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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re MICHELLE P., a Person Coming  
Under the Juvenile Court Law.

B256316  
(Los Angeles County Super. Ct.  
No. CK85737)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

TATIANA G., et al.,

Defendants and Appellants.

APPEAL from the orders of the Superior Court of Los Angeles County, Rudolph A. Diaz, Judge. Affirmed.

Frank H. Free, under appointment by the Court of Appeal, for Defendant and Appellant Tatiana G.

Marsha F. Levine, under appointment by the Court of Appeal, for Defendant and Appellant Carlos P.

Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Tatiana G. (mother) and Carlos P. (father) appeal from the dependency court's May 12, 2014 jurisdictional findings and dispositional orders. Both parents contend substantial evidence does not support petition allegations that their three daughters are minors described by Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> based on father's marijuana abuse, the children's access to a marijuana plant, father's mental and emotional problems, and mother's awareness of father's drug and mental health issues and her failure to protect the children from him. Father also contends that the dependency court erred in removing the children from his custody and requiring him to undergo drug testing and substance abuse counseling. We affirm, holding substantial evidence supports the jurisdictional findings and the removal order and the dispositional orders do not constitute an abuse of discretion.

### **STATEMENT OF FACTS AND PROCEDURE**

Mother and father have three daughters, ages four, three, and two. In 2010, the family was the subject of an earlier dependency proceeding after father fled the scene of a robbery while his then nine-month-old daughter was in the car. Father also had an earlier conviction for spousal battery in 2009, when mother was pregnant. The judge in the previous dependency case ordered father to remain out of the home and participate in individual and conjoint counseling with mother, and ordered family preservation services for mother, who remained in custody of the child. Father did not complete court-ordered services, and the court terminated jurisdiction with a family law order giving mother sole legal and physical custody and granting father monitored visits with the child.

The Los Angeles County Department of Children and Family Services (Department) began the current investigation after receiving an anonymous call in January 2014. The caller reported father hits mother in the children's presence, and the

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

neighbors and landlord have not reported father's aggressiveness because they fear retaliation. The caller also said father smokes marijuana in front of the children, grows marijuana on the side of the apartment unit, and is drunk daily. According to the caller, mother is aware but does nothing to resolve the problem.

In various interviews during its initial investigation and later, the Department obtained conflicting information from family members and neighbors. Initially, father and mother claimed father did not live in the home and was currently homeless. Father denied being in a relationship with mother. Later, father admitted he had been staying in the home. Mother wants to be with father, and both intend to continue their relationship.

A neighbor reported domestic violence between mother and father. Their four-year-old daughter denied being afraid of father and denied any domestic violence. However, during a different interview with mother, the three-year-old explained that she was crying because "daddy hit mommy." Mother minimized the incident, explaining that father had thrown a pillow at her and the pillow had hit her eye. The interviewer also reported that mother "shut down" the three-year-old, presumably to keep her from discussing the incident further. When Department staff asked mother if she would be willing to obtain a restraining order to keep father out of the home, she initially said no, explaining she did not feel that father was a threat or a danger to the children or to her. She later agreed to obtain a restraining order, but did not take steps to do so.

Father initially denied any drug use, but then admitted smoking marijuana to ease the pain from a gunshot wound and a job injury. Father has a prescription for medical marijuana. He smokes marijuana and also consumes "edibles" that he uses when preparing his meals. He does not smoke in front of the children; instead he smokes in the backyard with friends. A neighbor reported mother and the children are inside when father and his friends are out back smoking, but the smell is strong enough to permeate the building. The neighbor also reported that father drives the children while under the influence of substances.

Father reportedly suffers from schizophrenia and may also be bipolar. He received medications in jail. After his release, he began receiving mental health services

from the county in September 2013. According to the Department's jurisdiction report, "Father reported being prescribed Serequeol [sic] in the past and experiencing bad side effects such as excessive sweating, weight gain and little interest in anything. Father said he stopped taking medication for a while because of the 'bad effects' of the Serequeol medication but is now taking Abilify." "Father said he often feels that people are out to get him and that he always needs to have his 'guard up' even in comfortable environments like at home with his children." After he was no longer able to live at home with mother, he has no stable housing and spends time with his parents or friends.

The home was clean and had sufficient food. On an initial visit, the two younger children appeared unkempt, but on a later visit, all three children were "adequately dressed and in good health with no visible signs of abuse or neglect."

On March 4, 2014, the court granted the Department's request for authorization to detain the children from father only. The court's order directed the Department to hold a meeting with mother to develop a safety plan.

On March 10, 2014, the Department filed a petition alleging jurisdiction under section 300, subdivisions (a) and (b), based on multiple factual allegations, including (1) domestic violence between mother and father, (2) father's marijuana abuse, (3) the presence of a marijuana plant outside the home in a place the children could access, (4) father's schizophrenia and past failure to take medications, and (5) mother's depression and hallucinations.

On May 12, 2014, the court held jurisdiction and disposition hearings. After entering into evidence the Department's reports and a May 1, 2014 letter confirming father's mental health treatment, the court heard argument from counsel, and sustained three counts under section 300, subdivision (b), based on the allegations of marijuana abuse, the marijuana plant, and father's mental and emotional problems. It dismissed allegations based on domestic violence and mother's depression.

Proceeding to disposition, the court found by clear and convincing evidence that a substantial danger existed to the children and there were no reasonable means to protect them without removing them from father's custody. Services for father were to include

substance abuse treatment and drug testing, parenting classes, individual counseling and monitored visitation.

Mother and father filed timely notices of appeal from the jurisdiction findings and disposition orders.

## DISCUSSION

### **Substantial Evidence Supports a Finding of Jurisdiction Under Welfare and Institutions Code Section 300, Subdivision (b).**

“On appeal, the ‘substantial evidence’ test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.]” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) We resolve all conflicts in support of the determination, examine the record in a light most favorable to the dependency court’s findings and conclusions, and indulge all legitimate inferences to uphold the court’s order. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379; *In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.) “[I]ssues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.]” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) If supported by substantial evidence, the judgment or finding must be upheld, even though substantial evidence may also exist that would support a contrary judgment and the dependency court might have reached a different conclusion had it determined the facts and weighed credibility differently. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Thus, the pertinent inquiry when a finding is challenged on sufficiency of the evidence grounds is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*Ibid.*)

Section 300, subdivision (b), provides in pertinent part: “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 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 . . . .” In order to establish jurisdiction under subdivision (b) of section 300, there must be evidence of (1) neglectful conduct by the parent, (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.) In determining whether a minor is at risk of harm, the court may consider past conduct as well as steps taken by a parent to address past problematic conduct. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025-1026.) “The paramount purpose underlying dependency proceedings is the protection of the child. [Citations.] ‘The parents do not represent a competing interest in this respect.’ [Citation.]” (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.)

In this case, the court sustained three jurisdictional counts under subdivision (b). So long as one of the sustained counts is supported by substantial evidence, we may affirm. “‘When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the [trial] court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’ [Citation.] However, we generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*)). We address each count separately.

*Father's abuse of marijuana*

Father and mother both contend the evidence cannot support a jurisdictional finding based on father's marijuana use alone. We reject their contentions, holding that substantial evidence supports the finding that father's use of marijuana, and mother's acquiescence with father's actions, placed the children at substantial risk of harm.

Mother argues that father's marijuana use alone cannot support a jurisdictional finding against her because the Department reported the children had adequate food, clothing, and shelter, and the children were not afraid of father while in father's presence. Father also points to the lack of evidence that he smoked inside the home. Mother and father both cite several cases for the proposition that a parent's use of marijuana alone does not justify the court's exercise of jurisdiction over the children. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 768-769; see *Destiny S.* (2012) 210 Cal.App.4th 999, 1003 [acknowledging that a minor does not fall within the jurisdiction of the dependency court based on a parent's use of marijuana without more].) In *Drake M.*, the dependency court found jurisdiction over a child whose father smoked legal marijuana. (*Drake M.*, *supra*, at p. 761.) The appellate court reversed, holding that the Department had failed to prove the father was a substance abuser because he had a valid, medical recommendation to use marijuana for recurring knee pain and could adequately care for the child. (*Id.* at p. 767.) In addressing whether legal marijuana use constituted conduct that rendered a father incapable of providing regular care and supervision to a child, the court did point out that that such conduct *could* fall within the purview of section 300, subdivision (b), if a child has suffered or was at substantial risk for suffering serious physical harm or illness as a result of: (1) a parent's inability to provide regular care due to substance abuse or (2) the parent's failure to adequately supervise or protect the child. (*Id.* at p. 763.) Father attempts to distinguish *In re Alexis E.* (2009) 171 Cal.App.4th 438, 452 (*Alexis E.*), where the court found a risk of harm based on father's use of medical marijuana in the home, which exposed his children to second-hand smoke and had a negative effect on his demeanor when he was with the children.

The facts in this case are not as clear-cut as in *Alexis E.*, but father's situation is distinguishable from *Drake M.*, where the father had no criminal history or evidence he cared for the minor while under the influence. Here, father has a significant criminal history, including an instance of profound disregard for his daughter's safety, fleeing a robbery with his daughter in the car. Although father did not smoke inside the home, there was evidence that father smoked with friends in the backyard, that the smoke would permeate into the home, and that father sometimes drove the children while under the influence. Despite the parents' objection to the admissibility of statements by neighbors and the landlord at the jurisdiction hearing, these statements are admissible as corroborating evidence. (See *In re R.R.* (2010) 187 Cal.App.4th 1264, 1280-1281 [hearsay statements contained in a social study report are admissible as corroborating evidence].) Based on the above, substantial evidence supports the court's jurisdictional finding.

#### *Father's mental and emotional problems*

Father contends that any finding his mental illness puts the minors at risk of harm is speculative and cannot support an assertion of jurisdiction under section 300, subdivision (b). We reject father's contention, holding that the dependency court's jurisdictional finding that father's mental and emotional problems pose a substantial risk of harm to the children is supported by substantial evidence.

On appeal, father argues that he was already seeing a therapist before the jurisdiction hearing, and therefore the Department has not met its burden of showing a nexus between his mental illness and his ability to care for the children. Father compares his situation to that of the parents in *In re David M.* (2005) 134 Cal.App.4th 822 (*David M.*) and *In re James R.* (2009) 176 Cal.App.4th 129. In both cases, the appellate court reversed the dependency court's jurisdictional findings on the grounds that the risk of harm to the children when one parent suffers from mental illness is speculative and cannot support a jurisdictional finding. (See, e.g., *David M.*, *supra*, at p. 830 [the record

lacks any evidence of a specific, defined risk of harm].) The key distinction between these cases and father's situation is that here, father has exhibited harmful behavior on multiple occasions, and has discontinued his psychiatric medications at least once. Four years ago, father committed felony robbery and fled the scene with his nine-month-old daughter in tow. After being released from prison, he had thoughts that "everyone was after him," even when he was with his children. His neighbor and landlord describe him as aggressive, and are reluctant to report problems for fear of retaliation. On at least one occasion, he threatened to hit the landlord with a two-by-four. All of this evidence, coupled with mother's acquiescence, warrants the court's exercise of jurisdiction in this case.

#### *Marijuana plant*

Father and mother contend that the presence of a marijuana plant outside the apartment and within reach of the children cannot support a jurisdictional finding. They argue that it is unlikely a child would ingest more than a single leaf, and ingesting such a small amount would not likely pose a risk of harm even to a young child. Even if the evidence supported a finding that the parents were aware of the plant's existence and the fact that it was within the reach of their children, the Department did not present any evidence demonstrating the mere presence of a marijuana plant near toddlers, without more, posed a risk of harm. Regardless, because there is ample basis to support a jurisdictional finding on the two grounds already discussed, we exercise our discretion in declining to address the allegation regarding possession of the marijuana plant. (*Alexis E., supra*, 171 Cal.App.4th at p. 454.)

## **Removal Order**

Father contends there is insufficient evidence to support the order removing the children from his custody under section 361, subdivision (c),<sup>2</sup> emphasizing that removal is only authorized if the court finds clear and convincing evidence that the parent is unable to provide care for the children and that it would be detrimental for the children to remain with the parent. (*In re Bernadette C.* (1982) 127 Cal.App.3d 618, 627.) “The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the standard of proof at trial. ‘Thus, on appeal from a judgment required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.” [Citation.]’ [Citation.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 578.)

We have already held there is substantial evidence to support the court’s jurisdictional findings based on father’s marijuana use and his mental illness. The same evidence supports the court’s removal order as well.

## **Father’s Court-Ordered Services**

We also reject father’s contention that because there is no substantial evidence to support the jurisdictional finding that he is a substance abuser, the disposition orders

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<sup>2</sup> It is unclear whether section 361, subdivision (c) grants the dependency court authority to remove the minors from father’s custody and concurrently order children to be placed with mother. (See, e.g., *In re N.S.* (2002) 97 Cal.App.4th 167, 172, fn. 5 [because removing daughter from parental custody and immediately placing her with mother would exceed the dependency court’s jurisdiction, the reviewing court construed the order as only limiting father’s control over daughter by removing father from home].) Because neither party addresses this question in briefing, we decline to examine it in this case.

requiring him to drug test and participate in substance abuse counseling must be reversed.

The court has authority to direct any reasonable orders to the parents of minors over whom the court has found jurisdiction. (§ 362, subd. (d).) “The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” (*Ibid.*) ““The juvenile court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.’ [Citation.]” (*In re A.E.* (2008) 168 Cal.App.4th 1, 4.)

Even though the court was aware that father would most likely test positive for marijuana, it was not an abuse of discretion to order drug testing and substance abuse counseling for father, where such orders could assist father with reducing his marijuana use, an outcome that could only benefit the minor children and make successful reunification more likely.

## DISPOSITION

The dependency court's jurisdictional findings and dispositional orders are affirmed.

KRIEGLER, J.

We concur:

MOSK, Acting P. J.

GOODMAN, J. \*

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\* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.