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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re D.P. et al., Persons Coming Under the  
Juvenile Court Law.

B269935

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK82067)

Plaintiff and Respondent,

v.

L.W.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Stanley Genser, Juvenile Court Referee. Affirmed in part, and dismissed in part.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Brian Mahler, Senior Associate County Counsel, for Plaintiff and Respondent.

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Mother L.W. appeals from the juvenile court's dispositional orders under section 361, subdivision (c) of the Welfare and Institutions Code<sup>1</sup> as to now 16-year-old D.P., eight-year-old B.R., and nearly two-year-old J.F., arguing that there was not substantial evidence that justified their removal from her care, and because there were less drastic means of protecting the children. As to mother's youngest child, J.F., we find that the appeal is moot, because J.F. has been returned to mother's care. As to the older children, we conclude that the court's dispositional orders are supported by substantial evidence, and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The family came to the attention of the Los Angeles County Department of Children and Family Services (Department) on May 25, 2015, when the Department received a referral that D.P. "was terrified of mother." Mother hit D.P. with objects if D.P. did not do as mother asked. Mother also used drugs and left drugs accessible to the children. The reporter put D.P. on the phone, and D.P. confirmed that mother smoked methamphetamine. Mother made D.P. babysit her younger siblings, even though D.P. did not know how to care for infant J.F. Mother also struck D.P. and B.R. with belts and hangers and threw objects such as books, forks, and shoes at D.P. D.P. had left mother's home one and one-half weeks earlier, and wanted to stay with her father, Bryan R., and his wife S.R., where she felt safe. D.P. did not want to return home, for fear that mother would "beat" her for "running away." Bryan R. was also the father of B.R.

D.P. believed that mother's boyfriend, Justin F., who was J.F.'s father, also used drugs. Justin admitted to D.P. that he and mother were "on meth." D.P. had found glass pipes in the bathroom, with burnt residue. Mother and Justin left the children alone when they went to buy drugs. Mother at first lied about where she and Justin were going, but at the urging of Justin, mother admitted "We're going to go get drugs." D.P. would smell "nasty" chemical odors in the family home that "[m]ade [her] want to throw up."

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

Mother and Justin hit B.R. for dropping J.F. Mother would often yell at D.P. and call her names. However, mother was generally much more loving to B.R.

When Department social workers went to B.R.'s school to meet with her, she was absent, and had only attended school twice in the last two weeks.

On May 27, 2015, a Department social worker met with mother and Justin. Mother denied that Justin lived in the family home, but admitted that he visited on weekends. However, Justin's address in the CLETS system was the family home. Mother and Justin admitted to a long history of drug use. Mother began using marijuana at 15 and methamphetamine at 17. She used methamphetamine daily from the time she was 17 until B.R. was two years old, a total of 14 years. She denied any current substance use, and agreed to submit to an on-demand drug test. Justin admitted to a history of using marijuana and methamphetamine. He used methamphetamine for over 14 years, but stopped using in August 2014. He also agreed to drug test.

Mother admitted to allowing D.P. to live with her boyfriend and his family for several months, and for often leaving her children in the care of a former boyfriend, P.C., with a long history of intravenous drug use, and a history of domestic violence against mother.

Mother also admitted that she was bipolar, and was not in treatment or taking any medication for her condition. She suffered "extreme highs and lows."

Later that day, mother and Justin called the social worker, and told her they had consumed coffee with methamphetamine mixed in four days earlier. Justin said that he would likely test positive for drugs.

Mother called back later that same day and denied that she had told the social worker she had consumed methamphetamine. She was confident that her test would be clean.

Mother and Justin did submit to testing, and mother tested negative, although her test was diluted. Justin's test was diluted and could not be processed.

On May 29, 2015, the Department obtained a removal order for the children. J.F. was placed with her paternal great-grandmother, G.D. B.R. was placed with her father,

Bryan R. As the social worker was transporting B.R. to her placement, B.R. admitted that mother and Justin argued and B.R. would go to her room to “stay out of the way” and sometimes cover J.F.’s ears “so she can’t hear any of it.” B.R. admitted that she did not attend school because she was “afraid of being picked up and taken away.” Mother sometimes kept B.R. out of school “so they can’t pick [her] up and put [her] in a foster home.” B.R. also admitted that there were “pipes” in her home.

The family has an extensive child welfare history with 15 referrals between 2002 and 2015, one of which resulted in a voluntary family maintenance case, and one of which resulted in a sustained petition in 2010. The 2010 petition was sustained on allegations that mother inappropriately physically disciplined D.P., that mother and her then partner, P.C., committed domestic violence in front of D.P. and B.R., that mother did not take her psychotropic medications, that mother medically neglected B.R., and that mother had a history of substance abuse. Mother complied with her case plan and the case was closed in May 2012.

On June 3, 2015, mother sought mental health services at La Casa Mental Health Urgent Care Center. She was diagnosed as bipolar and was prescribed medications. On June 4, 2015, mother enrolled in a six-month outpatient substance abuse treatment program with the Cambodian Association of America. The program required that she attend two 1-hour individual sessions per week, two 2-hour group sessions per week, and to participate in random drug testing. Also in June, mother participated in a parenting orientation and a domestic violence program.

A dependency petition was filed on June 5, 2015, alleging mother’s physical abuse of D.P. under section 300, subdivisions (a), (b) and (j), drug use by mother and Justin, that mother created a detrimental home environment by allowing Justin to use drugs in the home, and that mother had a mental health history and did not take her prescribed medication.

The Department’s jurisdiction/disposition report indicated that mother had a criminal history of arrests for vandalism, being under the influence of a controlled substance, forgery, assault with a deadly weapon, and burglary, and a conviction for

grand theft. Justin also had an extensive criminal history with a number of drug-related arrests, and convictions for theft and weapons-related crimes.

Justin admitted that mother struck D.P. and had been using methamphetamine. Justin told the social worker that mother was prone to fits of anger, and “attacked him by scratching him all over” on August 23, 2015. The social worker saw scratch marks on Justin’s face, shoulders, arms, and chest. Justin did not retaliate or strike mother, and simply left their home.

Mother claimed that Justin was choking her, and that she scratched him in self-defense. The social worker did not see any marks or bruises on mother.

In July, mother admitted to paternal great-grandmother that she was not taking her medication for her bipolar disorder because “the pills knock her out and put her to sleep.” The social worker was also concerned about mother’s compliance with her medication, as mother minimized her mental illness and was very volatile.

Justin tested positive for amphetamine and methamphetamine on August 3, 2015. Mother had negative drug tests on June 17, June 22, July 2, July 23, and August 10, 2015.

On August 27, 2015, mother completed a 10-week domestic violence program. She had also made steady progress in her parenting program.

In a September 8, 2015 last minute information for the court, the social worker noted that mother “used to call . . . nonstop” but had stopped contacting her over the last several weeks. She had also received reports from paternal great-grandmother that mother “is really unstable and emotional.” Mother was displaying very controlling behavior toward Justin, and had threatened to call police and report that he raped her if he tried to leave her. The social worker was concerned that despite mother’s clean drug tests, mother was still abusing drugs. The social worker once “worked with a mother who was able to produce negative drug test[] results [even though] she continued to use meth on the weekends . . . .” Mother did not appear stable. Mother also had lied to paternal great grandmother and to Bryan R.’s wife, S.R., about things the social worker had said.

On September 14, 2015, a first amended petition was filed, adding allegations that mother and Justin were involved in a “physical altercation” on August 23, 2015, where mother scratched Justin.

On October 14, 2015, mother’s treating psychiatrist wrote a letter stating that mother had been a patient since July 6, 2015, and she had consistently kept her appointments. She was diagnosed with depressive disorder and personality disorder. She did not appear to meet the diagnostic criteria for bipolar disorder. She had been prescribed medications, and “appeared stable” during her appointments. She had also reported to her psychiatrist that “she is less irritable and more stable in mood with the use of medications.” The focus of mother’s psychiatric treatment was medication management and not counseling.

A January 12, 2016 letter from mother’s psychiatrist noted that mother was still keeping her appointments, and was “calm and cooperative” during their meetings.

Mother had also completed parenting and domestic violence programs, and had completed a 24-week outpatient drug program. She enrolled in a 30-day aftercare drug program in December 2015. Mother was noted to be “very motivated” during her group and individual sessions in her drug program. She was compliant with all aspects of her drug program. As of January 14, 2016, mother had completed her 30-day aftercare drug program, and “exceeded the expectations of the program.”

In a January 15, 2016 last minute information for the court, the Department reported that Justin had informed the social worker that mother was selling heroin and methamphetamine. Mother had apparently disclosed this information in a telephone conversation which Justin recorded. Mother denied selling drugs. She also had a diluted test on December 1, 2015, but was otherwise testing negative.

At the January 19, 2016 adjudication hearing, mother pled no contest to the first amended petition, including allegations of an unresolved history of drug use, inappropriate physical discipline of D.P., mental and emotional problems, and domestic violence.

The court also sustained allegations as to Justin’s substance abuse.

As to disposition, mother asked that the children be returned to her care. Bryan R. asked that jurisdiction be terminated as to the older children. Mother argued that there was not clear and convincing evidence that the children would be in substantial risk of harm if returned to her care, and argued that appropriate safeguards could be put into place, such as wraparound services, unannounced home visits, and drug testing. Mother also suggested that D.P. and B.R. were old enough to self-report any abuse.

The court terminated jurisdiction over the older children, awarding Bryan R. sole physical custody, and joint legal custody to mother and Bryan. The court ordered unmonitored visits for mother to occur every weekend. The court ordered J.F. removed from mother.

This timely appeal followed.

### **DISCUSSION**

Mother contends that insufficient evidence supported the removal of D.P. and B.R., reasoning there was no clear and convincing evidence the children were in danger in her care.<sup>2</sup> Mother contends that Justin's uncorroborated claim that mother was selling drugs does not support removal, because the petition did not allege drug sales as a basis for jurisdiction, and because the Department never obtained the alleged tape of the admission from Justin. She also contends there was no present risk of domestic violence because mother was compliant with her medication and stable, and because she was no longer involved with Justin. Mother also contends that B.R. was not in danger, because the only child she inappropriately disciplined was D.P.

A child may not be removed from a parent or guardian unless there is clear and convincing evidence of "substantial danger to the physical health, safety, protection, or

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<sup>2</sup> Mother's appeal also challenges the removal of J.F. However, following mother's appeal, the juvenile court returned J.F. to mother's care. We sent a letter to the parties under Government Code section 68081, inquiring whether mother's appeal of the dispositional order as to J.F. was moot. Mother agrees that her appeal concerning J.F. is moot. Therefore, we will not reach the merits of this claim. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.)

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 or guardian's physical 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." ' ' ' ( *In re A.S.* (2011) 202 Cal.App.4th 237, 247.)

A juvenile court's removal order is reviewed under the substantial evidence standard of review, notwithstanding the evidentiary standard used at trial. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; see also *In re E.B.* (2010) 184 Cal.App.4th 568, 578.) We do not pass on the credibility of witnesses, resolve evidentiary conflicts, or evaluate the weight of the evidence. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250-251.) We draw all reasonable inferences in support of the court's findings, view the evidence in favor of the court's order, and must affirm that order even though other evidence might support a contrary conclusion. (*Ibid.*)

Substantial evidence supports the juvenile court's finding that removal was necessary, and that there were no less drastic means to protect the children. Even if we were to disregard altogether Justin's allegations that mother was selling drugs, mother does not dispute that she has a long substance abuse and mental health history, and a history of abusing both D.P. and B.R. Although mother was testing negative for drugs, her unstable behavior continued. She violently attacked Justin *the same week* she completed a 10-week domestic violence program. Also, social workers and paternal family members continued to observe mother to be unstable and depressed, and there were concerns she was not taking her medication. Mother has an extensive history with the Department, and there was evidence that before the instant petition was filed, mother was keeping B.R. out of school to avoid Department intervention. Although mother completed many programs, she had not demonstrated that she meaningfully benefitted

from them. There were still well-grounded concerns about her ability to safely parent both D.P. and B.R. at the time of the disposition orders.

**DISPOSITION**

The dispositional orders are affirmed. The appeal as to the J.F. is dismissed as moot.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.