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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.C., a Person Coming Under the  
Juvenile Court Law.

B253106

(Los Angeles County  
Super. Ct. No. DK00313)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.S.,

Defendant and Appellant.

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

Andre F. F. Toscano, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

C.S. (mother) challenges the dependency court's jurisdictional findings and dispositional order detaining her daughter, A.C., pursuant to Welfare and Institutions Code, sections 300(a) and (b)<sup>1</sup>, and placing A.C. in the custody of A.C.'s father, S.C. (father).<sup>2</sup> Mother contends the jurisdictional findings against her are not supported by substantial evidence, and that the dependency court erred in refusing to dismiss the petition and award joint custody over A.C. We disagree and affirm the dependency court's order.

### FACTUAL AND PROCEDURAL HISTORY

#### *A. Initial Investigation and Detention*

This case began on or about June 12, 2013, when the Department of Children and Family Services (DCFS) received a referral claiming that A.C., then 16 months old, was an alleged victim of physical and emotional abuse by mother and mother's boyfriend (boyfriend). The referral stated that on June 11, 2013, mother and boyfriend had a verbal altercation that turned into a physical altercation, resulting in scratches on boyfriend's chest. A.C. was at father's home at the time. DCFS was also informed that there had been ongoing domestic violence between mother and boyfriend, including boyfriend slapping mother in the face, pushing her and scratching her, and that boyfriend had threatened mother and had been arrested for making terrorist threats. Mother and boyfriend had been together since May 2012 and currently lived together. When not staying with boyfriend, mother and A.C. resided with the maternal grandmother (grandmother) and grandmother's boyfriend, Mr. Smith.

The investigating DCFS social worker met with father on June 12, 2013. Father reported that he had "concerns regarding mother's relationship" with boyfriend and that

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<sup>1</sup> Statutory references herein are to the Welfare and Institutions Code.

<sup>2</sup> Father is not a party to this appeal.

when mother and boyfriend had been fighting, boyfriend “does not allow the mother to receive [A.C.]” when father drops A.C. off at boyfriend’s home. Father stated that he knew that boyfriend had a gun but was told it was registered. He said that he “did not want any drama” with mother and boyfriend, despite his concerns. Father “did not want to take the mother to family law court as he wanted to reconcile with her.” Father also indicated that he was willing to take custody of A.C. if she was removed from mother.

DCFS also interviewed grandmother and her boyfriend, Mr. Smith. They both related concerns regarding mother’s relationship with boyfriend. Mr. Smith stated that mother’s boyfriend had threatened the family with a gun and had been incarcerated for domestic violence and terrorist threats against mother. Grandmother reported that mother had bruises after contact with boyfriend.

The social worker also visited boyfriend’s residence on June 12, 2013. At the time of the visit, boyfriend, mother, and A.C. were present. The social worker observed that A.C. “appeared to be smiling and playing” but had two scratches on her face. Mother stated that A.C. returned from father with the scratches on her face.<sup>3</sup> Mother denied that she or boyfriend “were violent with each other” and denied any physical abuse by boyfriend. The social worker observed that mother “minimized” the domestic violence between her and boyfriend and stated that her “parents are ‘making a big deal out of nothing because they don’t like him.’” Mother denied receiving any bruises from boyfriend and insisted that they only had “verbal fights.”

When asked about the gun, mother stated that boyfriend “called her school and made a terrorist threat that he was going to shoot everyone at the school if she did not

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<sup>3</sup> DCFS ultimately reported these scratches as “superficial scratches on face, possible by nails . . . cause is undetermined,” and noted that the scratches “appeared to be age appropriate.”

return home or at least get [] on the phone.” Mother acknowledged she was told by her school to obtain a restraining order but that she did not do so.<sup>4</sup>

The social worker observed a hole in the wall of the bedroom at boyfriend’s residence. Mother stated boyfriend punched a hole in the wall during an argument with her. During her interview, mother denied drug abuse, criminal activity or mental health issues, but became tearful and stated that she felt that the sexual abuse she experienced as a minor affects how she relates to men and that she felt she needed counseling to address past abuse.

In his interview with the social worker, boyfriend denied that he and mother had a violent altercation. He admitted that he had made a terrorist threat by calling mother’s school but denied that he had threatened mother’s family with the gun at any time. Boyfriend stated that he was arrested and the gun was confiscated as a result of the terrorist threat. He also confirmed that he had hit the wall while fighting on the phone with mother and caused the hole. But he denied ever striking A.C. and “minimized that any [domestic violence] exists.”

DCFS developed a safety plan with the family. Mother agreed to have A.C. reside with father during the DCFS investigation, with monitored visits between A.C. and mother. However, two days later, on June 14, 2013, mother called the social worker and stated that she did not understand the necessity for the safety plan. The social worker attempted to discuss domestic violence with mother, but mother “did not seem to understand the seriousness of this problem.” When asked where she was, mother responded that she was at boyfriend’s house. Mother also stated she did not think a restraining order was necessary to protect herself from boyfriend.

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<sup>4</sup> This incident occurred on April 17, 2013. The social worker was informed by the Long Beach Police Department (LBPD) that, at the time, boyfriend’s gun was taken into custody, but the district attorney did not feel that the incident was serious enough to file charges against boyfriend, so his gun was released to him.

The social worker again spoke with mother on June 27, 2013. Mother stated that she and boyfriend “never engaged in any physical altercations besides pushing and shoving” and that these altercations occurred about “once every two months.” Mother stated that all altercations occurred when A.C. was with her father.

On July 8, 2013, DCFS held a Team Decision Making meeting with mother, boyfriend, and father. The participants agreed to a safety plan, including voluntary family maintenance services for six months, A.C. to live with father while mother participated in individual counseling to address her childhood and domestic violence issues, boyfriend to enroll in anger management and individual counseling, and mother to have monitored visits with A.C. DCFS provided mother with referrals for counseling. On July 10, 2013, mother called the social worker stating that she wanted to run away with A.C. and could not comply with the safety plan. The social worker explained that the plan was voluntary and mother agreed to try to participate. On July 22, 2013, boyfriend informed the social worker that he and mother “got into a big fight” and were no longer together, and that he did not want to participate in the safety plan. Boyfriend stated that mother became upset regarding a text message he received from a female and broke up with him on July 19, 2013. Boyfriend stated that mother came to his home to retrieve her belongings and brought the police with her to ensure her safety. According to boyfriend, on July 21, 2013, he met with mother to tell her that he “wanted to make peace and maintain their friendship.” However, he then “lost it” and started to hit mother because “she kept telling him about [ ]all the men that she had slept with.” Boyfriend told DCFS that he broke mother’s phone so she could not track him, took her car, and left.

The social worker spoke to grandmother again on July 24, 2013. Grandmother reiterated that whenever mother had contact with boyfriend, “she usually came back with bruises on her body.” During another interview, grandmother stated that she saw mother covered in bruises about two times every two weeks. Grandmother also stated that she believed boyfriend was incarcerated. Grandmother told the social worker that A.C. was

usually with mother whenever mother went to boyfriend's house, so it was likely that A.C. was present when they were fighting.

The social worker met with mother on July 25, 2013, and observed a bruise on mother's eye area that appeared to be healing, bruises on both legs, and a small bruise on the right side of her rib. Mother stated that she was pressing charges against boyfriend and had obtained an emergency protective order against him. Mother confirmed that she had ended her relationship with boyfriend and brought the police with her to pick up her things from his apartment. She further stated that when she met with boyfriend on July 21, 2013, he told her it was to maintain a friendship, but when he got into her car, he told her "it was a set up." Mother stated that boyfriend "used his legs to try to choke her," punched her legs, eye, and rib area. She reported that she was sore and in pain from the incident, felt ashamed and did not want A.C. to see her bruises.

The social worker confirmed that boyfriend was in jail and was informed that boyfriend was being transferred to the "mental ward" because he was suicidal. The LBPD detective informed the social worker that they recovered a gun and a loaded magazine from boyfriend's car after the incident on July 21, 2013, and that if he "had been able to get to his car he might have killed the mother." Mother told the social worker that she would not go to a domestic violence shelter, as DCFS had recommended, because she "cannot live like that." Mother also failed to attend the individual counseling agreed to as part of the safety plan, stating that she was too busy.

On July 31, 2013, DCFS filed an Application for Authorization for Removal, which was granted. DCFS took A.C. into protective custody on August 1, 2013, and released her to father.

#### *B. Section 300 Petition and Detention Hearing*

On August 6, 2013, DCFS filed a petition under section 300, subdivisions (a) and (b), alleging the child came within the jurisdiction of the dependency court because of the history of boyfriend engaging in violent altercations against mother in the child's presence and mother's failure to protect the child. In its detention report, filed August 6,

2013, DCFS indicated it had performed a risk assessment as to mother and found there was a “High Risk Level for future emotional abuse and/or neglect as to the child [A.C.] because of the mother’s past history of returning to the boyfriend, not going to the shelter as recommended by DCFS, failed [safety plan], and the mother has expressed a desire to runaway [*sic*] with the child.” Thus, DCFS recommended continued detention for A.C. and placement with her father as “necessary to protect the child’s safety.”

At the August 6, 2013, detention hearing, the dependency court found a prima facie case was established for detaining A.C. pursuant to section 300. The court released A.C. to father pending the next hearing and granted monitored visits with A.C. and mother. Boyfriend was ordered to have no contact with A.C. The court also issued a temporary restraining order against boyfriend at mother’s request and set the matter for hearing regarding a permanent restraining order. The court then issued a permanent restraining order against boyfriend on August 19, 2013, to remain in effect until August 19, 2016.

### *C. Adjudication*

DCFS filed its Jurisdiction/Disposition Report (jurisdiction report) on September 4, 2013. In the report, DCFS noted that it observed A.C. on August 27, 2013, in her father’s presence, and the child appeared to be “active and comfortable” and healthy, with no observable bruises or marks. Mother was interviewed on August 21, 2013, and stated that she called the police to escort her to boyfriend’s home to retrieve her belongings in July because she knew he had a bad temper. She also discussed the incident on July 21, 2013, stating that boyfriend had threatened to hurt her parents in the past, so she agreed to meet him at a street corner for her parents’ safety. Mother stated that boyfriend got into her car and demanded to see her cell phone. When she refused, boyfriend “began to punch her face, her body, [and] legs with his closed fist, causing bruises on her face, legs and body.” Mother also stated that boyfriend “had hit her numerous times in the past, but she did not call the police.” When asked where A.C. was during this altercation, mother stated that A.C. “was never around when [boyfriend] and I

had arguments. She was always with her father []. I don't want my daughter to see us fighting. I know it's not good [for] her." Mother indicated that she was worried boyfriend might hurt her and her family upon his release from jail in January 2014. Mother stated she was committed to doing everything to be reunited with her daughter in the near future.

DCFS interviewed father on July 27, 2013. Father was asked about domestic violence between mother and boyfriend and stated he did not know "about their problems." Father indicated that, to his knowledge, mother did not fight with boyfriend in A.C.'s presence, noting that "[m]ostly, [A.C.] stayed with me or with her grandmother." Father also indicated that mother had been visiting A.C. consistently. A maternal aunt stated that mother and boyfriend had "on-going verbal and physical arguments" but denied that A.C. was present during these arguments. Similarly, grandmother stated that A.C. was with her or with father during the altercations between mother and boyfriend.

As a result of the above investigation, the jurisdiction report concluded that while in her mother's care, A.C. "was placed in a detrimental and endangering situation on more than one occasion" based on mother's abusive relationship with boyfriend, and that prior remedial services provided to mother "were not successful in preventing the mother from putting herself and the child at risk." Thus, DCFS recommended that "further court and DCFS intervention is needed."

On September 4, 2013, the court indicated it had read and considered the jurisdiction report and ordered DCFS to submit a supplemental report addressing a section 301 contract. Section 301 provides that a social worker may, "in lieu of filing a petition or subsequent to dismissal of a petition already filed, and with consent of the child's parent or guardian, undertake a program of supervision of the child." DCFS filed a responsive report, a Last Minute Information for the Court, on September 10, 2013, stating that a section 301 contract "is not an appropriate Case Plan for the child . . . at this time" because "prior remedial services provided to the mother were not successful in

preventing the mother from putting herself and the child at risk of physical and emotional harm.” DCFS noted that mother and boyfriend did not enroll in the programs provided to them under the voluntary family maintenance case plan, and that mother presently was not enrolled in a domestic violence program, parenting classes, or individual counseling.

The adjudication hearing in this matter was held on November 18, 2013. The court admitted into evidence the jurisdiction report<sup>5</sup> and the September 10, 2013 Last Minute Information report. The parties stipulated that mother had moved residences, as verified by DCFS.

A.C.’s counsel argued that the petition should be sustained, noting that, while mother recently had taken some positive steps, it took a number of instances of domestic violence for mother to do so. Moreover, mother previously had downplayed and denied that any domestic violence was occurring and it was likely A.C. was present during this period. A.C.’s counsel also pointed out mother’s own statement that she was afraid of what might happen when boyfriend was released from jail. Mother’s counsel argued that the petition should be dismissed because there was no evidence A.C. was present during any of the incidences of domestic violence. Further, the violence was not ongoing and unlikely to continue, as mother had completely ceased her relationship with boyfriend, had moved, had pressed charges from the attack in July, and had obtained a permanent restraining order.

The court amended the allegations in the section 300 petition to reflect mother’s status as the victim in the alleged domestic violence incidents and sustained the amended allegations under section 300, subdivisions (a) and (b) as follows:

“The child [A.C.]’s mother [] and mother’s male companion [] have a history of [boyfriend] engaging in violent altercations against the

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<sup>5</sup> The exhibit list and minute order from the adjudication hearing indicates that the jurisdiction report is dated October 1, 2013. The jurisdiction report indicates that it was signed by DCFS on September 3 and filed on September 4, 2013. However, the report bears a footer dated October 1, 2013. The precise date of the report is not material to this appeal.

mother in the presence of the child. On 7/21/13, the male companion used the male companion's legs to choke the mother. The male companion struck the mother's face, ribs and legs with the male companion's fists, inflicting bruising and swelling to the mother's eye, ribs and legs. On 4/17/13, the male companion threatened to shoot everyone at the mother's school. On a prior occasion in 2013, the male companion struck a hole in a wall in the child's home, with the male companion's fist. The mother failed to protect the child, in that the mother caused the child to frequent the male companion's home, allowing the male companion to have unlimited access to the child. On 7/21/13, the male companion was arrested for spousal abuse. Such violent conduct on the part of the male companion against the mother, and the mother's failure to protect the child, endangers the child's physical health and safety and places the child at risk of physical harm, damages, danger and failure to protect."

The court noted that there had been multiple domestic violence incidents, as early as April 2013, and that mother had "been in denial" for much of that time. The court further observed that at present mother had not yet participated in a domestic violence program, despite her "history of being in a relationship with a man who almost killed her."

For disposition, the court found, by clear and convincing evidence, that there was no reasonable means to protect A.C. without removal from mother's custody. Therefore, the court declared A.C. a dependent of the court under section 300, subdivisions (a) and (b), and ordered A.C. removed from mother's custody. The court ordered A.C. released to father's custody with DCFS to provide family maintenance services. The court also ordered enhancement services for mother, as well as monitored visitation with A.C., with discretion to DCFS to further liberalize visitation

Mother timely appeals the court's jurisdictional findings and November 18, 2013 dispositional order.

## **DISCUSSION**

### *A. Standard of Review*

We review jurisdictional findings and the disposition to see “if substantial evidence, contradicted or uncontradicted, supports them.” [Citation.] (*In re I.J.* (2013) 56 Cal.4th 766, 773.) ““In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation].” (*Ibid.*)

### *B. Jurisdiction*

Section 300, subdivisions (a) and (b), provide that a child comes within the jurisdiction of the dependency court as a dependent when “(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent . . .” or “(b)(1) The 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 . . . to adequately supervise or protect the child . . .” DCFS has the burden of proving by a preponderance of the evidence that a child is a dependent of the court under section 300. (§ 355, subd. (a); *In re I.J.*, *supra*, 56 Cal.4th at p.773.)

Mother here argues that the dependency court erred in sustaining the section 300 petition because there was no evidence that A.C. currently faced a substantial risk of harm. Specifically, mother points to the evidence that A.C. was not at risk in father's custody and appeared “healthy and well-developed” while in father's care. We agree that the evidence suggested A.C. was doing well in her father's care, but disagree that the court could not find jurisdiction based on mother's conduct in this case. In fact, a minor may be adjudged a dependent if the actions of either parent bring her within one of the statutory definitions under section 300. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.)

“This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent. [Citation.]” (*Ibid.*) Here, mother was the victim of repeated incidents of severe domestic violence by a man who also had threatened her, her family, and her coworkers with a gun. While A.C. may have been out of danger while with her father, the evidence showed she also spent time with her mother and mother’s boyfriend, despite father’s admitted concerns about that relationship. Indeed, father acknowledged that he knew about fighting between mother and boyfriend and that boyfriend had a gun, but did not want to interfere, “did not want any drama” and did not want to seek custody in family court because he was hoping to reconcile with mother. Under the circumstances, there was substantial evidence that A.C. was not sufficiently removed from danger merely by virtue of placement with her father.<sup>6</sup>

Mother relies on *In re A.G.* (2013) 220 Cal.App.4th 675, to argue that the dependency court should have dismissed the petition based on father’s ability to assume custody of A.C. We disagree. In *A.G.*, the court overturned a finding of jurisdiction because the section 300 petition was premised *only* on allegations that the mother was “mentally ill and is unable to care for the minors.” (*In re A.G.*, *supra*, 220 Cal.App.4th at 683.) Crucially, the court found that not only was the father able to care for the children, he was able to “protect them from any harm from Mother’s mental illness.” (*Id.* at p.

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<sup>6</sup> Mother also appears to contend that because the court ordered “enhancement” services rather than “reunification” services for mother, it implicitly conceded that A.C. was at no risk of harm from mother while in father’s custody. Mother cites no authority for this proposition. As discussed herein, the dependency court expressly found that A.C. remained at risk despite placement with her father. Moreover, where, as here, a child is removed from a custodial parent and placed in the custody of the other parent, the dependency court has discretion to order family maintenance services for one or both parents, as well as enhancement services to the parent not retaining custody. (§ 361.2, subd. (b)(3)) These enhancement services are “not designed to reunify the child with that parent, but instead to enhance the child’s relationship with that parent by requiring that parent to address the issues that brought the child before the court.” (*In re A.C.* (2008)169 Cal.App.4th 636, 642, fn. 5.) Mother offers no basis to establish that enhancement services were inappropriately ordered here.

684) Consequently, because “harm may not be presumed from the mere fact of mental illness of a parent,” the petition failed to establish that the minors were at risk in father’s care. (*Ibid.*, quoting *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.) The additional cases discussed in *A.G.* are all similarly focused on whether the nonoffending parent is able to shield the children from risk of harm. (See *In re A.G.*, *supra*, at pp. 684-685; see also, e.g., *In re Phoenix B.* (1990) 218 Cal.App.3d 787, 793 [no basis for dependency jurisdiction where nonoffending father provided appropriate care and the minor’s welfare was not endangered by placing her with the father].) Here, on the other hand, the evidence suggested a continuing risk to A.C. based on father’s reluctance to get involved with mother’s relationship, despite his concerns, coupled with his willingness to allow A.C. to spend time with mother and boyfriend. As such, there is substantial evidence to suggest that A.C. would not be shielded from risk of future harm.

Additionally, while mother acknowledges her history of domestic violence with boyfriend, she argues that there is no evidence that A.C. was ever exposed to it and that therefore dependency jurisdiction was not warranted. We find that there was sufficient evidence in the record to support the dependency court’s jurisdiction. In particular, the court could credit the evidence that mother and boyfriend frequently fought and grandmother’s statement that A.C. usually was with mother whenever mother went to boyfriend’s house. Based on this evidence, the court could draw the reasonable inference that A.C. likely was exposed to the domestic violence by boyfriend against mother. The evidence that mother minimized the domestic violence issue until recently also supports that conclusion. Finally, mother contends that her recent steps to sever her relationship with boyfriend and “address her issues,” as well as boyfriend’s incarceration, all suggest any risk of harm has passed and therefore weigh against jurisdiction. At the disposition hearing, DCFS acknowledged that mother recently had made some progress—moving out of boyfriend’s house, getting a restraining order against him, and starting parenting classes—but expressed concern with how long it took mother to take these steps, given her long history of domestic violence. The court agreed, noting that mother’s

relationship had multiple incidents of domestic violence over at least several months, and that mother had been in denial “for a large period of that.” Moreover, as the court noted, mother had three months to enroll in counseling programs following the latest incident where boyfriend “almost killed her” and still had not begun domestic violence counseling. Further, although boyfriend was incarcerated at the time, he was apparently due for release in a few months and mother herself had expressed fear that he might hurt her and her family upon his release. In light of the evidence of the severity and frequency of the violence by boyfriend against mother, mother’s denial for much of that period (and, consequently, ongoing exposure for both mother and A.C. to boyfriend), and the fact that mother previously had rejected informal services and had not yet begun domestic violence counseling, we find there is sufficient evidence that A.C. continued to be at a substantial risk of serious harm.

### *C. Disposition*

Mother also contends that the dependency court erred in finding that DCFS met its burden for removal from her custody. At the disposition hearing, a child may not be removed from the custody of the parent(s) with whom he or she resided at the time the petition was initiated unless the court finds, by clear and convincing evidence, at least one of the matters set out in subdivision (c) of section 361, including (as relevant here) 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).)

Here, for the reasons discussed above, we find substantial evidence supports the dependency court’s finding that there were no reasonable means to protect A.C.’s physical health without removing her from mother’s custody. Based on the evidence, the court could reasonably conclude that A.C. would not be sufficiently protected from harm

by allowing her to remain with mother and receive voluntary services without the formal oversight of the dependency system.

**DISPOSITION**

Affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.