

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 TWO

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

B269879  
(Los Angeles County  
Super. Ct. No. DK13588)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

VICTOR P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.  
Stephen Marpet, Juvenile Court Referee. Affirmed.

John M. Kennedy, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant  
County Counsel, William D. Thetford, Principal Deputy County Counsel, for  
Plaintiff and Respondent.

This is an appeal from jurisdictional and dispositional orders entered against Victor P. (Father) pursuant to Welfare and Institutions Code, section 300<sup>1</sup> concerning his biological daughter, Sarai P., and his presumed son, Isaac G. We affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

The children at issue in this appeal came to the attention of the Los Angeles County Department of Children and Family Services (the department) months before the department filed a petition pursuant to section 300. The parents had agreed in April 2015 to participate in a voluntary family maintenance plan.

#### **1. The Petition**

The department filed on September 30, 2015, the section 300 petition on behalf of three-year-old Isaac and 14-month-old Sarai. B.C. (Mother), who is the children's mother, has not appealed the juvenile court's orders.<sup>2</sup>

Count b-1 of the petition alleged that Father is Mother's companion. Father has a history of illicit drug use and is a current user of amphetamine, methamphetamine and marijuana which rendered him incapable of providing regular care and supervision for the children. Father also had a criminal history of driving under the influence of alcohol. Father had a positive toxicology screen for amphetamine, methamphetamine and marijuana in March 2015. Father had positive toxicology screens for marijuana in March and August 2015. In March and August 2015, and on prior occasions, Father was under the influence of illicit drugs while the children were in his care

---

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

<sup>2</sup> Isaac's alleged biological father, who is named in the petition, but whose whereabouts are unknown, is not a party to the appeal.

and supervision. Father's drug use interfered with his abilities to provide the constant care and supervision needed for children of such young ages.

Mother, who knew of Father's illicit drug use, failed to protect the children.

Remedial services had failed to resolve the family problems because Father continued to use illicit drugs. Father's illicit drug use and Mother's failure to protect the children endangered the children's physical health and safety and placed them at risk of serious physical harm.

Count b-2 of the petition alleged that Mother has a history of illicit drug use and is a current user of marijuana, which rendered her unable to provide regular care and supervision of the children. She had positive toxicology screens for marijuana in March and August 2015. Mother was under the influence of illicit drugs while the children were under her care and supervision.

## **2. The Initial Petition Report**

In a petition report, also filed on September 30, 2015, the department stated that the children resided at home with Mother and Father. On March 8, 2015, the child abuse hotline had received a call concerning then three-year-old Isaac and seven-month-old Sarai. The report supported allegations of general neglect and at risk for physical and emotional abuse of the two children. The caller reported that Mother and Father abused "crystal meth" and marijuana and frequently fought in the children's presence. Mother allegedly slapped Father privately and in public. It was reported that Mother and Father lived in an unsanitary and cluttered room. Mother and Father tested positive on March 18, 2015, for marijuana. In addition, Father tested positive for methamphetamine.

The department reported that Father has a history of crystal methamphetamine use and was currently enrolled in an outpatient substance

abuse program. Father also uses marijuana. Father reported that he needed substance abuse treatment in order to refrain from using crystal methamphetamine. Father acknowledged that the drug was addicting and stated that he needed professional help to ensure that he does not use drugs again or become addicted. Mother reported using marijuana once or twice a month at social gatherings. Mother denied using any other controlled substances or abusing alcohol.

Both parents requested help with parenting skills. Mother is the primary caregiver. Since March 18, 2015, the parents had agreed that, because of Father's crystal methamphetamine use, Father was not to be left alone with the children.

When, in April 2015, the parents agreed to participate in the voluntary family maintenance plan, the department reported that both parents were initially cooperative with services. Father enrolled in an outpatient substance abuse program on March 23, 2015. In May 2015, Father received a diagnosis of Adjustment Disorder and a secondary diagnosis of Poly Substance Abuse/Addiction. No medication was prescribed for Father; however, it was recommended that he continue to follow up with his outpatient substance abuse treatment. Father was also given a referral for outpatient individual counseling. Father did not follow through with either recommended service.

Mother submitted to random drug and alcohol tests with negative results on April 30, May 18, and June 20, 2015. Mother had no shows on April 29, May 27, May 29, June 1, and June 15, 2015. Father tested positive for marijuana on March 30, 2015. Father had no drug test results in April 2015. Father had no shows on May 4, May 19, and June 3, 2015. Father tested negative twice in May 2015 and twice in June 2015. Neither parent

tested in July 2015. Both parents tested positive for marijuana in August 2015.

In June 2015, the family moved to West Covina. Father was given a list of outpatient substance abuse programs near their new home.

On June 22, 2015, the family was given a referral for family preservation. Although the family was initially cooperative, Mother and Father began to make themselves unavailable. The family preservation case was closed on July 31, 2015, because the parents were not making themselves available for services.

On August 5, 2015, the social worker referred Father to the department's substance abuse navigator to assist Father in enrolling in substance abuse treatment. On August 6, 2015, the social worker provided the parents with information concerning the closest testing sites to their new home. The department also gave Father a \$110 "Emergency Aid Requisition" for a bus pass to assist in drug testing, a substance abuse program, parenting classes and counseling. Mother was going to receive a bus pass through the Department of Public Social Services DPSS.

On August 28, 2015, the department and the parents had an emergency staff meeting because Father failed to follow through with services. Father failed to submit to on-demand testing on August 18, 21, and 27, 2015. During the emergency meeting, Father admitted that two days earlier he used "meth." The parents agreed that Father would voluntarily leave the family home until he enrolled in an inpatient or outpatient substance abuse program. The social worker gave Father a list of shelters that were close to his workplace. Father and Mother agreed to on-demand testing following the emergency meeting. Both tested positive for marijuana.

On September 2, 2015, four days after the emergency meeting, the substance abuse navigator informed the social worker that Father no longer wanted to enter an inpatient facility. They agreed that Father would enroll in an outpatient substance abuse program and attend Narcotics Anonymous (NA) meetings three times a week. Father was also to have a sign-in sheet completed at every meeting because he could not begin the program until October 2015.

Mother was a no show for a random test on September 3, 2015. Father's on-demand test on September 11, 2015, was positive for marijuana. Father did not submit to a random test on September 18, 2015. During an unannounced visit on September 24, 2015, Father reported that he had only participated in three NA meetings for the month of September 2015. He had documentation for one meeting and said he could not locate the sign-in sheet for the other two sessions. Father then added, "honestly" he had a new job and was working a lot.

During scheduled and unannounced visits, the children were neat, clean and well groomed. The family's home was well organized. The utilities were in working order. There was an ample supply of food. There were no drugs or alcohol in the home. Neither Mother nor Father appeared to be under the influence of drugs.

The department reported that, as of September 25, 2015, the parents had not completed any of the recommended services and were not in compliance with the goals outlined in the voluntary family maintenance case plan. The social worker conducted a risk and safety assessment and determined the risk for future abuse and neglect was high. The department stated that voluntary family maintenance services had failed to ameliorate safety concerns in the home.

### **3. The Detention Hearing**

On September 30, 2015, the juvenile court conducted a detention hearing. The court found Father to be the children's presumed father. The court made no detention findings as to Father and Mother at that time. The court ordered the children released to the parents pending the next hearing. The department was ordered to provide referrals and make unannounced visits to the home. The parents were ordered to drug test weekly and on demand.

### **4. Subsequent Reports**

In a December 2015 jurisdiction/disposition report, the department stated that Mother had said Father was no longer using methamphetamine. She denied knowing that he used it until his positive test in March 2015. Mother said she never saw him use any type of drugs while the children were present. The children were never left in his care while he was under the influence of any type of drug.

Mother said she uses marijuana recreationally about twice a month for stress and anxiety. Mother denied currently being a "chronic" user, although she was a "more chronic" user in the past. She stopped using marijuana while she was pregnant with Isaac and started again when he was about a year old. Mother tested positive for marijuana on September 25, 2015. Mother had three no shows in October 2015. Mother obtained a medical recommendation for marijuana on November 21, 2015.

In a November 2015 interview, Father denied that he was currently using drugs. He first experimented with methamphetamine about a year ago and used it once a month. Father said he did not have a problem but admitted that "it was a problem." He said "the old me" wanted to quit but could not. He attributed his substance abuse to experimenting with the

wrong thing and socializing with the wrong people. He denied that Mother knew of his substance use. He hid it from her. Mother was very “mad and disappointed” with him and asked how he could do this to the family. In response to the statement that the children were under his supervision while he was under the influence, Father said it was not “exactly accurate.” The children were either in Mother’s care or in day care.

Father admitted that he continued to use marijuana. He had a positive test on September 25, 2015, for marijuana and three no shows in October 2015.

Father said Mother used edible marijuana but not around the children. Mother used marijuana every two or three weeks but the children would be in day care. He and Mother occasionally used marijuana together but not when the children were present.

The department reported the parents appeared to understand why the family came to the department’s attention. The family had appropriate housing and the children’s basic needs were being met. Father stated that he needed to be responsible. He was willing to participate in a substance abuse program to address the case issues. He attended a program that was helpful and wanted to enroll in one that was closer to the family’s residence. Mother believed that both parents would benefit from a parenting education program.

### **5. The Jurisdiction/Disposition Hearing**

On December 7, 2015, the court continued the jurisdiction/disposition hearing to January 21, 2016. In January 2016, the department reported that Father and Mother both had two no shows for drug tests in December. Mother stated that there was a miscommunication about the testing site because the family had relocated. Mother indicated that Father had enrolled

in a substance abuse program the prior week. The parents enrolled in a parenting education program. The social worker made an unannounced visit to the home in November 2015. There were no immediate safety concerns for the children.

At the hearing, the children's attorney joined the department's recommendation that the court sustain the petition. Counsel argued that the parents were given the opportunity to participate in voluntary family maintenance almost a year before the hearing date. The parents chose not to do what the plan required. They did not test and participate in programs. Counsel argued that Sarai was nine months old when the family came to the department's attention because of the parents' issues and the issues were still the same.

Father argued that the petition should be dismissed because his methamphetamine and marijuana use alone did not place the children at risk under standards set forth in *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake*) and *In re Destiny S.* (2012) 210 Cal.App.4th 999 (*Destiny S.*). Mother argued that she did not know that Father used methamphetamine. Father hid his use of the drug from her. The argument was that Father's use of methamphetamine did not rise to the level of abuse and that Father had the DUI before they met. She also claimed that her use of marijuana had no nexus to her ability to properly care for and supervise the children.

Citing section 300.2, the court noted that the Legislature specifically set forth a standard to protect the one-year-old and four-year-old, who are too young to protect themselves in a home with substance abuse. The court also pointed out that Father used methamphetamine and both parents used marijuana. The court concluded there was ample evidence to show the children were at risk. The court sustained the allegations in count b-1

concerning Father's methamphetamine and marijuana use. The court struck the allegations in count b-1 about Father's DUI conviction. The court also struck count b-2 about Mother's marijuana use.

The court ordered that the children remain in the home of the parents. Mother and Father were ordered to participate in counseling. Father and Mother were ordered to counseling, including parenting and random alcohol and drug testing. If Father tested positive, he was ordered to substance abuse counseling. Mother was ordered to test for marijuana levels to stay the same or go down. Mother was ordered to use edible marijuana and not smoke around the children.

Father filed a timely appeal of the court's orders.

### **DISCUSSION**

Father claims jurisdiction was not proper because there was insufficient evidence that his substance abuse placed the children at a substantial risk of suffering physical harm or illness. Section 300, subdivision (b)(1) authorizes the court to adjudge a child to be a dependent 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." We review the juvenile court's jurisdictional findings for substantial evidence. (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438; *In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.) A determination in a light most favorable to the challenged order resolves all evidentiary conflicts in favor of the order. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

The primary purpose of dependency statutes is to protect children by safeguarding their physical and emotional well-being. (§ 300.2; *In re Nolan W.* (2009) 45 Cal.4th 1217, 1228; *T.W. v. Superior Court* (2012) 203 Cal.App.4th 30, 42-43.) Section 300.2 states: “Notwithstanding any other provision of law, the purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent reabuse of children. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child. *The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment. . . .*” (Italics added.)

Father relies on a number of cases to support his claim that substance abuse alone is insufficient for jurisdiction. (See *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 728 [a 13-year-old was not at substantial risk from her mother’s substance abuse]; *Drake M., supra*, 211 Cal.App.4th at p. 764 [usage of medical marijuana without a showing of substance abuse is insufficient to support finding of failure to supervise or protect]; *Destiny S., supra*, 210 Cal.App.4th at p. 1003 [parent’s use of marijuana without more is insufficient to support jurisdiction]; *In re David M.* (2005) 134 Cal.App.4th 822, 829-830 [mother’s continued substance abuse of marijuana without more

did not support finding of risk].) Father claims that his substance use was nothing more than “experimental” and there was no evidence he abused methamphetamine by the time of the hearing in January 2016. Father claims that the court did not properly weigh considerations that the children might not be at risk. He points to evidence that: he continued to work; the family home was clean and had sufficient food; and the parents did not use drugs around the children.

However, a court may exercise jurisdiction when the parent has a history of substance abuse and the evidence shows that the substance abuse places a child of tender years at risk of harm from the parents’ inability to provide regular care. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) “Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child [citation].” (*Id.* at pp. 1215-1216.) In making that determination, the court may consider whether past events require the court’s present protection if there is reason to believe that the parent will continue the conduct. (*Id.* at p. 1216.)

In sustaining the allegations against Father, the court noted that, in enacting section 300.2, the Legislature has expressly stated that dependency statutes are designed to protect children by providing a home free of the negative effects of substance abuse as a means of protecting their physical and emotional well-being. The court noted that the children living in Father’s home are very young. During the hearing, the children’s attorney argued that the petition should be sustained especially because the children were very young. Isaac was four years old and Sarai was one year old. Sarai was nine months old when the family initially came to the department’s

attention in March 2015. At that time, Father and Mother tested positive for marijuana (prior to Mother obtaining a medical marijuana use card). Father also tested positive for methamphetamine.

The record also showed that, as part of the voluntary family maintenance plan, Father agreed to drug testing and to participate in substance abuse programs. In November 2015, two months before the January 2016 jurisdiction/disposition hearing, Father admitted that he had a problem with methamphetamine. Although he claimed the problem no longer existed, from March 2015 until January 2016, Father had a number of no shows for drug testing. Father had positive tests for marijuana. Father also sporadically enrolled in and attended substance abuse programs. Father admitted that he needed to attend the programs to refrain from using methamphetamine because it was addictive.

Father tested positive for methamphetamine in March 2015. Both parents claimed that Father hid his use of methamphetamine from Mother. On August 28, 2015, Father admitted that he had used methamphetamine two days prior to the emergency meeting that was called because he was not following through with services, including submitting to three on-demand tests in August 2015. Father (and Mother) tested positive for marijuana in August 2015. Father had a positive test for marijuana in September 2015 and did not submit to a random test. Father also did not attend his substance abuse program. Father had no shows for drug tests in October and December 2015.

Thus, at the time of the jurisdiction/disposition hearing in January 2016, Father, who resided in the same home with young children, had not resolved the issue which initially brought the family to the court's attention: substance abuse. Contrary to Father's assertion, his unresolved drug issues

formed a sufficient basis to assert jurisdiction over the children, who are of “tender years.” (See, e.g., *Drake*, *supra*, 211 Cal.App.4th at pp. 766-767 [a finding of substance abuse is prima facie evidence of parent’s inability to provide regular care resulting in a substantial risk of physical harm for children of “tender years”].) “The state, having substantial interests in preventing the consequences caused by a perceived danger is not helpless to act until that danger has matured into certainty. Reasonable apprehension stands as an accepted basis for the exercise of state power.” (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1003.)

The juvenile court could reasonably conclude that there was a nexus between Father’s unresolved illegal drug-related issues, including methamphetamine use and a risk of injury to such young children. Because of the tender age of the children involved in this case, we are not persuaded that Father’s reliance on numerous case authorities requires a different result. (See *In re Rebecca C.*, *supra*, 228 Cal.App.4th 720 [13-year-old child]; *Drake M.*, *supra*, 211 Cal.App.4th 754 [parent legally used medical marijuana for pain] and *Destiny S.*, *supra*, 210 Cal.App.4th 999 [11-year-old].) Under the circumstances, Father is incorrect that the juvenile court did not have sufficient evidence to base its jurisdictional findings against him.

#### **DISPOSITION**

The juvenile court orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.