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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re MIA G., a Person Coming Under the
Juvenile Court Law.

B239230
(Los Angeles County
Super. Ct. No. CK89716)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RICHARD G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Marguerite D. Downing, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, and Melinda White-Svec, Deputy County Counsel, for Plaintiff and
Respondent.

Richard G. (Father), the father of Mia G. (Mia), appeals from a juvenile court order, arguing that substantial evidence did not support the finding of jurisdiction over Mia. We affirm.

BACKGROUND

I. September 16, 2011 Petition

On September 16, 2011, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code section 300,¹ on behalf of Mia (born February 2011, and then six months old). The section

300 petition also named Mia's half-siblings Kimberly E. (Kimberly), G.V., and Joshua V. (Joshua), the minor children of Edith E. (Mother) by two other fathers. As Father challenges only the finding of jurisdiction over Mia, we discuss the facts as they pertain to Mia, and do not detail or address the allegations related to the other children unless pertinent.

The petition alleged in allegation a-1, under section 300, subdivision (a), that in July 2011, Father and Mother had engaged in violent physical altercations, with Father grabbing Mother and choking her with his forearm, throwing her to the ground, and holding her down. Father then grabbed Mother's arm, shoved Mother, grabbed her left wrist, slapped her face, and shoved her into a wall. Mother struck Father's chest and slapped Father's face. Mother sustained pain, bruises, and redness to the right side of her right eye and cheek, and fingerprint marks on her right wrist. Father was arrested on July 19, 2011, and charged with inflicting corporal injury on a spouse. All this occurred in the children's home and in their presence. Father's violent conduct against Mother endangered the children's physical health and safety, created a detrimental home environment, and put the children at risk of physical harm, damage, and danger.

In allegation b-2, under section 300, subdivision (b), the petition alleged that Father had a 10-year history of substance abuse and currently abused marijuana and

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

alcohol, rendering Father incapable of providing regular care of Mia. Father tested positive for marijuana on August 2, 2011, and possessed, used and was under the influence while caring for Mia. Mother knew of Father's substance abuse and failed to protect the children, letting Father live in the home and have unlimited access to them. Father had a criminal conviction for possession of marijuana.

The petition made additional allegations not at issue here regarding Mother and Father, under section 300, subdivisions (a), (b) and (j). The detention report stated that Mother was living at a confidential home address with the four children. Father was subject to a three-year criminal protective order for domestic violence, dated July 25, 2011, protecting Mother until July 25, 2014. A family law order filed August 24, 2011 and based on a conciliation court agreement provided that Father and Mother had joint legal custody of Mia. As to physical custody, Mia was in the care of Mother except that Father had care and responsibility of Mia Monday through Friday from 10:30 a.m. to 2:00 p.m., with exchanges to occur at the paternal grandmother's residence.

The referral on July 19, 2011, alleged that Father emotionally abused Kimberly, G.V., Joshua, and Mia, and physically abused Mia. Mother had called the police to report that she and Father had begun a verbal argument on July 18 which continued to July 19. Mother reported that Father hit her. The referral caller had seen bruises on Mother's left and right arms and red marks on both sides of her face. Mother reported that Father pushed her against the wall, and when she handed Mia to Kimberly, Father attempted to grab Mia. During that attempt, Mia "turned red." Father had been arrested and was incarcerated. None of the children was injured, and Mother planned to seek a restraining order against Father.

The social worker interviewed Mother on July 21, 2011. Mother said that on July 17, she and Father were arguing in the bedroom. Mother could not remember what they argued about. Mother moved to get Mia out of her crib. Father said she could not take Mia, stood in Mother's way, and threatened that he would take Mia away from Mother. Mother started to cry, and Father pushed her to the floor and told her to be quiet. Mother got up and closed and locked the door because she was afraid Father would harm

the other children. Father then grabbed Mother from behind with his forearm around her neck. Father yelled for Joshua to open the door, but Mother said not to and yelled to the children to record Father with their phone. Father then threatened to harm Mother's adult child, Luis, and break his legs. Father opened the bedroom door, and Mother ran to the living room and held on to a table, while Father grabbed her and told G.V. and Luis to watch Mother cry. G.V. told Mother to calm down, and Mother went to the kitchen for some water. The rest of the day and the next day were quiet.

On July 19, 2011, Mother was awake at 3:00 a.m. and in the living room, where she could hear neighbors talking about smelling marijuana coming from her apartment while she was at work. Father walked in and asked her what she was doing, and although Mother was upset at what she had heard, she said nothing. Mother went back into the bedroom and looked through Father's things, finding a video camera. The camera contained a video of Father having sex with a female neighbor, in Father and Mother's bedroom and on their bed, with Mia in her crib next to the bed. Mother thought this had happened while she was at work from 12:30 a.m. to 8:30 a.m. Mother confronted Father with the video and slapped him. Father slapped Mother back. Mia and Kimberly saw the incident, and Mother grabbed Mia and handed her to Kimberly. Father attempted to grab Mia, but Kimberly refused to let her go, so Father struggled with Kimberly, who finally got away and ran outside with Mia. Someone called the police, who arrested Father. Mother said this was the first time she and Father had a physical altercation. The next day, Mother obtained an emergency protective order protecting her and all four children.

Kimberly, then 15 years old, told the social worker that Mother and Father argued on July 18 because Father would not let Mother pick Mia up. Kimberly could see a shadow underneath the bedroom door of Mother being pinned to the ground by Father. Father got out and told them to get mother out of the room "the easy way" or "the bad way," although Kimberly did not know what that meant. Father started to take Mother's clothes out of the hallway dresser. Mother told him to pick the clothes up, and when he complied, things calmed down. Kimberly knew that the next day, July 19, Mother had found a videotape of Father and another woman. Mother confronted Father, told him to

leave, and they began to argue. Someone called the police, who came and arrested Father. Nothing like this had even happened before. Father had never hit or spanked Kimberly. Kimberly also reported that she had seen Father smoke marijuana once last year, sometimes the apartment smelled like marijuana, and Father drank once or twice a week, although she had noticed no change in his behavior.

Joshua, then 10 years old, stated that Mother and Father were arguing in the bedroom, but he did not know what about. At 6:00 a.m., Joshua noticed Kimberly was not in her bed, went to the living room, and heard Father telling mother he was going to take Mia away from her. Joshua saw Father slap Mother and push her to the ground, and when Mother got up Father pushed her against the wall. Joshua heard Kimberly tell Father not to hit Mother. Kimberly had Mia in her arms, and Father tried to take Mia away. Joshua saw Kimberly and Father struggle, and Kimberly finally was able to run outside. Someone called the police, who arrested Father. Joshua had not seen Father become physical before. Father had threatened to slap Joshua across the face, but never had done it. Joshua had seen Father smoke marijuana outside of their old house, and when no one was at home, Joshua could smell marijuana in the house. Joshua had seen Father drink “a big bottle of something,” and had seen Father drunk.

G.V., then 13 years old, stated that on July 18, 2011, Mother wanted to pick-up Mia from her crib, but Father would not let her. Mother and Father argued in the bedroom with the door closed, and G.V. heard Father push Mother and heard her fall to the ground. G.V. could also see, under the door, the shadow of Father holding Mother down. Kimberly was yelling at them to open the door, and Mother told them to record what was going on. G.V. heard Mother try to calm Father down, but he would not listen. Father opened the door and pulled Mother out of the bedroom, and Father finally calmed down. The next day, July 19, Mother and Father argued again because Mother did not go to work. Mother left and came back, looked through Father’s things, and found a video of Father with another woman. Mother confronted Father and told him to leave, but Father refused. They kept arguing, and Kimberly saw Father slap Mother. G.V. heard Kimberly screaming, came out of his bedroom, and saw Father trying to grab Mia out of

Kimberly's arms. Father was squishing Mia and she was turning red. Someone then called the police, and Father was arrested. G.V. said nothing like this had ever happened before, and he had never seen Mother and Father hit or push each other in the past. Father had never hit or spanked G.V.

Mother's adult child Luis told the social worker that on July 18, 2011, Mother and Father were arguing in the bedroom. Mother had told Luis that Father started to choke her. Luis heard mother yell at him and his siblings to stay in their room. Mother later told Luis that Father threatened to break Luis's legs if he tried to intervene. The next morning, Mother and Father were still arguing. Mother left and came back after a few minutes, looked through Father's things, and found the video camera showing Father having sex with another woman. Luis heard Mother tell Father to leave, but he refused. Luis heard a commotion, and when he walked into the living room he saw Father trying to take Mia from Kimberly, who finally got away and ran. Luis then called the police and told them Father was hitting Mother; when the police arrived, they arrested Father. Luis had never heard Mother and Father argue like this before, and had never seen them hit or push each other.

The police report stated that when the police arrived on July 19, 2011, they found Mother crying and having trouble breathing. Mother told them that her boyfriend of two years, Father, had assaulted her. On July 18, Mother had told Father she wanted to break up because he was constantly threatening to beat her children. Father grabbed her left arm, shoved her, and told her she was not leaving or taking the child. She later found the video of Father with another woman, and confronted him about his infidelity. She asked him to leave the house, and Father replied: "I'm not leaving and you're not taking my child." In the ensuing argument, Mother grabbed Mia from the sofa and handed her to Kimberly, telling Kimberly to go into the bedroom so she would not see the argument. Father grabbed Mother by the left wrist, slapped her with his open hand, and shoved her against the wall. Father then walked toward Kimberly, grabbed Mia with both hands, and tried to pull Mia out of Kimberly's arms. Mia turned red and began to cry. Kimberly broke free and ran outside with Mia in her arms.

The police saw bruises in all stages (green, red, and purple) on Mother's left arm, bruising and redness on the right side near the upper cheek area, and finger marks on Mother's right wrist. Mother complained of pain in her back and shoulder area. Mother said Father had not hit her in the past.

The police saw no bruises on Mia, and no sign of trauma was found when Mia was examined at a child crisis center. Father was arrested for domestic violence in violation of Penal Code section 273.5, subdivision (a).

The social worker interviewed Father on August 1, 2011. Father stated that on July 18, Mother yelled at him, saying, "you better respect me," and hit him on the chest. To calm Mother down, Father grabbed her arms and held her to the ground, yelling for the children to come and calm her down. Father finally managed to open the bedroom door and pulled Mother into the hall. When Father opened the drawer in the hallway, Mother pulled him and he pulled the entire drawer out. Mother tried to crawl back into the bedroom and Father grabbed her and began to wrestle. G.V. finally sat down on the ground next to Mother and got her to calm down.

The next night, Mother started looking through Father's things, and found a video of him sneaking a woman into the bedroom and of the woman holding Mia, all while Mother was at work. Mother never accused him of sleeping with the woman. Father then denied that there was a video or that he had ever snuck a woman into the apartment. When mother found this videotape, she began to yell and told Father to leave, hitting him twice on his chest and slapping him in the face. Father slapped her back. Kimberly had Mia in her arms and when Father tried to take Mia, Kimberly refused. Mia turned red because Kimberly was holding Mia tightly, and Father let go when he saw Mia turn red. Father saw Luis call the police, and the police arrested Father when they arrived. Father at first pleaded not guilty, but later he pleaded guilty so he did not have to stay in jail. The judge ordered Father to enroll in a 52-week domestic violence program, which he would do as soon as he could. The restraining order protected Mother until July 25, 2014.

Father denied ever disciplining Mother's children. Father admitted he had a juvenile criminal record and in 2008–2009, he served 13 months in prison for commercial burglary. In 2010, Father also had been pulled over while driving, tested at exactly 0.08, and had to attend 12 drunk driver classes. Father explained he had a medical marijuana card, and smoked marijuana outdoors about three times a week, for insomnia and back pain. He drank beer about twice a month, but did not get drunk.

Father stated that Mother was a few weeks pregnant, and he hoped to get legal and physical custody of Mia and the unborn child. He agreed to participate in an up-front assessment for domestic violence, and on-demand drug and alcohol tests.

On August 4, 2012, the social worker received Father's on-demand drug and alcohol results. Father tested positive for cannabinoids on August 4, 2011. He had a valid medical marijuana card based on an evaluation dated April 12, 2011. Father had also been the subject of three DCFS referrals as a victim, although no cases had been opened.

At a team decision making meeting with Mother present on September 13, 2011, DCFS determined that it would close the investigation of Mother. Mother would continue to enforce the restraining order against Father and follow the family law order of August 24, 2011, which allowed Father unmonitored visitation with Mia from 10:30 a.m. to 2:00 p.m., Monday through Friday, with exchanges at the paternal grandmother's residence. Mother stated she was concerned that her children had observed the domestic violence and did not want to show them that such behavior was okay. Mother worried that Father would take Mia away from her, and had not had any contact with him since she filed the restraining order.

At a separate team decision making meeting the same day with Father present, voluntary and court services were explained to Father, but Father did not agree to voluntary services and wanted the case taken to court. Father denied ever verbally abusing the children, and stated that trying to grab Mia out of Kimberly's arms was not physical abuse. Father did not believe that any domestic violence occurred, and also stated that he was considering taking a nine-month jail sentence rather than completing a

domestic violence program, believing that if he enrolled he would be admitting an incident of domestic violence. DCFS expressed concern about Father's "extensive substance use" and his criminal history.

DCFS recommended that the children remain detained in Mother's home, with monitored visits for Father with Mia.

II. September 16, 2011 Detention Hearing

Father and Mother were present, represented by appointed counsel. The court found that Father was Mia's presumed father. The court found a prima facie case to detain Mia, releasing her to Mother at a confidential address. Father denied the petition. Reunification services were to be provided to Father, who was given visitation according to the family court custody order. The court urged Father to get himself into a domestic violence program right away and ordered DCFS to give him referrals.

III. October 21, 2011 Jurisdiction/Disposition Report

The jurisdiction/disposition report contained more recent interviews with Kimberly, G.V., and Joshua in which they gave accounts of the domestic violence consistent with their prior interviews. The report stated that Father was very upset when he received a copy of the petition. When interviewed on October 12, 2011, Father insisted that whoever reported the domestic violence remembered too many details to have been scared, adding: "I will tell you this much. I did slap the mother's face but that's not domestic violence or against the law." Father also stated that he used the medical marijuana for back pain resulting from childhood physical abuse by his mother's boyfriend, but kept it in a container in a high corner of his closet. He had also used crystal meth, did not remember when he last used it, but was not addicted. Mother and Father confirmed that Father's unmonitored visitation with Mia was proceeding as scheduled, with pick-up and drop-off at the maternal grandmother's home.

DCFS expressed concern that Father did not believe there was domestic violence and that he refused to enroll in a domestic violence program. Father had told the dependency investigator that "hitting and getting slapped" was appropriate discipline for

children, and then immediately stopped and stated he did not want that statement to go to the court.

A last minute information filed November 30, 2011 stated that Father had been noncompliant with DCFS, and the social worker had been unable to verify if he was enrolled in any programs. The up-front assessment concluded that Father used marijuana daily, twice a day, and diagnosed cannabis dependence.

IV. December 7, 2011 Adjudication Hearing

Father and Mother were present and represented by counsel at the adjudication. Father's counsel moved into evidence copies of six receipts dated October 22, 2011 to November 26, 2011, showing Father's payment for domestic violence classes. The dependency investigator testified that DCFS did not recommend changing Father's unmonitored visitation with Mia. The social worker had reported that Father was not in contact with her, and that she could not verify his enrollment in programs; the dependency investigator had not been shown the receipts. Asked whether Father posed a current risk to Mia, the investigator responded "there is no risk as long as he continues to participate in his programs. [¶] He has unmonitored visits right now." There were concerns about the visitation, however, in that Mother claimed "there was a lot of last minute antics" and "it appeared that the father was not there during the visits with Mia. That it was primarily the grandparents." The investigator was not aware of any violations of the restraining order by Father, or any inappropriate contact with the children.

Mother testified that Father had not returned home after she obtained the restraining order, and that she needed help getting alternate housing.

The children's counsel requested that the court sustain the domestic violence allegations and dismiss the substance abuse allegations, and Mother's counsel agreed. Father's counsel asked the court to dismiss the entire petition. Father was enrolled in domestic violence classes, and the July incident was a one-time event dealt with by the criminal restraining order and the family law order. There was no need for DCFS to order services in which Father was already enrolled.

The court stated that it had read the DCFS exhibits and Father's exhibit containing the receipts. The court did not agree that the criminal order took care of the issues in the case. Father's participation in a program did not mean that there was no risk, and it was possible that Father would violate the restraining order. Father had not stayed in touch with the social worker. The court stated: "I have no guarantee that he's going to complete the program. . . . The [domestic violence] program that he is doing does not mean that there's no risk" The court sustained the petition as to all four children on counts a-1 (Father's domestic violence) and b-2 (Father's substance abuse), gave physical custody to Mother, and dismissed the other allegations.² Father was to receive reunification services, be subject to random drug and alcohol testing, and complete a parenting program.

Father filed this timely appeal.

DISCUSSION

We apply the substantial evidence test on appeal from a court's finding of jurisdiction in a dependency case, and we affirm if the record shows "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]" (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) "We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary conclusion. [Citation.]" (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.) "In dependency proceedings, a trial court's determination will

² The minute order incorrectly states that the court *dismissed* count a-1. This section of the minute order must be ignored, because it is clear from the court's oral pronouncement that the court dismissed count a-2 and sustained count a-1. (See *In re Aryanna C.* (2005) 132 Cal.App.4th 1234, 1241, fn. 5.; *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.) In any event, the minute order subsequently states, correctly, that counts a-1 and b-2 are sustained.

not be disturbed unless it exceeds the bounds of reason. [Citation.]’ [Citation.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 575.)

Count a-1 alleged that the violent physical altercations between Mother and Father, in the presence of all four children, endangered Mia’s physical health and safety and placed her “at risk of physical harm, damage, and danger.” Father argues that there was insufficient evidence that Mia “has suffered, or there is a substantial risk that [Mia] will suffer, serious physical harm inflicted nonaccidentally upon [Mia] by [Father],” as required for jurisdiction under section 300, subdivision (a). Under that subdivision, “a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).)

“Although many cases based on exposure to domestic violence are filed under section 300, subdivision (b) [citations], section 300, subdivision (a)[,] may also apply.” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) In reviewing an allegation of domestic violence, “application of section 300, subdivision (a) is appropriate when, through exposure to a parent’s domestic violence, a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent.” (*Id.* at pp. 598–599.)

The application of section 300, subdivision (a) to this case did not exceed the bounds of reason. Viewing the evidence in the light most favorable to the court’s finding of jurisdiction, we see ample evidence that Father engaged in two violent altercations with Mother witnessed by all the children and directly involving Mia. On July 17, 2011, when they were arguing in the bedroom and Mother, newly pregnant, moved to get six-month-old Mia out of her crib, Father stood in her way and threatened to take Mia. Father then pushed Mother to the floor, told her to be quiet, grabbed Mother from behind, and put his forearm around her neck. Father threatened to break Luis’s legs, and then followed Mother into the living room, where he held her still and ordered the children to

watch her cry. The most violent part of Father’s abuse occurred next to Mia’s crib, when Mother attempted to take Mia out.

Two days later, Mother and Father slapped each other, and Mother grabbed Mia from the couch and handed her to Kimberly. Father shoved Mother against the wall. He tried to grab Mia and then struggled with Kimberly, who held on to Mia. Father was “squishing” Mia and making the baby turn red. Again, Father’s violence against Mother included Mia when he tried to grab the baby, forcefully enough to make her turn red, after Mother attempted to protect Mia by handing the baby to Kimberly.

This is not domestic violence between parents, standing alone; the violence occurred in the presence of four children and centered around and about the youngest, a six-month-old baby. Father placed Mia in the middle of his violence against Mother. Surely this is enough to indicate that Mia was at risk of serious physical harm inflicted nonaccidentally on her by Father. “The court may consider past events in deciding whether a child presently needs the court’s protection. [Citations.]” (*In re N.M.* (2011) 197 Cal.App.4th 159, 165–166.)

Father argues that the jurisdictional finding was not necessary, as the parents had “separated” and Father had begun to comply with the terms of his probation by participating in domestic violence counseling. The parents had “separated,” however, only because Mother obtained a three-year criminal restraining order against Father, who was therefore prohibited from contact with Mother. Further, Father was not going to counseling voluntarily. He did not agree to voluntary services and wanted his dependency case taken to court. He denied that slapping mother was domestic violence, and stated that he believed hitting and slapping were appropriate discipline for children. He attended counseling because 52 weeks of domestic violence counseling was required by his probation following his conviction for domestic violence.³ His involuntary separation from Mother, as a result of his criminal conviction, and his enforced

³ Father had not stayed in touch with the social worker, who was unaware that he was participating in domestic violence counseling until the disposition hearing. Father had completed only six of the 52 required weeks.

participation in counseling do not make dependency jurisdiction unnecessary. “The question to be asked is whether, in the absence of the state’s intervention, there is a substantial risk that the child will be abused.” (*In re Carlos T.* (2009) 174 Cal.App.4th 795, 806.) If Mother had not obtained the restraining order against Father, and if Father’s criminal conviction for domestic violence had not required him to attend counseling, Mia faced a substantial risk of abuse, given Father’s belief that slapping Mother was not domestic violence and that hitting and slapping were appropriate discipline for children.

It is true that at the time of the hearing, the family court order allowed Father unmonitored visitation with Mia, and the trial court did not require that visitation with Mia be monitored. This is not, however, fatally inconsistent with the court’s order. While his visitation was unmonitored, exchange was to occur at the home of Father’s parents. Under the criminal restraining order, Father would have no contact with Mother during the exchange, providing Mia with insulation from the risk of being caught in the middle of another violent confrontation. Further, the dependency investigator testified that it appeared that Father was not there during the visitation, which was primarily with Mia’s paternal grandparents.

Considering the evidence as a whole, Father’s refusal to participate in voluntary services, his failure to keep in touch with the social worker, and his repeated denial that hitting or slapping were domestic violence or abuse, supported the court’s concern that there was no guarantee that Father would complete the counseling program or continue to comply with the criminal restraining order. Drawing all inferences in favor of the court’s ruling, we affirm the court’s assertion of jurisdiction over Mia under section 300, subdivision (a).

Father also argues that substantial evidence did not support the trial court’s assertion of jurisdiction under count b-2, which alleged that Father’s history of substance abuse, his abuse of marijuana and alcohol, and his criminal history for possession of marijuana created a detrimental home environment and placed the children at risk of

physical harm, damage, danger and failure to protect under section 300, subdivision (b).⁴ We need not address this claim. When, as in this case, a dependency petition alleges multiple grounds for asserting jurisdiction, we may affirm the juvenile court’s finding of jurisdiction “if any one of the statutory bases for jurisdiction . . . 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. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) We conclude that substantial evidence supported jurisdiction over Mia under section 300, subdivision (a), and we therefore need not address this second ground for jurisdiction in affirming the trial court’s assertion of jurisdiction.

We note, however, that the medical marijuana card is not the sole evidence supporting jurisdiction under section 300, subdivision (b). Father’s history of alcohol and marijuana use is undisputed, he had also used “crystal meth,” and although he presently had a medical marijuana card, he had a misdemeanor conviction of possession of marijuana. The two older children reported that they had smelled marijuana in the home, and Mother heard the neighbors complain that they smelled marijuana coming from the apartment while she was at work. Father initially stated that he smoked marijuana outside three times a week, but the up-front assessment reported that he smoked twice daily, and diagnosed cannabis dependence.

As in *In re Alexis E.*, *supra*, 171 Cal.App.4th 438, the medical marijuana card “did not come into existence until long after Father began using marijuana, which means that Father was medicating himself with it prior to that recommendation. Thus, Father was using the substance illegally prior to that recommendation, and that fact supports a finding of substance abuse.” (*Id.* at p. 451.) Here, there was evidence that Father used

⁴ Section 300, subdivision (b), provides in relevant part that a minor comes within the jurisdiction of the juvenile court if the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness because of the failure or inability of his or her parent to adequately supervise or protect the child, or the inability of the parent to provide regular care for the child due to the parent’s substance abuse.

marijuana in the home, like the father in *In re Alexis E.* (*Ibid.*) In this case, Father was diagnosed with cannabis dependence; in *In re Alexis E.*, the father was diagnosed with panic disorder, consistent with the literature on the effects of marijuana abuse. (*Id.* at p. 453.) “[W]e have no quarrel with Father’s assertion that his use of medical marijuana, *without more*, cannot support a jurisdiction finding that such use brings the minors within the jurisdiction of the dependency court However, we have just set out the ‘more’ that supports the court’s finding that his use of medical marijuana presents a risk of harm to the minors.” (*Ibid.*)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.