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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re ASA S., a Person Coming Under the  
Juvenile Court Law.

B248366

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK97600)

Plaintiff and Respondent,

v.

JOHN S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Steven Klaif,  
Referee. Affirmed.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and  
Appellant.

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

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John S. (father) appeals from juvenile court orders asserting dependency jurisdiction over 15-year-old Asa S., and removing him from father's custody. Father contends the trial court erred in denying his request for a continuance of the jurisdiction hearing. Father also argues substantial evidence did not support the order declaring Asa a dependent of the court, or the dispositional order removing Asa from father's custody. We affirm the juvenile court orders.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On January 29, 2013, the Los Angeles County Department of Children and Family Services (DCFS) received a call at the child abuse hotline regarding 15-year-old Asa. The referral alleged emotional abuse and general neglect by father. On January 30, a Pasadena police officer interviewed Asa in response to a suspected child abuse report. According to Asa, his parents divorced in 2003. He lived with his mother and maternal grandmother until his mother's death in 2007, when he began living with father in Hawthorne. In 2008, Asa enrolled in a private school in Pasadena. Father began working in Pasadena in 2009. In 2012, Asa entered the ninth grade in Pasadena. Father and Asa moved to Pasadena in August 2012.

Asa reported that father had become a "hoarder." Since they had moved from a two bedroom apartment to a smaller home in Pasadena, there were items stacked in front of the residence that would not fit inside. There were also boxes and containers in the house, which Asa described as "more like junk which his father would not get rid of." Asa also reported that father lost his job as a civil engineer in October 2012, and had since grown "increasingly moody." Father now had to get food from local food banks; much of the food was close to its expiration date when father brought it home. Asa "was told by his father to take a chance on recently expired food from time to time." But sometimes Asa "would skip a meal or two just to make sure that the food was not spoiled." Father forgot about food in the refrigerator until it had spoiled; Asa had to remind father to throw food away.

Asa told the police officer father had often fallen asleep while driving with Asa in the car. Father had driven off the road a few times, but he and Asa were unhurt. Father had also caught himself falling asleep and would pull over to nap. Asa said they would “often end up parked in some unsafe part of town,” and this made “Asa feel unsafe and frightened.” Asa denied any physical abuse. But the two fought soon after father lost his job, and father blamed him. When Asa responded angrily, father grabbed him. The two wrestled to the floor. Asa said no one was injured. He told the officer he was initially uncomfortable moving to their current residence, a converted garage, because he considered the neighborhood unsafe. He also thought the house itself might be unsafe because it was not “built to code.” The wall heater in the house did not work and the toilet did not flush properly. Although Asa used a portable electric heater, it was not enough to keep him warm.

Two Pasadena police officers and a DCFS social worker went to the house. Father was home, but was reluctant to answer questions. The reporting police officer described the unit as surrounded by boxes and containers, as well as a double mattress. Father said storage was a problem since they had moved to a smaller house with no garage. The living room was “filled with containers with papers and [father’s] work related items.” The officer noted the unit’s refrigerator was located in a small hallway. He “could smell a rotten stench in this area which smelled like spoiled food. The refrigerator was full of food items in mostly original packaging. [The officer] was unable to tell if rotten food was present. [Father’s] room was littered with boxes and items of clothing on the bed and the floor. He told [the officer] that he had just thrown out some kale which had been spoiled in the refrigerator.” The officer was unable to get hot water from a faucet in the bathroom, but the toilet worked.

The DCFS social worker’s report was similar. The social worker noted a “very strong foul odor as one enters the home,” and “stuff in all the living areas, boxes, piles of paper, clutter.” Father showed the social worker canned goods in the cupboard, and milk in the refrigerator. However, the social worker noted there was a “strong smell to the refrigerator area.” She later interviewed Asa. Asa was clean, and was wearing clean

clothes. He reported that things had grown “very bad living with his father because his father is not stable, he lost his job, lost his car, has no means of support. . . . Father has no stable income and gets food from the food bank. The food is good for one day or two, and then it rots in the refrigerator. It goes bad and then father does not throw out the food. Sometimes Asa goes 12 hours without eating, . . . . And Asa is allergic to some of the food that is available, including allergic to all nuts and wheat. Asa said that there are canned goods in the home, but they can’t eat the food, because they do not have a can opener.” Asa opined that father acted in a “bi-polar way,” and, when angry, father said things to intentionally hurt Asa. He felt “he should be taken away from his father because of the rotten food, bad smell, roaches in the home, not proper living conditions.”

Father refused to make a safety plan with the DCFS social worker. Asa was taken into protective custody and placed with family friends. DCFS filed a dependency petition containing the following allegations under Welfare and Institutions Code section 300, subdivision (b):<sup>1</sup>

“(b-1): On prior occasions, [father] placed the child in a detrimental and endangering situation in that the father fell asleep while the father drove a vehicle, while the child was a passenger in the vehicle, resulting in the father driving off the road. Such a detrimental and endangering situation established for the child by the father endangers the child’s physical health and safety and creates a detrimental home environment, placing the child at risk of physical harm, damage and danger.

“(b-2): [Father] failed to provide the child with the adequate amounts of food, resulting in the child going hungry for twelve hours. Such failure to provide adequate amounts of food 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.

“(b-3): On 1/30/2013, [Asa’s] home was found to be in a filthy and unsanitary condition including numerous boxes, containers and a mattress surrounding the entrance to the home. There were containers, piles of papers and clutter in the living room. There were numerous boxes and clutter in the father’s bedroom. The home emitted a foul odor and the refrigerator smelled of rotten food. Such a filthy and unsanitary home environment established for the child by the child’s father . . . endangers the child’s

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

physical health, safety and well being and places the child at risk of physical harm and damage.”

The petition asserted a similar allegation regarding father’s failure to provide sufficient food under section 300, subdivision (g). In early February 2013, the juvenile court detained Asa.

### ***Jurisdiction and Disposition Report***

In March 2013, DCFS filed a jurisdiction and disposition report. A social worker interviewed Asa regarding the petition’s allegations. Asa recalled that once in 2010, father fell asleep while driving and Asa was in the car. The car went into a ditch, but no one was hurt. Asa also reported that between 2009 and 2012, father on occasion swerved in lanes while driving because he was falling asleep. On several occasions while Asa was in the car, father pulled over and stopped, then slept, because he was too tired to drive.

As to the allegation that father did not provide adequate food, Asa reported:

“When we moved to our house on Mountain in August of 2012 there was no food to begin with. We would eat out every night. When [father] lost his job in October he would go to food shelves and basically get a lot of food that would expire the next day. He would leave it in the refrigerator and [it] would get rotten and stink. We would get canned food from our church but had no can opener. My dad left all the time he would say I’m going to do some errands and would always say I will see you in two-three hours from now. But in reality it would be more than 12 hours. In all that time I would be without food until he got back.”

Asa told his grandmother he had no food in the house. She began giving him money for lunch and grocery store gift cards. Asa said he used the money “in secret” because father would view Asa’s conduct as “rebellion, disrespectful.”

Asa also confirmed the allegation regarding the state of their house. He reported father “would not wash dishes for three or four weeks and expected me to do it but never really told me.” Asa also said there were cockroaches in the house, and the smell of rotten food. Although father tried to get rid of the smell, he did not know where it was, and gave up. Asa further reported: “There were stacks of bills that had not been paid. Music and boxes of stuff that had been from the old house. The things that had been put

in the garage in the old house he just put outside. The food being rotten only started when he lost his job in October. The clutter has always been there.”

Asa opined that father was showing symptoms of bipolar disorder. He explained: “These symptoms include radical changes in behavior which involve being depressed for no reason he is in bed for most of the day and he doesn’t communicate with people around him. In some moments he is extremely happy almost to the point of anger. He believes he is the victim in every situation. He has a hard time handling money sometimes he will buy something that he knows he cannot afford and wastes all of his money on that.” However, father had never been formally diagnosed by a physician. Asa recounted that in November 2012, he and father got into an argument about Asa keeping secrets from father. According to Asa, father “got in [Asa’s] face,” pushed him, and they “went to the floor and . . . battled it out.” Asa continued: “He kicked me on my side. He was just trying to subdue me like trying to hold me down. With his elbow he quickly jabbed me on my side. He never punched me but he would threaten me by saying that he went to West Point and he was a trained killer.”

DCFS did not interview father. A DCFS social worker was unable to reach father by telephone, or in person, on February 25 and 26, 2013. On February 28, the social worker spoke with father by phone. Father told the social worker to speak with his attorney, but she informed him she was unable to do so. Father said he would ask his attorney about talking to the social worker. The social worker advised father any interview had to take place before March 5. Later that day, father left the social worker a message indicating he wished to provide a number of letters to DCFS refuting the petition’s allegations, and he did not want to meet with DCFS until he had received various documents. The social worker responded with a telephone message, asking father to call back with an appointment date and time for the interview, “as there is a deadline [the social worker] has to complete the report.” She indicated she was available to meet on March 4. As of March 5, father had not contacted the social worker.

One of Asa's former teachers, Joye Roberts, told DCFS about an occasion in 2012 in which father drove dangerously due to fatigue. Roberts and Asa were both in the car. She recalled that father had difficulty staying in his lane and nearly hit a barrier on the freeway. Roberts screamed, causing father to jerk the wheel to the right. Father then rolled the window down and said he needed air because he was sleepy. Roberts also told DCFS father "controlled everything Asa did." Roberts was called upon to help Asa when father refused to help him complete his homework. She reported father "placed all blame on [Asa] and not assisting him in obtaining school supplies and taking him to library to complete project [*sic*] and would get frustrated with Asa to the point where he would tell him, 'I'm going to take you to the desert' and always implied he would straighten Asa out." Although these seemed to only be threats, Asa and father told Roberts father had in fact taken Asa to Barstow and "threatened Asa regarding obedience." Father told Roberts he "made threats to Asa that on the next trip Asa would not return." She expressed concern about providing a statement to DCFS. She explained that father "could be unpredictable and tenacious in his revenge and quest to get revenge or to rectify or justify this situation where he feels he's been wronged."

Asa's maternal grandmother recounted that father fell asleep anywhere, and Asa had called her several times to report that he was in the back of the car, waiting while father slept. The maternal grandmother also recalled one occasion when Asa asked her daughter (the maternal aunt) to pick him up from church because he had not eaten for three days.<sup>2</sup> He then ate so much he became ill. From that time on, the maternal grandmother and aunt began giving Asa grocery store gift cards so that he could buy his own breakfast and lunch. They also deposited money for lunch at Asa's school. Asa told the grandmother father suggested he drink juice to fill up. Maternal grandmother told DCFS that when Asa visited her, his clothes smelled musty, "like old stale food," he was dirty, his hair had not been cut in weeks, and his clothes were "rumped." Asa also told

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<sup>2</sup> When interviewed for the detention report, Asa told the social worker he had gone for 12 hours without eating, but never three or four days.

her the bathroom in the house was “so dirty you couldn’t use it.” Maternal grandmother opined father needed medical care for mental illness. She said father cried and got depressed, then appeared “high (happy but not drug related) . . . .”

Asa informed DCFS he would want to live with father if father could provide a “stable environment.” Asa felt he never knew where he would live, how long he would be able to stay in his school, or where his next meal was coming from. He described father as “mentally unstable.” He explained: “If [father] has a stable job and if we live in a home in a decent neighborhood and if he takes prescribed pills prescribed to him I want to move in with him.” If those conditions were not met, Asa wished to continue living with his current placement—family friends—until he finished 10th grade. He then wished to live with his adult half-sister, in Rhode Island.

The sister was paying the majority of Asa’s private school tuition. She was interested in having Asa placed with her immediately. Asa told her about father’s threats to leave him in the desert. In a February 2012 call, Asa told the sister he was “so frustrated and concerned about his home life that he didn’t want to live anymore.” In a letter attached to the DCFS report, the now 32-year-old sister recounted incidents she remembered from her childhood of father (her stepfather) “hoarding” papers and books, driving erratically on one occasion (while awake), and disappearing for days at a time.<sup>3</sup>

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<sup>3</sup> The sister also recounted incidents she had heard about from her younger sister, her mother, before she died, and Asa, as well as behavior she observed many years earlier. These included: her sister told her father punched a hole in the wall (the half-sister was 19 and had already left home); in 2007, mother told her father picked up Asa and did not return him to mother for 10 days, without letting her know where they were; father appeared uninvited at the half-sister’s college graduation; Asa told her the house was “a mess,” there were jars or containers of human waste in the house and rotten food, and father had kicked off the door to Asa’s room; Asa told her he and father had physical altercations more than once; Asa said the apartment was condemned, leading her to conclude father and Asa were “squatting” in the apartment; for one year when she was a child, she, mother, father, and her sister lived in a motorhome because they had no money for housing; she recalled periods in which father was too depressed to get out of bed, followed by periods in which he seemed to be in a “state of euphoria”; when she was still living at home, the family consistently had lights cut off, no hot water, and on one

DCFS described Asa as “simply amazing in the way he tries to excel in his academics, participates in theatre in school, football and track.” The report recommended the court assert dependency jurisdiction over Asa, with reunification services to father.

### ***Jurisdiction and Disposition Hearing***

At the jurisdiction hearing, father’s counsel requested a short continuance. Counsel requested additional time so that he could subpoena pictures taken by the police department on the day Asa was removed. He also requested the continuance so that a written statement father had prepared could be distributed to the parties, and DCFS might provide a response. Counsel for DCFS and Asa both objected to the continuance. Father told the court he refused a DCFS interview because he felt DCFS had “twisted” his words in the detention report and other documents. As a result, he preferred to provide a declaration so his statements could not be “made into something that I did not say.” The court denied the continuance request, explaining: “I don’t find those pictures to be particularly relevant. I find the father is not ready because he chose not to be interviewed by the Department, and he can testify to anything in his statement if you want to put him on the witness stand.” The court subsequently elaborated: “I will also add to it that even if I give father the benefit of the doubt to submit those pictures to show the house is in fairly good shape, those – the court will still consider any other testimony and statements by any witnesses in the report or alive as to the condition of the house.”

Father then testified. Father denied the allegation that he had failed to provide Asa with adequate amounts of food. At Asa’s last doctor’s appointment, the doctor said Asa was 10 to 15 pounds overweight.<sup>4</sup> On the day Asa was detained, there were significant

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occasion they had no food in the house; mother told her father threatened to commit suicide if mother left him; and she believed father emotionally abused mother by isolating her from her family, attempting to control her, and belittling or insulting her.

<sup>4</sup> Father testified that Asa weighed 200 pounds. The record does not include Asa’s height.

amounts of food in the house, including frozen food, fresh produce, and canned food, including some food in cans with flip-tops.<sup>5</sup> Father said they had a can opener, which he had used in Asa's presence. The home had a microwave and a convection oven. On January 29, 2013, the day before Asa was removed and detained, father and Asa ate hamburgers and French fries at an Islands restaurant. Father said Asa had never complained about not having anything to eat, or about father not feeding him. When Asa told him he was hungry, father would ask him to describe how hungry he was, so father would know how much food to buy. On weekdays, father and Asa ate breakfast and dinner together and Asa ate lunch at school; on weekends, Father and Asa ate most meals together. Father also testified Asa knew how to prepare a meal for himself. Father had been getting food from food banks, and food and gift cards from members of his church. He denied there was any time when they were completely out of food.

Father admitted nodding off while driving on one occasion two years earlier, during a drive from Anaheim to Hawthorne. He also admitted that he had on occasion pulled the car over to nap, because he was tired. He would pull over in locations he knew were near police department headquarters, or were regularly patrolled by the Los Angeles Police Department. He denied the house was filthy on the day Asa was detained. He had not done housework that day because he was sick. But he denied the house was in any way dangerous. He admitted there were containers and boxes in the house, and items he intended to place in a shed that he was building. Father also admitted the refrigerator smelled that day, but denied the house in general had a foul odor. He had thrown out some rotten kale the day before. Asa always had clean clothes for school, and father did laundry several times a week. On cross-examination, father admitted there had been two roaches in the house. He maintained that Roberts, Asa's former teacher, had never been

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<sup>5</sup> Father provided a detailed recitation of the food in the house, which included frozen "toast pockets," fresh and frozen bagels, canned goods, potatoes, bananas, apples, watermelon, cup of noodle soups, raisins, crackers, cans of tuna, flip top cans of soup, canned tomatoes, microwavable macaroni and cheese, meat, organic milk, two boxes of cereal, and apple sauce.

to their home in Pasadena. Father said he intended the move to Pasadena to “coincide” with Asa attending his current school.

Asa also testified. Asa admitted father no longer had a car, and had not had a car since December 2012. Asa first testified the last time father had fallen asleep at the wheel was in July 2012, then he indicated the last time was in 2012, but he did not recall the month. In the 2012 episode, father did not run off the road or hit anyone. In September 2012, father nodded off while driving. After father lost his car in December 2012, Asa he and father took the bus. Father met Asa after school, and they took the bus home together.

Asa testified that he was “not fed every day,” while living with father. He said “sometimes, especially on Saturdays,” father left to run errands, and Asa was home alone for “an extended period of time.” Food in the home was rotten. Asa explained: “The food in the fridge was rotten, and I had – it had a rotten odor. My dad could not smell it because he had a nose problem during that time, but I can definitely smell it. The cupboards – the cupboards were with food but at that time we did not have a can opener.” In October 2012, Asa told father they needed a can opener. He admitted some of the canned food had pull tops, and he knew how to open a can and feed himself. He also admitted not everything in the refrigerator was spoiled. Yet, he could not feed himself with the edible food because he “couldn’t find it.” On questioning by his own counsel, Asa explained: “There was produce that had expired. There was milk that had expired. There was yogurt that had expired. There was cake that had expired. I didn’t know what was good and what was not. And you could say that there was good food, but I didn’t know where it was.” When asked how many times he was unable to find anything to eat at home, Asa answered: “no.” He also answered “no” to the question: “There never was a time when there was anything for you to eat there?” He admitted the convection oven and microwave in the house were used to prepare meals every day.

Asa testified there was one instance when he went 12 hours without food. Father was away all day, food in the house was rotten, and there was no can opener. Although there was “dry food,” Asa was allergic to it. He could not recall any other occasions

when he went for 12 hours without anything to eat. He and father ate out for dinner nearly every night. After father lost his job in October 2012, father also cooked on a regular basis. Father gave Asa money for lunch when he asked. However, he only recalled asking for lunch money twice. Asa used money from his grandmother to buy lunch every day. He ate a power bar or yogurt for breakfast, although they ran out of power bars in December 2012, and he stopped having breakfast when he had to take the bus and no longer had time. He knew father could not afford to buy more power bars. Asa denied that he ever weighed 200 pounds, but testified he had not gained any weight since being detained from father. He had maintained a weight of 190 pounds. He knew his weight because of weigh-ins for football.

Asa described the house as cluttered. He had his own room, which he maintained himself. He testified there was a bookcase in the house that would fall if “knocked into,” but otherwise there was nothing hazardous in the house. He saw roaches every two weeks in the house. Father asked the landlord for pesticides, but nothing was done. Father also applied pesticides, but they did not work. Asa said the house smelled like “rotten dairy products mixed with rotten banana.”

Asa did not feel that father provided him with adequate food. He contacted a family member or friend every month about needing food. He went to bed hungry. Although he and father ate out frequently, they might eat at 5:00 p.m. By his bedtime, he was hungry again. Asa said he was reluctant to tell father he was hungry, because father would tell him he needed to go on a diet, and exercise control over his eating habits. This made Asa feel “bad about [himself]” and insecure, so he no longer wanted to talk to father. Father took Asa to Barstow and threatened to leave him there, or to drop him off and have him return on his own. In late 2008 or 2009, father threatened to take Asa to the desert and cause him to lose contact with his family. Since 2012, father had made “threats such as you can live somewhere else if you don’t want to obey me or respect me.”

Asa testified that in November 2012, he and father got into a “fight about respect.” Asa said father was mad because: “I didn’t wash the dishes or something he didn’t make known to me. And he raised his voice and he got in my face and he pushed my arm. And we both were yelling at each other, saying ‘what are you going to do? Are you going to get in my face?’ I said yes. And he touched me and grabbed me and we both went to the floor and wrestled. From that time on – it probably lasted nearly 30 seconds. He had said ‘if you’re going to live with me, you’re going to respect me. And if you don’t, you can find somewhere else to live.’ And that was the end of that.” Asa also testified that father: “mentally abused me by saying choice words to build my self-confidence or to tear down my self-confidence.”

The juvenile court amended the petition so that the first count indicated father had fallen asleep while driving on more than one occasion. The court amended the second count to indicate that on more than one occasion, father failed to provide Asa with adequate amounts of food, and, on one occasion, Asa went hungry for 12 hours. The court struck a count alleging jurisdiction under section 300, subdivision (g). As amended, the court sustained the petition. At disposition, the parties stipulated that if called, father would testify he had cleaned up the home and removed all clutter. The court ordered Asa removed from father’s custody and ordered reunification services for father, including a mental health evaluation. The court also ordered DCFS to initiate an evaluation pursuant to the Interstate Compact on the Placement of Children, to determine the suitability of placing Asa with his half-sister in Rhode Island.

## **DISCUSSION**

### **I. The Juvenile Court Did Not Abuse its Discretion in Denying Father’s Request for a Continuance**

Father contends the juvenile court erred in denying his request for a continuance. We disagree.

Under section 352, subdivision (a): “Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided

that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. ¶¶ Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause. . . . Whenever any continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court."

Thus, "[a]lthough continuances are discouraged in dependency cases [citation], the juvenile court has discretion to grant a continuance upon a showing of good cause if it is not contrary to the best interest of the child. (§ 352, subd. (a).) We review the court's ruling on a continuance request for an abuse of discretion." (*In re Mary B.* (2013) 218 Cal.App.4th 1474, 1481.)

In this case, father's counsel requested a continuance to allow him time to subpoena photographs taken by the police department, and to allow father to finish and circulate a prepared statement. However, father's counsel did not explain what had prevented him, or father, from completing these tasks earlier. The police department took photographs of father's home on January 30, 2013. That photographs were taken was noted in the police report attached to the DCFS detention report, as well as in the detention report itself, which was filed on February 4, 2013. Counsel's request for a continuance did not explain why the photographs had not yet been subpoenaed by the time of the March 14, 2013 jurisdiction hearing. Similarly, counsel did not explain why father had not yet been able to respond in writing to the petition's allegations. In addition, there were several sources of evidence regarding the state of father's residence on January 30, and father was available to testify in court. Although additional time

remained before the expiration of 60 days from the date of the detention hearing,<sup>6</sup> we still find no basis to conclude the trial court abused its discretion in denying the request for a continuance.

Moreover, even if the trial court erred, we would find any error harmless. (*D.E. v. Superior Court* (2003) 111 Cal.App.4th 502, 514.) As noted above, while father preferred to provide a written response to the DCFS investigation, he could, and did, testify as to the petition's allegations. With respect to the photographs of the home, the evidence was not in significant conflict regarding the visual appearance of the house. Father admitted the house contained many items he intended to place in storage. He did not deny clutter. He also admitted he had not done any housework that day. Further, the police report indicated the refrigerator was full of food, and the officer could not tell what, if anything, had gone bad. The DCFS detention report similarly reported there was food in the refrigerator and in the cupboard. There was no evidence suggesting the house lacked food. The only significant conflict in the parties' descriptions or admissions regarding the house concerned the smell. There is no reason to believe the photographs would have resolved that conflict. Thus, any juvenile court error in denying the continuance was harmless, under any standard.

## **II. Substantial Evidence Supported the Jurisdiction and Disposition Orders**

Father contends there was insufficient evidence for the court to assert dependency jurisdiction over Asa under section 300, subdivision (b). We disagree.

### **A. Jurisdiction**

“We review the court's jurisdictional and dispositional findings for substantial evidence. [Citations.] Evidence is ‘ “[s]ubstantial” ’ if it is ‘ “ ‘reasonable, credible, and of solid value.’ ” ’ [Citation.] We do not pass on the credibility of witnesses, attempt to

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<sup>6</sup> Under section 352, subdivision (b), “if a minor has been removed from the parents’ or guardians’ custody, no continuance shall be granted that would result in the dispositional hearing, held pursuant to Section 361, being completed longer than 60 days after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring such a continuance.”

resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record in favor of the juvenile court's order and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161-1162.) " " "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' [Citation.]" [Citation.]" [Citation.]" (*In re V.M.* (2010) 191 Cal.App.4th 245, 252.)

Under section 300, subdivision (b), the court may assert jurisdiction over a child if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment . . . ." "The three elements for jurisdiction under section 300, subdivision (b) are: "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the [child], or a 'substantial risk' of such harm or illness." ' [Citations.]" (*In re B.T.* (2011) 193 Cal.App.4th 685, 692.)

Here, there was evidence father had fallen asleep while driving in the past, with Asa in the car. On at least one occasion, this resulted in father driving off the road, and on other occasions he swerved and had near-miss incidents. Although father did not have a car at the time of the jurisdiction hearing, he still had the ability to drive. There was no evidence he had given up driving for any reason other than the lack of a car. Further, he failed to acknowledge the repeated and pervasive nature of his drowsy driving.

In addition, there was evidence that father failed to provide enough edible food for Asa. Construing the evidence most favorably to the judgment, the record established father had food in the house, but he allowed items to spoil and did not throw bad food away. Thus, there were perishable items in the house, but many were spoiled. Father secured canned food, but Asa had no means of opening the cans. There were boxed or

other non-perishable items, but Asa was allergic to them. When father left Asa alone, mainly on weekends, Asa had little or no edible food at his disposal. Further, father discouraged Asa from eating after dinner, thereby either coercing or forcing him to go to bed hungry.

Finally, there was significant evidence regarding the state of the home. While “clutter” may not have posed a substantial risk of serious harm or illness to Asa, there were multiple reports of a foul smell of rotting food in the home. Father admitted there were cockroaches; according to Asa, the cockroaches were an ongoing problem. In addition, Asa reported there were dirty dishes in the sink for weeks and a broken toilet.

Taken together, the juvenile court could reasonably determine father’s conduct placed Asa at substantial risk of serious physical harm or illness. Father’s history of extremely dangerous driving continued to pose a risk to Asa, as the court could reasonably anticipate father would drive again in the future, with Asa as a passenger, and father did not appear to treat the issue as a significant problem. In addition, father failed to provide sufficient *edible* food for Asa. While father procured food, he let it spoil in the house, failed to throw it away, did not insure that cans of food could be opened, and was not mindful of Asa’s inability to eat packaged foods due to his allergies. There was evidence Asa once went 12 hours without eating, and that other times, particularly on weekends, he had no edible food for extended periods of time. Moreover, Asa testified he went to bed hungry, on more than one occasion, due to father’s explicit or indirect refusal to allow him to eat after dinner. Asa frequently sought help from friends and family in order to get enough to eat. This lack of food placed Asa at risk of serious physical harm or illness.

The state of the house by itself may not yet have posed a significant risk to Asa’s physical well-being. Yet “section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction.” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “ ‘The purpose of dependency proceedings is to prevent risk, not ignore it.’ [Citation.]” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.)

There was substantial evidence indicating father’s ability to adequately care for Asa had

deteriorated, in several aspects. Asa told DCFS that while father's "hoarding" had always been a problem, father's failure to throw away spoiled food became an issue after father lost his job. Father's failure to dispose of rotten food, and to keep the house clean and free of pests, added to this picture, which also included his failure to have edible food in the house, physical altercations with Asa, threats of desertion, and his dangerous driving. Drawing all reasonable inferences from the record, we conclude substantial evidence supported the juvenile court's finding that father's conduct placed Asa at risk of substantial risk of serious physical harm or illness, warranting dependency jurisdiction.

### **B. Disposition**

We also conclude substantial evidence supported the dispositional order removing Asa from father's custody. Under section 361, subdivision (c)(1), a dependent child may not be taken from the physical custody of the parents with whom the child resides at the time the petition was initiated unless the juvenile court finds, by clear and convincing evidence, "[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).) "The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).)" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) " 'The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.' [Citation.] The court may consider a parent's past conduct as well as present circumstances. [Citation.]" (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.) We review a dispositional order removing a child from parental custody for substantial evidence. (*In re D.G.* (2012) 208 Cal.App.4th 1562, 1574.)

Sufficient evidence supported the juvenile court finding that Asa could not remain safely in father's custody. Father did not acknowledge that his drowsy driving was an ongoing problem. And, while father did not have a car at the time of the hearing, he was still authorized to drive. Father also denied there had ever been a time when there was

insufficient food for Asa. His stipulated testimony was that he had cleaned the house, yet he denied there had ever been an ongoing problem with rotten food. Further, he had declined to cooperate with DCFS. At the outset of the case, father rejected a DCFS social worker's proposal for a "safety plan." (*In re Maria R.* (2010) 185 Cal.App.4th 48, 71, disapproved of on another ground by *In re I.J.*, *supra*, 56 Cal.4th at p. 781 [mother's refusal to cooperate with agency was evidence that removal was necessary].) The juvenile court could reasonably determine there were no reasonable means to protect Asa without removing him from father's custody. (§ 361, subd. (c)(1).)

**DISPOSITION**

The juvenile court orders are affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.