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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B240567  
(Los Angeles County  
Super. Ct. No. CK56419)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ADRIANA M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Steven Marpet, Commissioner. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel and Navid Nakhjavani, Deputy County Counsel for Plaintiff and Respondent.

Appellant Adriana M. (Mother), mother of M., Melody and Albert M., appeals the juvenile court's jurisdictional order asserting jurisdiction over M. and Albert under Welfare and Institutions Code section 300, subdivision (b), and its dispositional order removing them from Mother's care.<sup>1</sup> She contends the court's orders are not supported by substantial evidence. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in May 2011, when M., then seven, allegedly kissed a fellow student and threatened to kill the student if she told anyone.<sup>2</sup> A caseworker for DCFS investigated the matter by interviewing M., Mother and the maternal grandmother, and found no evidence of sexual abuse.<sup>3</sup> However, the family's home was found to be extremely messy, containing rotten food, trash, mold, and spider webs. Mother was instructed to clean the home.

When the caseworker returned in July to follow up, the maternal grandmother refused to let her into the home. She confessed it had not been cleaned and blamed its condition on her diabetes and Mother's work schedule. The caseworker also learned that M. had been a client of the Regional Center and that the case had become inactive when Mother discontinued services and ignored

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code. Melody was not a subject of the underlying proceeding. At the time it was initiated, Melody was living with her paternal grandmother, who had formally been appointed the girl's guardian in 2008.

<sup>2</sup> M. suffers from cerebral palsy and cognitive impairment. Mother and Peter M. (Father) had been involved in a dependency proceeding in 2004, prior to the births of Melody and Albert. At that time, a petition was sustained based on domestic violence, Father's use of methamphetamine, Mother's history of substance abuse, and M.'s ingestion of amphetamine she found in the home.

<sup>3</sup> Mother, M. and Albert were living with the maternal grandmother.

the staff's repeated attempts to contact her.<sup>4</sup> The caseworker also learned that although a July medical examination of M. had revealed no evidence of sexual abuse, the examiner noticed bruising that might have been the result of physical abuse. M., Melody, age 6, and Albert, age 5, reported that their maternal uncle, Juan M., had hit all three minors with belts, shoes and extension cords. Melody stated that Mother had told Juan to stop hitting them because it left marks that someone could see. The paternal grandmother reported that Melody had had a bruise near her eye a few weeks earlier and reported that her uncle had hit her.<sup>5</sup> Father spoke to Mother about Juan's physical abuse of the children and Mother told Father to talk to Juan himself. Father further reported that Albert had been taken to an emergency room and given staples in his scalp due to injuries suffered while playing unsupervised with his cousins at Mother's home. The caseworker attempted to contact Mother, who initially did not return the calls. The caseworker put into place a safety plan under which the children were to stay with the paternal grandmother in her home. Father was instructed not to reside there. The paternal grandmother was instructed not to allow either parent to visit the children outside her presence.

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<sup>4</sup> (See *Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 486, quoting § 4620, subd. (b) ["Under the Lanterman Developmental Disabilities Services Act [§ 4500, et seq.], care for the developmentally disabled is provided by private contractors operating, among other services, residential care facilities. The coordination of the delivery of such direct services is the responsibility of 'private nonprofit community agencies' called 'regional centers.' [Citation.]" (Fn. omitted.); § 4512, subd. (a) [defining "[d]evelopmental disability" as "a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual," and stating that the term includes mental retardation, cerebral palsy, and other "disabling conditions found to be closely related to mental retardation"].)

<sup>5</sup> The paternal grandmother, Father and Melody all reported that Juan lived with Mother and the maternal grandmother. The maternal grandmother denied that he was living with the family.

On July 25, 2011, Mother and Father attended a team decision meeting, where Mother acknowledged that when she was at work, she left the children unsupervised or in the care of the maternal grandmother, who was unable to supervise them due to her illness. Mother admitted she could not stop Juan from coming into the home and abusing the children. She further admitted that she had not been diligent in obtaining the services needed for M.<sup>6</sup> She disclosed a 2008 DUI, which caused her to lose her driver's license.<sup>7</sup> Father had a lengthy criminal history, including arrests for possession of a controlled substance, infliction of corporal injury on a spouse, and "sexual battery," but he had been in compliance with parole conditions since his release from imprisonment in 2010 and had been testing negative for drugs.<sup>8</sup> As a result of the meeting, Mother agreed to participate in parenting classes focusing on special needs children, individual counseling, and random drug testing. Father agreed to participate in parenting classes and random drug testing. DCFS nonetheless decided to file a petition and "explore" alternate placement.

At the detention hearing, Father asked that he be allowed to return to the paternal grandmother's home, and that the children be formally released to him. The children's attorney joined in the request, as Father was essentially a non-offending parent, and there was no prima facie evidence to support detaining the

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<sup>6</sup> Mother had been informed by a medical provider that M. would eventually need corrective eye surgery. Over the course of the proceeding, it was determined that M.'s vision was very poor. She did not get glasses or an eye surgery medical consultation until after DCFS's intervention.

<sup>7</sup> The caseworker later learned that Mother's criminal history included petty theft, possession of a controlled substance and two DUI's, in 2001 and 2008.

<sup>8</sup> Father reported that the conduct involved "sexual interactions" with a 16-year old girl when he was 19, and that he had registered as a sex offender at the insistence of his parole officer. He claimed that the attorney who represented him subsequently advised him he should not have registered and was attempting to help him "unregister[]."

children from him. The court detained the children from Mother and, over DCFS's objection, placed them with Father on the condition that he and they continue to reside with the paternal grandmother. The court allowed Mother to have unmonitored visits, on the condition that they take place in a public setting and that no others be present.

In the original jurisdictional/dispositional report, prepared in September 2011, the caseworker reported that Mother had failed to keep in contact with DCFS or return the caseworker's calls.<sup>9</sup> As of that date, Father had moved out of the paternal grandmother's home, claiming that his status as a registered sex offender required the move. He began living with his current girlfriend and her two children.<sup>10</sup> The caseworker concluded that Father had made "reasonable accommodations" for the children by leaving them with the paternal grandmother when he moved out. DCFS did not recommend a change in custody or placement.

Interviewed in November for an interim report, Mother stated that she knew Juan hit the children but she had told him to stop and believed that he had. She admitted she had not followed through with obtaining Regional Center services for M. and blamed her failure to do so on her lack of a telephone. She stated that when Albert was injured by a rock while playing with his cousins, she believed her sister was supervising the children.

In December 2011, the paternal grandmother was evicted from her home for failure to pay rent and moved in with Father and the minors. At a team decision meeting held later that month, the parties decided that placement with Father would not be disturbed as long as he continued to reside with the paternal

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<sup>9</sup> The jurisdictional/dispositional hearing was continued several times and did not take place until March 2012.

<sup>10</sup> One of the children was Father's and the girlfriend was pregnant with their second child, who was born in January 2012.

grandmother. DCFS later learned that the paternal grandmother was living elsewhere and caring for three other grandchildren, and that Father and the minors were still living with his girlfriend and her three children. The caseworker “express[ed] concern” about the children’s care with Father, but DCFS did not recommend a different placement.<sup>11</sup>

In February 2012, Mother moved into an acceptable apartment with room for the children. She stated that either her boyfriend or a neighbor would provide child care when she was at work. However, the caseworker learned that Mother’s boyfriend, who lived with her, had a criminal history of substance abuse. The neighbor, when contacted, did not confirm that she had agreed to be available for childcare. Under the circumstances, the caseworker did not believe Mother would be able to care for the children. In addition, the caseworker was concerned that Mother would be unable to maintain a clean home. Moreover, because Mother failed to comply with the case plan to which she had agreed at the original team decision meeting, the caseworker believed she had “not gained any insight into why her family is involved with DCFS,” and that future abuse was likely to occur.

At the March 2012 jurisdictional hearing, the caseworker reported that Mother’s home was clean and had no safety hazards. Mother testified she had been in the shower when Albert, playing in the backyard with his cousins, was hit

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<sup>11</sup> Father had taken parenting classes and had put himself on a waiting list to obtain individual counseling. He had submitted to multiple random drug tests, all of which were negative. Mother was often difficult to contact and although she tested negative when she appeared, she repeatedly missed scheduled drug tests. She did not begin parenting classes until February, 2012 and according to Father, who attended some of the same sessions, had not begun the series until the fourth class. She had not enrolled in individual counseling, although she claimed to have been on a waiting list since July 2011. She did not arrive at a scheduled March 2012 family meeting until its conclusion and missed multiple visits with the children. She attempted to blame Father for the missed visits, but Father explained that in compliance with the court’s order, he refused to let her take the children when she brought her boyfriend along for visits.

in the head with a rock.<sup>12</sup> She claimed that because she was “always at work,” the maternal grandmother was responsible for keeping the house clean. She further testified that she stopped taking M. to the Regional Center for services because someone told her the services would be terminated when M. turned 5 and began receiving occupational speech therapy through the school. She denied ever hearing from the Regional Center that she should bring M. back. Mother further denied ever seeing Juan strike the children and denied that the children had ever reported being hit by him.

After hearing the arguments of counsel, the court found true (1) that Juan physically abused M. and Albert by striking them with “belts, shoes and extension cords inflicting marks and bruises,” and that Mother failed to protect the children, despite knowing that they were being physically abused; (2) that Mother and Father medically neglected M. by failing to obtain “age appropriate developmental services including Regional Center services and appropriate physical therapy”; and (3) that Mother “placed the children in an endangering situation” by leaving them unsupervised, which caused Albert to sustain an injury requiring staples on his scalp.<sup>13</sup> Based on these sustained allegations, assumption of jurisdiction was found to be appropriate under section 300, subdivision (b), failure to protect.

Turning to disposition, the court asked whether counsel wished to be heard. Hearing no response, the court placed custody with Father, finding “by clear and convincing evidence” that there was “a substantial danger to the [minors’] physical and mental well-being” and “no reasonable means to protect [them] without

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<sup>12</sup> She did not claim that another adult was supposed to have been supervising the children.

<sup>13</sup> Allegations of the original petition concerning Father’s criminal past and the unsanitary condition of the maternal grandmother’s home were stricken by the court or dismissed by DCFS.

removal [from Mother].” Mother was ordered to complete a parenting program, to undergo individual counseling to address case issues, and to drug test on demand. Mother was permitted unmonitored visits with the children on the condition that no one else be present.

## **DISCUSSION**

Mother contends substantial evidence does not support the court’s jurisdictional or dispositional findings. For the reasons discussed, we disagree.

### *A. Jurisdiction*

In order to assert jurisdiction over a minor, the juvenile court must find that he or she falls within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) DCFS bears the burden of proving by a preponderance of the evidence that the minor comes under the juvenile court’s jurisdiction. (*Ibid.*; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) “We review the juvenile court’s jurisdictional findings for sufficiency of the evidence.

[Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible. [Citation.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Section 300, subdivision (b), the provision under which the court asserted jurisdiction over M. and Albert in the present matter, permits the court to adjudge a child a dependent of the juvenile court where: “[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 the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of

the custodian with whom the child has been left.” A true finding under subdivision (b) requires proof of: “(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.) “[T]he consensus of the courts . . . has been that a court cannot exercise dependency jurisdiction under this subdivision where the evidence shows a lack of current risk.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1023.)

Mother contends that by the date of the jurisdictional hearing, there was no evidence of current risk of harm to M. and Albert, as she had moved into an apartment which the caseworker found to be appropriate and clean. Mother’s actions, though commendable, were insufficient to negate the risk of harm. The court based its jurisdictional finding on Mother’s failure to ensure that the children were appropriately cared for and protected from abuse throughout their young lives and her failure to ensure that M. received the services she needed. With respect to the lack of appropriate supervision, the evidence indicated this was a perennial problem, and that Mother regularly left the children unsupervised or supervised by wholly inappropriate caregivers, such as the maternal grandmother, who was too ill to adequately care for them. This neglect had led to the children being abused by Juan on numerous occasions and caused Albert to be seriously injured on another occasion. The evidence amply supported that Mother, though aware of Juan’s abusive actions toward the children failed to protect them until DCFS intervened. By moving out of the grandmother’s disorderly home and away from contact with Juan, Mother had alleviated that immediate problem, but the evidence indicated she was still oblivious to the children’s needs for consistent daily supervision and

to M.'s need for appropriate services to address her significant disabilities. Mother had failed to comply with her agreement to participate in a parenting class focusing on special needs children, which might have improved her understanding of the children's needs. She placed all blame for the condition of the home in which she and the children lived on the maternal grandmother. She suggested as new child care providers a boyfriend with a history of drug abuse and a neighbor who had not agreed to care for the children. In making its determination, the court was also entitled to consider Mother's uncooperative behavior over the course of the proceedings, including her failure to keep in contact with DCFS during various periods, her failure to cooperate with drug testing in breach of her original agreement, her absence from an important family meeting, and her decision to bring her boyfriend along on visits in violation of the court's orders. Moreover, Mother's testimony at the jurisdictional/dispositional hearing was so at odds with her previous statements, the court could reasonably conclude she was being intentionally deceptive. These factors, when combined with Mother's proven inability to arrange for appropriate care and supervision of the children or to protect them from abusive adults, amply supported the court's jurisdictional order.

#### B. *Disposition*<sup>14</sup>

After finding that a child is a person described in one of the subdivisions of section 300 and therefore the proper subject of dependency jurisdiction, the court must determine "the proper disposition to be made of the child." (§ 358.) "A dependent child may not be taken from the physical custody of his or her parents

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<sup>14</sup> Although Mother's counsel's failure to address disposition when invited to do so by the court and failure to object after the court stated its dispositional order raises the prospect of forfeiture, we address the merits of Mother's appeal of the dispositional order.

. . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [that] [t]here 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 from the minor's parent's . . . physical custody.” (§ 361, subd. (c)(1).) To support its dispositional order removing custody from a parent, “the court may consider the parent's past conduct as well as present circumstances.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917; see *In re Y.G.* (2009) 175 Cal.App.4th 109, 116 [juvenile court may “consider a broad class of relevant evidence in deciding whether a child is at substantial risk from a parent's failure or inability to adequately protect or supervise the child”].) On review of the court's dispositional findings, “we employ the substantial evidence test, however bearing in mind the heightened burden of proof.” (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

Mother's attacks on the court's dispositional findings are not persuasive. She claims that the risk to the children -- which she describes simply as “exposure to [Juan]” -- had been alleviated by her decision to move into her own place, and that her “only remaining problem at that point was child care.” Mother's deficiencies were not limited to her decision to permit Juan to have access to the children, although her failure to take effective measures to prevent him from abusing them was a serious issue which alone justified the court's determination. Mother's parenting skills were deficient in other ways evidenced by her neglect of M.'s medical and vocational needs and her failure to ensure appropriate supervision of the children when she was absent. She failed to address the issues that led to DCFS intervention, demonstrated by her uncooperative behavior over the course of the proceedings, her neglect of the services she had agreed to

undertake, and her refusal to take responsibility for the condition of the home in which she and her children had been living. Her unreliable testimony at the jurisdictional/dispositional hearing was further proof that she could not be trusted to resolve or correct her parental deficiencies unless strong measures were taken. The court's conclusion that there was a substantial danger that Mother would be unable to protect the children or ensure that they were properly supervised was reasonable, and justified its dispositional order removing them from her custody.

**DISPOSITION**

The court's jurisdictional and dispositional orders are affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.