

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Jose D., A Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANTONIO G.,

Defendant and Appellant.

B259281

(Los Angeles County
Super. Ct. No. CK51428)

APPEAL from a judgment of the Superior Court of Los Angeles County, Carlos E. Vasquez, Judge. Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Melinda A. Green, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Antonio G. (“Father”) appeals from the juvenile court’s jurisdiction and disposition orders declaring his son, Jose D., a dependent of the court pursuant to Welfare and Institutions Code¹ section 300, subdivision (b), removing the child from Father’s custody, and placing the child in the home of his mother. Father argues that the evidence was insufficient to support the jurisdictional findings that Jose was at a substantial risk of serious harm and that the juvenile court erred in removing Jose from his custody. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Prior Child Welfare History

Jose (born March 2006) is the son of Father and Claudia D. (“Mother”).² Mother also has two older children from a prior relationship. Between 2006 and 2014, the family was the subject of numerous child welfare referrals regarding Jose that were deemed unfounded or inconclusive. In February 2008, there was a substantiated referral alleging that Jose was the victim of emotional abuse by Father and general neglect by both Mother and Father due to Father’s alcohol abuse and the parents’ acts of domestic violence. In September 2008, the juvenile court sustained a section 300 petition filed on behalf of Jose based on findings that Father and Mother had a history of engaging in violent physical altercations in the child’s presence and that Father was an abuser of alcohol. The juvenile court ordered that Jose be placed in the home of Mother in December 2009, and the dependency case was closed in August 2010. Pursuant to a family law exit order, Mother had primary physical custody of Jose, and Father had joint legal custody with Mother and visitation with the child every weekend from Friday to Sunday.

¹ Unless otherwise stated, all further statutory references are to the Welfare and Institutions Code.

² Mother is not a party to this appeal.

II. Initiation of the Current Dependency Proceedings

A. May 15, 2014 Referral

On May 15, 2014, the Department of Children and Family Services (DCFS) received a referral alleging that Jose was the victim of physical and emotional abuse by Father. According to the reporting party, Jose had disclosed that Father drank alcohol on a daily basis and was verbally abusive toward Mother. The child also had disclosed that Father would say “bad things” about Mother and would tell Jose that he had to choose between Father and Mother. Jose was particularly distressed at that time because Father had refused to allow him return to Mother’s home on Mother’s Day or to talk to Mother on the telephone. When Jose attempted to call Mother on his own, Father hit him with a backscratcher. The paternal grandmother then tried to intervene, but Father continued hitting him. Jose had told the reporting party that Father previously hit him with his hands on the child’s arms, back, and other parts of his body.

Upon receiving the referral, a children’s social worker from the DCFS interviewed Father at the home he shared with the paternal grandmother. Father had previously been residing in San Diego for work, but he recently had moved back to the paternal grandmother’s home. Father stated that he tapped a backscratcher on the table to get Jose’s attention while he was helping the child with his homework. Father also stated that, after Jose repeatedly cursed at him and called him “stupid,” he “patted” the child twice on the buttocks with the backscratcher. He denied hitting Jose hard or using the backscratcher on an ongoing basis, and indicated his only intention was to gain the child’s focus. Father explained that he usually disciplined Jose by taking items away or spanking him on the buttocks with an open hand, and that he had spanked the child two days earlier for using foul language. With respect to his alcohol use, Father reported that he had a problem with alcohol in the past, but he completed a court-ordered substance abuse treatment program in 2009. He stated that he currently drank alcohol on a social basis and he last had a drink about 10 days earlier when Jose was not at home. He denied that he verbally abused Mother in Jose’s presence or refused to allow the child to have

contact with Mother on Mother's Day. Father accused Mother of being verbally abusive toward Jose and making disparaging comments about Father to the child.

The paternal grandmother also was interviewed. She explained that Jose was at her home every day and practically lived with her because Mother had difficulty dealing with his hyperactive and mischievous behavior. The paternal grandmother reported that she heard Father helping Jose with his homework and tapping the backscratcher on the table when the child cursed at him. She stated that Jose continued to curse at Father, who then disciplined the child by hitting him twice on the buttocks with the backscratcher. She also stated that Father did not hit Jose hard, but she told him to stop because Jose was upset. The paternal grandmother indicated that she had not seen Father drink alcohol recently, and that Father knew he was not allowed to drink alcohol when Jose was in her home. She also reported that Jose was under a lot of stress because Mother previously had refused to let the child speak with Father, and as a result, Jose had tried to hurt himself by running into the street and trying to get hit by a car. The paternal grandmother told the social worker that she suspected Mother was verbally abusing Jose and that Mother had slapped the child on a prior occasion while intoxicated.

The social worker met privately with Jose, who appeared to be in good health with no visible markings or bruises. Jose stated that Father had spanked him twice when he did not want to do his homework. He also indicated that he did not get along well with Father because Father "screams bad words" and spansks him. He denied that Father drank alcohol on a daily basis or in the home. Jose stated that he "kind of" got along with Mother, but he preferred being in the paternal grandmother's home. Jose denied any physical or verbal abuse by Mother, and was not afraid of either parent.

The social worker interviewed Mother at her home about the allegations. Mother reported that Father had ongoing issues with alcohol abuse and often called her while under the influence of alcohol to berate her. She also stated that she did not allow Jose to talk to Father on the telephone when he was drunk. Mother reported that neither Father nor the paternal grandmother would discipline Jose when he visited their home and that the child would return to her home with behavioral problems. Mother indicated that

Jose's school had assisted her in enrolling him in therapy because he was experiencing academic and behavioral issues at school. Jose also had begun to receive Full Service Partnership (FSP) services to address his mental health issues.

In response to a suspected child abuse report, a police officer conducted an interview with Father, who denied the allegations. The officer did not find any signs of abuse or risk factors for Jose, and determined that the report was unfounded.

B. June 13, 2014 Referral

On June 13, 2014, the DCFS received another referral alleging that Jose was a victim of emotional abuse by Father. According to the reporting party, Jose had disclosed that Father came home drunk two days earlier, and that Father became verbally abusive when Jose refused to talk to Father's girlfriend on the telephone. Father cursed at the child and called him "stupid," a "horrible son," "motherfucker," and "worthless." Both Jose and the paternal grandmother were afraid of Father and did not want to leave the grandmother's bedroom until he went to sleep. The reporting party also stated that Father drank heavily every weekend and that Jose did not want to visit him.

On June 19, 2014, the social worker spoke with Jose's therapist, who had been providing individual counseling to the child as well as conjoint counseling with Mother. The therapist reported that Mother was cooperative with the child's mental health services and was working with the therapist to implement recommended disciplinary techniques. The therapist stated that Jose felt a lot of pressure due to the custody battle between Mother, Father, and the paternal grandmother. The child had disclosed to her that Father provided him candy for reporting about Mother, and that he enjoyed visiting the paternal grandmother's home because he was allowed to do whatever he wanted. Jose also had disclosed that Father drank alcohol excessively and that he was fearful of being with Father because Father yelled at him a lot. The therapist had observed that Jose appeared more worried, agitated, and tearful, and she believed the ongoing conflict between the parents was detrimental to his emotional stability.

On June 24, 2014, the social worker re-interviewed Jose at Mother's home. Jose stated that Father drank alcohol and had been drunk at a family barbecue. Jose also stated that he found 20 cans of unopened beer under Father's bed, and that when he told the paternal grandmother about the beer, she told him to leave it alone. When asked about the allegations in the latest referral, Jose reported that Father was drinking beer and wanted him to talk to Father's girlfriend on the telephone. Jose did not want to talk to the girlfriend, and the paternal grandmother told Father to leave him alone. He later heard Father screaming at the paternal grandmother and paternal aunt. Jose stated, "When he drinks, he goes crazy, starts screaming." With respect to Father's discipline, Jose reported, "Before he would hit me with the stick. He hit me five times, different times with the stick. Now, he just screams." Jose admitted that he sometimes felt scared to be with Father "when he gets like that." Jose denied that he was afraid of Mother and noted that he simply did not like having to follow the rules in her home.

Mother reported that she was concerned Jose was having more tantrums and acting more aggressively when he returned from his visits in the paternal grandmother's home because there were no consequences in the home for misbehavior. Mother also noted that, when she went to pick up Jose from a recent visit, he was at a neighbor's house, but no one in the paternal grandmother's home had noticed he had left. Mother stated, "I know that his grandmother will take care of Jose but at the same time, I know that she will also protect her own son. She will not tell you if he is drinking."

The social worker spoke with the paternal grandmother about the latest referral. She admitted that Father was under the influence of alcohol when a verbal altercation occurred in the home, but she believed Jose was unaware of the incident because he was already asleep. The paternal grandmother stated, "Everything was under control. I told him to calm down and we just went to our room to avoid him. He had stopped drinking for some time and just recently began drinking. I have told him to stop drinking." The paternal grandmother added that she was concerned that Jose was being verbally abused by Mother and that the blame was being placed on Father.

On July 7, 2014, Father answered a telephone call from the social worker and his speech was slurred. He had difficulty staying focused during the conversation and indicated that he was drowsy from his medication. That same day, the social worker made an unannounced visit to the home. Father was observed to be groggy with red eyes and slow speech. He stated that he had taken prescribed pain medication and that was why he was “out of it.” He also admitted that he drank “a lot” of alcohol the day before and was “feeling it today.” Father was rambling at times and was unable to provide coherent answers when asked about the allegations in the latest referral. He repeatedly blamed Mother for the ongoing DCFS investigation and accused her of alcohol abuse. He also stated that he wanted to be left alone by the DCFS, and at one point, asked the social worker, “How much money will it take to leave us alone?” When asked about sleeping arrangements in the home, Father reported that he shared a bedroom with Jose when the child visited, but denied that he stored alcohol under the bed.

On July 9, 2014, the DCFS held a team decision-making meeting with Mother, Father, and the paternal grandmother. Both parents acknowledged the frequent conflict between them. Father indicated that he previously had participated in a court-ordered alcohol treatment program and he was willing to do so again. The paternal grandmother shared her concern that Father was verbally aggressive while under the influence of alcohol. When asked about his alcohol use, Father stated, “I drink because I like to drink. That’s it. No other reason. I like to drink.” Father agreed to have paternal grandmother monitor his weekend visits with Jose.

On July 16, 2014, a psychiatric mobile response team was contacted after Jose became physically aggressive toward Mother and his Therapeutic Behavior Services (TBS) specialist. The incident was triggered when Mother cancelled a planned visit with the paternal grandmother due to Jose being disruptive and acting out during a therapy session. The child became hysterical and began kicking, screaming, throwing things, and making threats to “kill everyone.” He then ran into the street in an attempt to hurt himself. Jose was transported to a hospital and placed on a psychiatric hold. Following his discharge, he began receiving more intensive therapy. Jose’s TBS specialist reported

that he had spoken with Father in May 2014, but since that time, Father had not been involved in the child's mental health services. Mother, on the other hand, continued to participate in Jose's treatment and was cooperative with his services.

On August 11, 2014, Jose's TBS specialist reported that there had been another incident where Jose became violent because he was not allowed to go to the paternal grandmother's home. According to the specialist, Jose became physically aggressive, made threats to hurt both himself and Mother, and stated that he wanted to run away and go with his grandmother. He then ran into the street and made threats to kill Mother and his therapists. As a result, Jose was placed on another psychiatric hold. Jose's therapist told the DCFS that she was concerned about Father's visits with the child. It appeared that Father was not always present at the paternal grandmother's home during the visits. Jose also had disclosed that, during the visits, he had been instructed to tell the court that he wanted to reside with Father and the paternal grandmother.

Based on its investigation, the DCFS recommended that Jose be detained from Father and remain placed with Mother. The DCFS also recommended that Father's visits with Jose take place at the DCFS's offices under agency supervision.

III. Section 300 Petition

On August 12, 2014, the DCFS filed a section 300 petition on behalf of Jose. The petition alleged that Jose was at a substantial risk of harm based on Father's substance abuse problem and physical abuse of the child. At the detention hearing held on August 12, 2014, it was reported that Jose remained placed on a psychiatric hold. The juvenile court made emergency detention findings and ordered that Jose be detained in a hospital or shelter care until the next hearing. On August 13, 2014, the juvenile court ordered that Jose be detained from Father and released to Mother, and that Father and the paternal grandmother be granted monitored visits with the child in a neutral setting. The matter was set for a jurisdiction hearing.

IV. Jurisdiction/Disposition Report

For its September 30, 2014 Jurisdiction/Disposition Report, the DCFS conducted interviews with the family about the allegations in the section 300 petition. Jose reported that Father hit him twice with a backscratcher on his legs because he did not want to do his homework. He also stated that Father goes out to drink and does not come home until the next day, and that he thinks Father “drinks too much.” Jose indicated that he wanted to spend time with both parents, but he wanted Father to stop drinking.

Father asserted that the allegations in the petition were “pure lies.” With respect to the alleged physical abuse, Father reported that he hit Jose with a backscratcher because the child refused to do his homework and then called Father a derogatory name. He denied leaving any marks or bruises on Jose, and he blamed Mother for allowing the child to use foul language in her home. With respect to the alleged substance abuse, Father acknowledged that he drank alcohol, but stated that he only did so on the weekends. He also stated that he had a drinking problem in the past, but he was “not like that anymore.” In describing his current alcohol use, Father indicated that he would drink beer or tequila at home and would have nine drinks in a period of eight hours. Between August 14, 2014 and September 15, 2014, Father tested negative for alcohol three times and failed to test once.

The paternal grandmother expressed her belief that the allegations in the petition were exaggerated. She stated that Father only hit Jose once with a backscratcher to discipline the child for using bad words. She acknowledged that there was an occasion where Father drank beer with his pain medication and became angry in Jose’s presence; she warned Father to be careful about mixing alcohol with his medication. She minimized the incident, however, and blamed Mother for questioning Jose about Father’s alcohol use. The paternal grandmother reported that Father was not currently drinking alcohol, but she believed a rehabilitation program would be beneficial to him.

Jose’s therapist reported that the child had disclosed to her that Father hit him with a backscratcher on his legs and buttocks and then yelled at the paternal grandmother when she tried to intervene. Jose had disclosed another incident to the therapist where

Father was drunk, yelled at the child, and called him names because Jose did not want to talk to Father's girlfriend on the telephone. Jose had indicated that he was scared on that occasion because Father was yelling so loud. The therapist explained that Father can be emotionally degrading to Jose and that the child's behaviors modeled Father's domestic violence. She also stated that Jose had been stable since the last court hearing and that he was more engaged during their therapy sessions.

The DCFS reported that Jose was having monitored visits with Father and the paternal grandmother at the DCFS's offices, and that Father had only missed one visit. The agency continued to recommend that the paternal grandmother not be allowed to monitor Father's visits because he had a history of being verbally abusive toward her and she tended to minimize his actions and alcohol abuse. The agency also reported that Mother had allowed the paternal grandmother and Father to have unmonitored contact with Jose in violation of the court's order. The DCFS stated that it remained concerned about Jose's safety in the care of Father due to Father's alcohol abuse and physical abuse of the child. The agency found that Father greatly minimized his alcohol abuse and failed to recognize how his actions were influencing Jose's behavior. The DCFS recommended that Jose be declared a dependent of the juvenile court and that the child be removed from Father's care and remain in Mother's custody under court supervision.

V. Jurisdiction and Disposition Hearing

On September 30, 2014, the juvenile court held a jurisdiction and disposition hearing for Jose. The court admitted into evidence the reports prepared by the DCFS and heard the arguments of counsel. The court then sustained the following two counts in the section 300 petition as amended:

Count b-1: "The child, Jose [D.'s] father, Antonio [G.], has a history of substance abuse, and is a current abuser of alcohol, which renders the father unable to provide regular care of the child. On prior occasions, the father was under the influence of alcohol and prescription medication while the child was in the father's care and supervision. The child was a prior dependent of the juvenile court due to the father's

substance abuse. The father's substance abuse endangers the child's physical health and safety, and creates a detrimental home environment, placing the child at risk of serious physical harm and damage."

Count b-2: "In April 2014, the child, Jose [D.'s] father, Antonio [G.], inappropriately disciplined the child by striking the child's buttocks with a backscratcher. On prior occasions, the father struck the child with a stick. Such physical abuse was excessive and caused the child unreasonable pain and suffering. Such physical abuse of the child by the father endangers the child's physical health and safety, and places the child at risk of serious physical harm, damage, danger and physical abuse."

Turning to disposition, the juvenile court declared Jose a dependent of the court under section 300, subdivision (b). The court ordered that the child be removed from Father's custody and placed in the home of Mother under the supervision of the DCFS. Father was granted monitored visitation with Jose a minimum of six hours per week. Father also was ordered to participate in weekly random drug and alcohol testing, a 12-step drug and alcohol program, parenting education, and conjoint counseling with Jose. On September 30, 2014, Father filed a timely notice of appeal from the juvenile court's jurisdiction and disposition orders.³

DISCUSSION

I. Jurisdiction Order

On appeal, Father challenges the sufficiency of the evidence supporting the juvenile court's jurisdictional findings under section 300, subdivision (b). Father specifically contends that the evidence was insufficient to support a finding that his alcohol use and physical discipline of Jose placed the child at a substantial risk of

³ On March 30, 2015, while Father's appeal was pending, the juvenile court held a six-month review hearing for Jose. The court found that continued jurisdiction over the child was necessary, and ordered that Jose remain placed in Mother's home under the supervision of the DCFS. On Father's motion, we take judicial notice of the juvenile court's March 30, 2015 minute order. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

serious physical harm. We conclude that the juvenile court’s exercise of jurisdiction over Jose was supported by substantial evidence.

A. Applicable Law

Section 300, subdivision (b) provides, in pertinent part, that a child comes within the jurisdiction of the juvenile court 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 inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b).) “The three elements for a section 300, subdivision (b) finding 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.’ [Citation.] The third element . . . effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future. . . . [Citations.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1395-1396.) “Although evidence of past conduct may be probative of current conditions, the court must determine ‘whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.’ [Citations.] . . . There must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135-136.)

We review a juvenile court’s jurisdictional findings for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Substantial evidence is “evidence that is reasonable, credible, and of solid value.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.) Under this standard of review, we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the juvenile court on issues of credibility of the evidence and witnesses. (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1103.) We determine only whether there is any substantial evidence, contradicted or uncontradicted, that supports the juvenile court’s order, resolving all conflicts in support

of its determination and drawing all reasonable inferences to uphold its ruling. (*In re John M.* (2012) 212 Cal.App.4th 1117, 1124.) If there is substantial evidence to support the juvenile court's order, we must uphold the order even if other evidence supports a contrary conclusion. (*In re N.M.* (2011) 197 Cal.App.4th 159, 168.)

B. Jurisdictional Finding Based On Father's Alcohol Abuse

The juvenile court found that jurisdiction over Jose was proper under section 300, subdivision (b) because Father's alcohol abuse rendered him unable to provide Jose with regular care and placed the child at a substantial risk of serious harm. Father argues the evidence was insufficient to support the jurisdictional finding because there was no showing that his consumption of alcohol posed a substantial risk of harm to Jose.

It is true, as Father asserts, that "[t]he mere possibility of alcohol abuse, coupled with the absence of causation, is insufficient to support a finding [a child is] at risk of harm within the meaning of section 300, subdivision (b)." (*In re James R.*, *supra*, 176 Cal.App.4th at p. 137.) Rather, to support a finding of jurisdiction based on a parent's drug or alcohol use, the social services agency must "present evidence of a specific, nonspeculative and substantial risk to [the child] of serious physical harm." (*In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003.) A parent's substance abuse problem can place a child at substantial risk of harm if it interferes with the parent's ability to provide the child with proper supervision or care. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 452 [parent's marijuana use posed risk of harm to child]; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1651 [parent's use of cocaine or methamphetamine posed risk of harm to child]; *In re Samkirtana S.* (1990) 222 Cal.App.3d 1475, 1489, disapproved on another ground in *In re Horton* (1991) 54 Cal.3d 82, 92-93 [parent's alcohol abuse posed risk of harm to child].) Accordingly, "even legal use of [drugs] can be abuse if it presents a substantial risk of harm to minors." (*In re Alexis E.*, *supra*, at p. 452.)

In this case, there was substantial evidence to support a finding that Father had an unresolved substance abuse problem that placed Jose at a substantial risk of serious harm. Contrary to Father's claim, the evidence did not merely show that he consumed alcohol

on occasion when Jose was not in his care. Rather, it demonstrated that Father abused alcohol on a regular basis to the point where it rendered him unable to provide Jose with appropriate parental care and supervision. The record reflects that Jose previously had been declared a dependent of the juvenile court based, in part, on Father's alcohol abuse, and that Father had been ordered to complete a substance abuse treatment program in 2009. Five years later, however, Father continued to have issues with alcohol abuse. In June 2014, Jose disclosed that Father became verbally abusive toward him when Father was drunk because the child did not want to talk to Father's girlfriend on the telephone. On that occasion, Father cursed at Jose and called him names, and the child became frightened because Father was yelling so loud. The paternal grandmother, who tended to minimize Father's alcohol abuse, confirmed that Jose was present in the home when a verbal altercation occurred because Father was under the influence of alcohol and that they went to her room to avoid Father. The paternal grandmother also acknowledged that Father became verbally aggressive when he was drunk.

The record further reflects that, in July 2014, Father was under the influence of alcohol as well as pain medication when the DCFS attempted to interview him about the second referral it had received regarding Father's alcohol abuse. Father was rambling at times during the interview and was unable to provide coherent responses when asked about the allegations in the referral. In a subsequent interview with Father during the dependency case, Father stated that he had a drinking problem in the past, but that he was "not like that anymore." However, when asked about his current consumption of alcohol, Father indicated that he drank at home on the weekends, and that he typically had nine drinks in a period of eight hours. Given that the weekends were the only time that Father had custody of Jose, the juvenile court reasonably could find that Father regularly abused alcohol when the child was in his care. In addition, there was evidence that Father had kept alcohol within access of Jose, who was then eight years old. Father reported that he shared a room with the child in the paternal grandmother's home, and Jose told the DCFS that he once found 20 unopened cans of beer under Father's bed.

The evidence also supported a finding that Father's current alcohol abuse was having a detrimental effect on the child. Jose disclosed to his therapist that Father drank alcohol excessively and yelled at him when he was drunk, and that he was fearful of being with Father. The therapist also expressed to the DCFS that Father was emotionally degrading to the child and that Jose's aggressive behavior was modeled by Father's behavior. In his interviews with the DCFS, Jose indicated that Father "drinks too much," and that there were times when Father would go out drinking and not come home until the next day. In describing Father's behavior when he was drunk, Jose stated, "When he drinks, he goes crazy, starts screaming." The child also stated that he felt scared to be with Father "when he gets like that." Jose told the DCFS that he wanted to spend time with both Mother and Father, but he wanted Father to stop drinking.

Based on the totality of the evidence, the juvenile court reasonably could find that Father had an ongoing problem with alcohol abuse which rendered him incapable of providing Jose with proper parental care, and placed the child at a substantial risk of serious physical harm. The juvenile court's jurisdictional finding based on Father's alcohol abuse was therefore supported by substantial evidence.

C. Jurisdictional Finding Based on Father's Physical Discipline

The juvenile court also found that jurisdiction over Jose was proper under section 300, subdivision (b) because Father's inappropriate and excessive physical discipline of Jose placed him at a substantial risk of serious harm. Father asserts the jurisdictional finding was not supported by substantial evidence because his physical discipline of Jose was appropriate and did not result in any physical harm.

A parent's use of inappropriate physical discipline on a child may support a finding of jurisdiction under section 300, subdivision (a) or (b) depending on the specific circumstances of the case. (See *In re Mariah T.* (2008) 159 Cal.App.4th 428, 438 [jurisdiction proper where mother punished three-year-old child by striking him with belt on stomach and forearms leaving deep purple bruises]; *In re David H.* (2008) 165 Cal.App.4th 1626, 1645 [jurisdiction proper where mother hit eight-year-old son with

belt and electrical cord 21 times causing bruises, red marks, welts, and broken skin].) In this case, Father contends that his physical discipline of Jose with a backscratcher in June 2014 was completely appropriate and part of normal parental discipline. Father points out that the discipline was in response to Jose screaming and cursing at him because Father told the child to do his homework. Father also claims that he spanked Jose only twice on the buttocks with the backscratcher and did not leave any marks or bruises.

There was evidence, however, that Father's discipline by hitting Jose with a backscratcher was not an isolated incident, but rather was part of a pattern of physically aggressive behavior by Father in the home. The family had a prior dependency case regarding domestic violence between the parents in the child's presence. There were also prior occasions when Father hit Jose in anger or with an object other than his open hand. Jose told the DCFS that Father previously hit him with a stick five different times. The child also stated that he did not get along with Father because Father "screams bad words and spanks me." In describing Father's discipline to his therapist, Jose recounted that Father had hit him with a backscratcher on both his legs and buttocks and then yelled at the paternal grandmother when she tried to intervene.

In addition, the record demonstrated that, prior to the incident involving the backscratcher, Jose was struggling with serious mental health issues for which he was receiving treatment. He had a history of attempting to harm himself. He also had a history of engaging in verbally abusive and physically aggressive behavior, and his therapists were working with Mother to apply appropriate disciplinary techniques in the home, such as time-outs and removal of privileges. Jose's TBS specialist reported that he had spoken with Father in May 2014 and had provided him with recommendations on proper discipline. However, Father had not had any involvement in the child's mental health services since that time. Jose's therapist similarly reported that she had not had any contact with Father. She also stated that she believed Jose's aggressive behavior was modeled by Father's domestic violence.

Under these circumstances, Father's repeated use of a backscratcher or a stick to hit Jose was not an appropriate method of discipline. Furthermore, Father's failure to

recognize that it was inappropriate for him to use such physical discipline on a child with significant mental health needs placed Jose at a substantial risk of serious harm in the future. The juvenile court's finding that Jose came within the jurisdiction of the court under section 300, subdivision (b) was supported by substantial evidence.

II. Disposition Order

Father also challenges the juvenile court's disposition order removing Jose from his care and custody and placing the child in the custody of Mother under the supervision of the DCFS. Father claims the evidence was insufficient to support a finding that Jose would be at a substantial risk of danger if allowed to remain in Father's custody and that removal of the child was the only reasonable means to protect him from harm. We conclude that there was substantial evidence to support the disposition order.

A. Applicable Law

Section 361, subdivision (c) permits the removal of a child from the custody of his or her parent if the juvenile court finds by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being" of the child if he or she were returned home, and "there are no reasonable means by which the [child]'s physical health can be protected without removing" the child from the parent's custody. (§ 361, subd. (c)(1).)

"A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] 'The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.' [Citation.] The [juvenile] court may consider a parent's past conduct as well as present circumstances. [Citation.]" (*In re N.M., supra*, 197 Cal.App.4th at pp. 169-170.) Where the juvenile court makes a dispositional finding by the elevated standard of clear and convincing evidence, the substantial evidence test remains the appropriate standard of review on appeal. (*In re D.G.* (2012) 208 Cal.App.4th 1562, 1574; *In re Henry V.* (2004) 119 Cal.App.4th 522, 529.)

B. Disposition Order Removing Jose from Father's Custody

Based on the record in this case, the evidence was sufficient to support a finding that Father's conduct posed a substantial risk of harm to Jose and that his removal from Father's custody was the only reasonable means of protecting him from harm. Prior to the current dependency case, Father did not have physical custody of Jose. Father had been residing in San Diego for a period of time without having any contact with the child. When Father returned home in April 2014, he resumed weekend visitation with Jose at the paternal grandmother's home. Less than a month later, the DCFS received a referral alleging that Father physically abused Jose, and while its investigation was ongoing, the DCFS received a second referral alleging that Father verbally abused the child while under the influence of alcohol. Jose disclosed to both his therapist and the DCFS that he was fearful of being with Father. Jose's therapist observed that the child appeared more worried, agitated, and tearful. The therapist also concluded that Father was emotionally degrading to Jose and that the ongoing conflict between Father and Mother was contributing to the child's emotional instability. Prior to Jose's detention, the child twice had to be hospitalized when he attempted to harm himself. After Jose was detained from Father and began receiving intensive mental health treatment, the child became more stable and engaged in his services.

The evidence further showed that Father refused to accept responsibility for his conduct or to acknowledge how his excessive drinking and inappropriate discipline were contributing to Jose's emotional instability. Throughout the dependency proceedings, Father minimized his alcohol abuse and the detrimental impact it was having on Jose. He admitted that he consumed an average of nine drinks a day at home on the weekends, but he did not believe that he had a current problem with alcohol abuse or that it affected his ability to provide Jose with proper care. Father also maintained that his action in hitting Jose with a backscratcher was an appropriate form of discipline and within his "rights as a father." While Father seemed to acknowledge that Jose had significant mental health needs, he made no effort to participate in the child's therapy or other services that were

being provided to the family. Instead, Father continually blamed Mother for the child's behavioral problems as well as the DCFS's involvement in this case.

Under these circumstances, the juvenile court reasonably could find that Father's alcohol abuse and inappropriate physical discipline placed Jose at a substantial risk of harm and that such risk could only be obviated by removing the child from Father's custody. The juvenile court's disposition order was supported by substantial evidence.

DISPOSITION

The juvenile court's jurisdiction and disposition orders are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

BECKLOFF, J. *

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