted that the matter was now over five months old and under the law, continuances should only be granted if they were found to be in the best interests of the child. The children's counsel and the Department opposed any further continuances. The court indicated it was unsure whether there was a "substantial disconnect between [Mother] and reality," or if Mother was "attempting to manipulate the system for her own benefit and to get even more continuances." Initially, the court denied Mr. Yoosefian's request to be relieved. However, the matter was subsequently recalled when Mother's newly retained counsel, Joseph MacKenzie, appeared in court and indicated he could be ready to proceed by the following Monday on October 31, 2011. Based on this representation, the court permitted Mr. MacKenzie to substitute in as mother's attorney of record and briefly continued the matter to the following week.

On Monday, October 31, 2011, at the outset of the adjudication hearing, Mr. MacKenzie addressed the court and indicated he had emailed county counsel on the afternoon of the prior Friday, October 28th, 2011, requesting that he be emailed the "Title XX's"⁹ and that the social worker be present in court for the adjudication. Mr.

⁹ "Title XX's" refer to a social worker's case activity logs.

MacKenzie indicated that county counsel responded by email later that day and indicated she did not believe his requests were timely. County counsel responded that she had spoken with Mr. MacKenzie the previous week regarding him substituting in as Mother's counsel of record and he told her he was "up to speed" and that "he did not have anyone to call." She also pointed out that when they spoke with the court the previous week regarding Mr. MacKenzie substituting in as Mother's counsel, "he did not represent at any time that he would requesting a social worker. Neither did either of Mother's prior counsel, including Ms. Metzger and Mr. Yoosefian." County counsel also argued Mr. MacKenzie's request "for Title XX's on a Friday afternoon by email" was not timely, as they had never been requested by Mother's previous counsel and the trial had been continued since July on at least three occasions.

The court stated that it also recalled the sidebar conversation the previous week and "[a]t no time was [there] an issue of Title XX's or the workers being necessary." The court also noted that "case law and the code is clear that you make your [section] 355 objections at the earliest opportunity, which is the time the matter's set for contest, which was some time ago. And I do not recall that anyone made – raised any [section] 355 objection." The court found the request to be untimely.

The court proceeded to adjudicate the section 300 petition and accepted various Department reports into evidence. In regard to the allegation regarding Mother's ability to address Marco W.'s medical needs, Mother argued that there was no nexus between her inability to care for the child and his special medical needs because, she argued, no parent would be able to provide for the child's needs. Likewise, concerning her drug use, Mother argued her criminal history was remote and that there was no nexus shown between her substance abuse and risk to the children. With respect to Mother's alleged mental and emotional problems, Mother argued there was only evidence in the record that she suffered from a conduct disorder.

The court found that Mother admitted she was unable to care for the child and "reject[ed] out of hand" "the argument that no parent could care for" the child. The court believed Mother's history of drug abuse affected her ability to care for her children. The

court said it could make a reasonable inference based on Mother's current use and her criminal history that she had an ongoing substance abuse problem that affected her ability to care for her children. The court sustained the section 300 petitions.

The court proceeded to disposition and declared the children to be dependents of the juvenile court and removed them from the parents' custody. It further ordered family reunification services and visitation for Mother. Mother also was ordered to complete a substance abuse program with random testing, parenting classes and individual counseling to address case issues.

Mother filed a timely notice of appeal.

DISCUSSION

Before this court Mother challenges the juvenile dependency court's ruling denying her discovery and her request for the presence of the social worker at the jurisdiction/disposition hearing. She also assails the court's exercise of jurisdiction based on her inability to care for her medically fragile children, her unresolved history of drug abuse, her mental and emotional problems, and Father's failure to provide for them.¹⁰ We address these contentions in turn.

I. The Court did not err in denying Mother's Requests for Production of Documents and Appearance of the Social Worker on the eve of the Jurisdictional Hearing

Discovery in juvenile matters rests within the control of the juvenile court, and the exercise of its discretion will be reversed on appeal only on a showing of a clear abuse.

¹⁰ Mother does not assert a distinct challenge to the merits of the order removing the children from her custody. Instead, she argues that the dispositional order should be reversed because the court erred finding jurisdiction under section 300.

(*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1166.) As the appellate court observed in *In re Tabatha G.*, “[j]uvenile courts are required to ‘control all proceedings with a view to the expeditious and effective ascertainment of the jurisdictional facts and of all information relevant to the present condition and welfare of the child.’ [Citation.] . . . The juvenile court rules encourage the informal exchange of information between the parties and create an affirmative duty to disclose favorable evidence, subject only to a showing of privilege or other good cause. [Citations.] ‘The court is instructed under the rules to give substantial weight to the juvenile’s need for stability and prompt resolution of custody status. [Citation.] The need for expeditious handling of juvenile matters is thus recognized and statutorily mandated. . . .’” (*Id.* at p. 1166; *In re Jeanette H.* (1990) 225 Cal.App.3d 25, 36.) Pursuant to California Rules of Court, rule 5.546(d): “[P]etitioner must, after *timely* request, disclose to the child and parent or guardian, or their counsel, the . . . material and information within the petitioner’s possession or control.” (Cal. Rules of Court, rule 5.546(d); emphasis added.) In addition, “[d]iscovery must be completed in a timely manner to avoid the delay or continuance of a scheduled hearing.” (Cal. Rules of Court, rule 5.546(i).) Similarly, under Welfare and Institutions Code section 355, subdivision (b)(2) “The preparer of the social study shall be made available for cross-examination upon a timely request by any party.”

Here Mother argues that the lower court erred in refusing to require the disclosure of the Title XX Reports and to allow cross-examination of the social worker who prepared the reports. We disagree.

Mother has not shown the dependency court abused its discretion in denying her request. Mother’s requests made on the eve of the hearing were untimely. It appears that at no time between July 12, 2011 – date of the initial jurisdiction/disposition hearing – and October 27, 2011 – when Mr. MacKenzie assumed representation of Mother – that Mother or her various prior counsel ever requested the production of Title XX Reports or the appearance of the social worker who prepared the reports. Certainly an order granting these requests would have further prolonged the proceedings, which had already been delayed five months after the petition was filed. Indeed, the jurisdiction proceeding

had already been continued more than 30 days so that Mother could hire private counsel. Thereafter, her new counsel, Mr. Yoosefian was given more than five weeks to prepare for the hearing, and then asked to be relieved on the day set for the contested hearing. The court agreed to allow Mother to retain Mr. MacKenzie based on his representation that he would need only a four-day continuance until October 31, 2011. At that time, Mr. MacKenzie did not indicate that he needed to have the social worker present at the jurisdictional hearing, and apparently told the Department that he would not be calling any witnesses. Absent a timely request, the Department was not obliged to produce the documents. Mother did not seek, nor is the Department required to produce the social worker for cross-examination at the hearing, in the absence of a timely request. (Cal. Rules of Court, rule 5.546(d); § 355.)

In any event, other than a conclusory assertion on appeal that the social worker's report contained hearsay subject to exclusion, Mother has made no showing that but for these errors she would have obtained a more favorable result. (*In re Celine R.* (2003) 31 Cal.4th 45, 59-60.) In short, Mother has not shown reversible error on this issue.

II. Sufficient Evidence Supported the Juvenile Dependency Court's Exercise of Jurisdiction

At issue here is the juvenile court's assumption of jurisdiction under section 300, subdivision (b). This subdivision provides, in pertinent part, that a child comes within the jurisdiction of the juvenile court if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, . . . 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." Proof of current risk at the time of the jurisdiction hearing is not required to support jurisdiction pursuant to section 300, subdivision (b), but may be satisfied by showing the child has suffered or there is a substantial risk that the child will suffer serious physical harm or abuse. (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261.)

A parent's substance abuse may constitute the requisite neglectful conduct supporting dependency jurisdiction. The statute explicitly permits jurisdiction based on "inability of the parent [] to provide regular care for the child due to the parent's . . . substance abuse." (§ 300, subd. (b).) The dependency statutes also recognize that "a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (§ 300.2.) As for the element of causation, drug-induced parental neglect might cause harm, particularly for "children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Furthermore, there are various ways in which a parent's substance abuse problem might create a risk that the child will ingest drugs. (*Id.* at p. 825.) The element – risk of injury – requires "evidence indicating that the child is exposed to a substantial risk of serious physical harm or illness." (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 823.)

Jurisdictional facts must be supported by proof by a preponderance of the evidence. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 198.) "By a 'preponderance of evidence' is meant such evidence as, when weighed with that opposed to it, has more convincing force, and from which it results that the greater probability of truth lies therein." (*In re Corey* (1964) 230 Cal.App.2d 813, 823.)

We review the juvenile court's jurisdictional findings pursuant to the substantial evidence standard of review. (See, e.g., *In re David M.* (2005) 134 Cal.App.4th 822, 828.) "In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact." (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) In determining whether substantial evidence supports the factual findings, all intendments are in favor of the judgment and we must accept as true the evidence which tends to establish the correctness of the findings as made, taking into account as well all inferences which might reasonably have been drawn by the trial court. The appellate

“court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) “Under the substantial evidence rule, we have no power to pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or determine where the weight of the evidence lies.” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748-749, fn. 6.) “Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.” (*In re Katrina C.*, *supra*, 201 Cal.App.3d at p. 547.)

If supported by substantial evidence, the judgment or finding must be upheld, even though substantial evidence may also exist that would support a contrary judgment and the dependency court might have reached a different conclusion had it determined the facts and weighed credibility differently. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Thus, the pertinent inquiry when a finding is challenged on sufficiency of the evidence grounds is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*Ibid.*) Applying this deferential standard, we view the evidentiary record in the light most favorable to the order. (*In re Diamond H.*, *supra*, 82 Cal.App.4th at p. 1135.)

Mother asserts two arguments with respect to the allegations in the section 300 petition pertaining to her. First she maintains the court applied the wrong legal standard in assessing parental neglect or lack of fitness. Second she claims there was no nexus between her drug use and mental health problems and risk to her children. Neither of these claims has merit.

A. *The court applied the correct legal standard*

Mother asserts that the dependency court erred in exercising jurisdiction without making a finding as to parental fault or unfitness, and instead by basing its finding entirely upon the fragile condition of Marco W. She asserts that the court concluded that

no parent could provide supervision for these children, and that absent a finding that she was unfit or neglectful, the court had no basis to exercise jurisdiction.

Mother misrepresents the court's findings. When the record is read in context it is clear that the court looked to Mother's failings as a parent, not just Marco W's condition in finding that jurisdiction existed. The court expressly rejected Mother's counsel's argument that no parent could care for the child.¹¹

B. Nexus between Mother's drug and mental problems and risk to the children

Mother argues that there is no causal connection between the risk of harm to the children and her drug abuse and mental health history and emotional issues. She claims that her drug use and emotional and mental challenges did not give rise to the children's medical conditions or affect her ability to parent them.

The Department did not present admissible evidence that Marco W. was directly exposed to drugs in utero. In addition, there was no evidence presented that Mother had harmed, or failed to supervise or neglected Marco W. or M.W. However, the juvenile court does not have to wait for a child to actually be hurt before it can intervene. (*In re Diamond H.*, *supra*, 82 Cal.App.4th at p. 1136, overruled in part on other grounds pursuant to *Renee J. v. Superior Court*, *supra*, 26 Cal.4th at p. 749.) "[T]he purpose of section 300, subdivision (b) is to protect the child from a substantial risk of future serious physical harm and that risk is determined as of the time of the jurisdictional hearing." (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1397.) Jurisdiction thus may be

¹¹ On this issue the court stated:

"This petition, especially Marco's petition, was not filed on behalf of all children or all parents. It was filed on behalf of the child, not against the mother. So whatever – whether any parent could take care of these children is really irrelevant. This mother admittedly can't take care of this child by her own statements and statements of her – arguments of her counsel today. . . . Even if I were to accept the argument that no parent could care for these – for this child with this condition, *which I reject out of hand*. But it is clear to me that she is unable to care for this child, and she's admitted that." (Emphasis added.)

unwarranted where the facts alleged in the petition represent an isolated instance of past parental neglect. Thus, for example, jurisdiction could not be based on a single incident of sexual abuse by an acquaintance in whose care the children were placed, where the evidence showed that he would never be trusted with them again. (*Id.* at p. 1398.) Likewise, jurisdiction was not warranted where the child was placed with a babysitter known to use marijuana, where the only evidence was that he would never be placed in her care again. (*In re David M., supra*, 134 Cal.App.4th at p. 831.) To support jurisdiction, there must be evidence that the child “will suffer, in the future, serious physical harm as a result of her parents’ negligent failure to protect her from the conduct of a custodian or caretaker. (§ 300, subd. (b).)” (*In re Savannah M., supra*, 131 Cal.App.4th at p. 1398.)

Here both children are medically fragile. At the jurisdiction hearing, Mother admitted through her counsel that she was unable to care for the children. Mother admittedly exposed M.W. to marijuana in utero, had a lengthy history of drug-related crimes, and failed to follow the terms of her probation. She was non-compliant with the services and treatment offered to help her deal with her ongoing drug use. Her lack of participation gives rise to the inference that her drug abuse problem is serious, unresolved and could affect her children’s safety.

In addition, Mother showed indifference towards her children. She failed to apply for benefits for Marco W., and failed to sign authorization to put a feeding tube in M.W. She missed the children’s appointments. She did not visit the children in placement consistently and did not call to inquire about their respective conditions. Mother displayed little interest in learning how to care for them.

Likewise there was evidence to support the allegation pertaining to her mental health challenges. She had a history of visual and auditory hallucinations. Mother had a history of erratic behavior, and irrational fears and obsessions. She had dramatic mood swings; she was violent and confrontational followed by periods of calmness. Mother assailed the hospital personnel caring for the children, threatening them and displaying an erratic temper. She failed to participate in the voluntary services to obtain therapy and a

mental health evaluation. Rather than treat her depression and purported stress disorder by taking the prescribed psychotropic medication, she choose to treat it by using marijuana. In view of Mother's history and behavior, the court could reasonably infer that Mother's ongoing and unresolved mental health problems posed a risk of harm to the two infants in this case.

Mother's effort to analogize her situation with *In re James T.* (2009) 176 Cal.App.4th 129, 137, is unavailing. In *James T.*, the mother with family support had been able to meet all of the needs of her three children, notwithstanding the mother's mental health history. In contrast, here the children were detained at birth and M.W. was exposed to drugs in utero. Mother had never been able to meet her children or her own needs, had not participated in programs to address her problems, continued to use drugs and failed to maintain regular contact with her children.

Taken as a whole the evidence in the record supports an inference that Marco W. and M.W. were at risk of harm based on Mother's drug abuse and mental health history and emotional issues which rendered Mother unable to care for them. Consequently, sufficient evidence supported the court's jurisdictional finding.

III. Mother lacks standing to challenge the jurisdictional allegations that pertain only to Father

Mother also argues there was insufficient evidence to support the jurisdictional findings in the petitions with respect to the Father regarding his failure to provide support for the children.

Mother lacks standing to raise this argument. Father has not appealed and Mother fails to show that she is aggrieved by the findings pertaining to Father. (*In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261 ["An appellant cannot urge errors which affect only another party who does not appeal."]; *In re D.S.* (2007) 156 Cal.App.4th 671, 674 ["Standing to challenge an adverse ruling is not established merely because a parent takes a position on an issue that affects the minor [citation]; nor can a parent raise the minor's

best interest as a basis for standing [citation]. Without a showing that a parent’s personal rights are affected by a ruling, the parent does not establish standing.”.)

Indeed, “[a] party has standing to seek review of a judgment or order by demonstrating that the party is legally aggrieved within the meaning of Code of Civil Procedure section 902. [Citations.]” (*In re Jasmine S.* (2007) 153 Cal.App.4th 835, 841-842.) “‘To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court’s decision. A nominal interest or remote consequence of the ruling does not satisfy this requirement.’ [Citation.]” (*In re Holly B.* (2009) 172 Cal.App.4th 1261, 1265.)

In any event, even were we to conclude that Mother was aggrieved by the findings related to Father, there is sufficient evidence that Father failed to provide support for the children or been involved in their lives in any way. This case stands in sharp contrast to *In re Anthony W.* (2011) 194 Cal.App.4th 1060, 1065-1066, where the appellate court rejected a finding that the child lacked support where notwithstanding lack of paternal support, the mother and grandmother had provided for the needs of the child. Here neither parent has provided for the needs of the children.

Though the evidence is not overwhelming, it is certainly sufficient to support the court’s jurisdictional findings.

DISPOSITION

The orders are affirmed.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.