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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

KENNETH G.,

Defendant and Appellant.

C069642

(Super. Ct. Nos.  
JD231761, JD231762,  
JD231763)

Father, Kenneth G., appeals from the juvenile court's orders declaring minors A.G., T.G., and C.W. dependents of the court and removing them from his custody. (Welf. & Inst. Code, §§ 360, 361, 395.)<sup>1</sup> Father contends the minors were not at substantial risk of harm at the time of jurisdiction, and

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

reasonable means existed to protect them without removing them from his custody. We conclude that there is substantial evidence supporting the juvenile court's findings that father's substance abuse and mental health problems put the minors at substantial risk of harm in his custody, and the efforts he had made to alleviate those problems were not sufficient to ensure the minors' safety without removing them from his home. Therefore, we affirm.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

##### **The Section 300 Petitions**

On August 12, 2011, the Sacramento County Department of Health and Human Services (the Department) filed section 300 petitions as to father's three daughters, nine-year-old A.G., 13-year-old T.G., and 17-year-old C.W. The petitions alleged:

1. Father had an untreated mental illness or psychiatric issues, with symptoms including but not limited to agitation, delusions, and paranoid thoughts. He had reported that his television, radio, and refrigerator were talking to him. He put duct tape on his ceiling because he believed the neighbors were audiotaping and videotaping him. His conduct made the minors fearful and anxious. He had not acknowledged the need for psychiatric evaluation and treatment or complied with the Department's interventions.

2. Father had a substance abuse problem. He drank alcohol daily to the point of intoxication, which caused him to become volatile, throwing things and yelling in the minors' faces. He also smoked marijuana daily. There was marijuana in the home,

and C.W. had observed father smoking it in his car. Father had two convictions for driving under the influence (DUI) and was arrested for DUI on another occasion. He had not acknowledged the need for substance abuse assessment and treatment or complied with the Department's interventions.

### **The Initial Hearing Report**

The initial hearing report further alleged: After the minors' mother, who had had primary custody of the minors, died in 2008, father moved into her home to care for the minors. There had been repeated referrals on the family from then on. In July 2008, a referral for general neglect was deemed substantiated, based on father's drinking, yelling at the minors, refusal to drug test, and failure to meet the minors' dental needs. In December 2010, father was reported to be drinking, throwing things, and kicking the minors out of the house at night. He would not sign the Department's safety plan.

In June 2011, when the police came to investigate a report that father was manufacturing and selling drugs in his home,<sup>2</sup> the minors seemed afraid to talk in father's presence.

Father denied mental health, alcohol or substance abuse problems and refused to drug test, seek a psychiatric evaluation, or comply with any of the Department's requests without a court order. He confirmed that he had put duct tape on his ceiling to block surveillance cameras supposedly

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<sup>2</sup> Law enforcement found no evidence that father was manufacturing or selling drugs in the home.

installed by a neighbor. He was on leave from work, and his employer demanded a psychological evaluation before he could return. The minors said he had lately been acting "bizarre." He had grabbed C.W. by the shirt, physically put her out of the home, and would not let her back in. He was intoxicated at the time.

C.W. reported that father has always had a drinking problem, but the minors had not been fully exposed to it when they lived with mother. When father drinks, he becomes short-tempered, yells in their faces and more recently has put his hands on them in anger.

Father would not let the minors' adult sister J.W. see the minors. The minors wanted to live with J.W.

#### **The Initial Hearing**

On August 19, 2011, the juvenile court ordered the minors temporarily detained in J.W.'s custody.

#### **The Jurisdiction/Disposition Report**

The jurisdiction/disposition report dated September 1, 2011 recommended out-of-home placement with reunification services for father.

The minors confirmed the allegations against father. A.G. said that before she would want to live with father again, he would need to change the way he acts and how much he drinks and smokes. A.G. also wanted father to get help with his "anger management problems." When asked what she would want father to change before she would want to return home, T.G. stated, "His drinking problem especially, his actions when he's drunk.

Mainly his drinking problem." C.W. said father could do nothing to make her want to return home.

C.W. reported that there were times when father drove intoxicated with the minors in the car. She also discussed the night father threw her out of the house. She had been on her laptop when father took it away and began throwing her belongings from her room into the hallway. C.W. videorecorded a portion of this event on her cell phone. She showed it to the social worker, who confirmed that the video depicted father throwing things into the hallway. C.W. also showed the social worker a photo of her wearing the shirt father tore when he threw her out.

J.W., the minors' adult sister, said she was concerned for their well-being in father's custody due to his substance abuse and mental health problems. The minors had often called her to report that they were frightened by his paranoia and felt unsafe with him. According to J.W., father was placed on leave at work because he had accused his supervisor and coworkers of watching him through cameras installed at the stoplight by his house and on his work computer. He also thought the household appliances were talking to him. He unplugged the refrigerator more than once, causing the food inside to spoil. He would often leave home and wander the neighborhood for hours, leaving the minors on their own. Sometimes he would let A.G. and T.G. stay with J.W., then call in the middle of the night demanding their return. When confronted with these statements, father denied them.

Father had 10 misdemeanor and two felony convictions.<sup>3</sup> Among the misdemeanor convictions were two for DUI, the most recent being a conviction in July 2011.

According to the report, father claimed a new neighbor had been harassing and threatening him and the minors and making racial slurs against him. The neighbor had been arrested for threatening another person and pulling a gun on him.<sup>4</sup> According to the father, the victim was the boyfriend of T.G.'s best friend. Father placed duct tape on the ceiling because the neighbor, who "had a security company," had threatened to put father under surveillance.

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<sup>3</sup> Father had the following misdemeanor convictions: 1981 - Penal Code section 415, disturbing the peace; 1986 - Penal Code section 415, disturbing the peace; 1987 - Penal Code section 148, resisting, delaying or obstructing a public officer/peace officer/EMT; 1990 - Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol or drugs; 1990 - Penal Code section 243, subdivision (b), battery on a peace officer/emergency personnel; 1992 - Vehicle Code section 2800.2, evading a peace officer with wanton disregard; 2011 - Vehicle Code section 23152, subdivision (b), DUI alcohol/0.08 percent.

Father had the following felony convictions: 2004 - Vehicle Code section 2800.2, subdivision (a), evading a peace officer with wanton disregard; 2008 - Vehicle Code section 2800.2, subdivision (a), evading a peace officer with wanton disregard. In both of these felony matters, father also sustained misdemeanor convictions of Penal Code section 148, resisting or obstructing a peace officer/EMT and Vehicle Code section 14601.1, subdivision (a), driving while privilege was suspended or revoked.

<sup>4</sup> The neighbor had, indeed, been arrested in June 2011 for criminal threats and displaying a handgun he had in his waistband. The arrest stemmed from a road rage incident which occurred at a Home Depot.

In May 2011, father took A.G. and T.G. to a hospital and demanded that they receive evidentiary examinations because father thought the neighbor had molested them. Both minors denied they had been molested. T.G. believed a schizophrenic methamphetamine addict who was father's friend had told him this story. T.G. did not understand why father would not believe her denial instead. Law enforcement was called to the hospital and determined the report was unfounded.

A.G. said she never saw the neighbor be mean to or threaten father. She described the neighbor as "hecka nice and he's funny." She is friends with the neighbor's girlfriend and his daughter.

T.G. said she never heard the neighbor threaten father. She said that there was a neighborhood rumor that the neighbor pulled a gun on her friend's boyfriend, but she heard the boyfriend also had a gun.

Father denied daily use of alcohol or marijuana, but admitted he had smoked marijuana a month ago. Initially, he told the social worker he had not had alcohol for the past two days. But the social worker detected the odor of alcohol emanating from his pores. When she took a purposeful sniff in the air and looked at father, father admitted having had alcohol the day before. Father said he drank every other day and when a football game was on. When asked what alcohol does for him, father stated he guessed it soothed him and took his mind off other issues he did not want to think about that day.

He described his behavior while drinking as "happy and calm all of the time."

Father denied bringing drugs into his home, smoking marijuana in his car, throwing things in the home, or yelling at the minors. He said C.W., who had made these allegations, was a compulsive liar.

Father refused to drug test unless the juvenile court ordered it. However, he was willing to undergo an AOD (alcohol and other drug) assessment. He admitted alcohol had caused problems in his life, but did not believe it was a problem for him. He said he was going to attempt to get a medical marijuana card because marijuana relieved his stress. His social worker advised against it, pointing out that marijuana can exacerbate mental health problems. Nevertheless, father obtained a medical marijuana recommendation on September 26, 2011.

Father said that on August 25, 2011, an unnamed psychiatrist told him he was fit to return to work. He suggested the social worker contact father's union representative to obtain this information from the psychiatrist.<sup>5</sup> He said he would call the representative to let her know it was

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<sup>5</sup> On August 29, 2011, Susanna Farber, father's union representative, said father had not yet called her about releasing information. Later, Farber told the social worker that father would have to give the social worker a medical release before Farber could provide contact information.

Although the Department's report uses the term "psychiatrist," father later testified that it was actually a psychologist.

okay to share information with the social worker. A letter from marriage and family therapist Myrna-Kay Robison stated that father had completed five therapy sessions with her. According to father, Robison, like the psychiatrist, told father he had no mental health problems.

Robison's letter actually states that *father told her* he had no mental or emotional problems. The letter does not state that she shared his opinion. In fact, father told Robison he did not know why he was there since he had no problems to discuss. Father came to Robison through his employee assistance program, not a management referral. Robison reported that she could not provide a psychiatric evaluation or treatment. Father would have to access such services through his health insurance. The only thing Robison said by way of any kind of evaluation of father is: "You presented well during sessions having a well groomed appearance, appropriate communication skills and normal affect/mood." As for stress in father's life, Robison noted that they discussed ways of dealing with stress, but father felt it was best not to get into the details of the two stressors he mentioned -- his new neighbor and being a single parent. Robison told the social worker that, because father denied having any issues to discuss, her work with father was limited.

On August 5, 2011, the Department held a meeting with father, the minors, and J.W. Father denied mental health or substance abuse problems and repeated that he would not comply with any of the Department's requests unless ordered to do so by the juvenile court. He would not acknowledge the minors'

concerns. During the meeting, T.G. was tearful and A.G. passed a note to the social worker that read: "[P]lease CPS get me out of this home."

On August 30, 2011, father met with Early Intervention Specialist Leslie Alexander for an AOD assessment, but it did not take place because father refused to sign a release of information for his mental health counseling. Initially, father said that he, his attorney, and his union representative would have to get together to release specific parts of the mental health records, rather than release the entire record. After reviewing the release document, father refused to sign it and said he wanted to consult with his attorney before proceeding. He pointed out that the "judge" had not ordered him to do anything yet.

#### **The Jurisdiction/Disposition Hearing**

At the contested jurisdiction/disposition hearing, which began on October 25, 2011, father testified on his own behalf. He also called Roxanne Eason, the minors' babysitter; Starlet Robinson Billings, the minors' paternal aunt; and social worker Sheila Kearney.

#### **Testimony of Roxanne Eason**

Eason began to babysit T.G. and A.G. five years ago, five days a week, at her home.<sup>6</sup> She also visited them on weekends.

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<sup>6</sup> On cross-examination, Eason said she had been paid to babysit the minors in the past, but had not formally babysat the minors in the last year and half; at the time of her testimony, the minors would just call her and ask if they could come over.

She talked with father every day. She saw father's interactions with the minors all the time and never had concerns about his behavior. The minors never mentioned any concerns about father to Eason, and they never appeared to be in fear of him. The only time Eason ever saw father drink was on July 4, 2010, when they "all toasted." She testified that over the last year and a half, she had only provided after-school day care for the minors at her house. She had rarely seen father in the last six months.

After the minors were removed from father's custody, they began calling Eason asking when they were going to come home. She still saw T.G. and A.G. every day because they went to school with Eason's daughters, and one of the minors was on the same volleyball team as one of Eason's daughters. They told her they missed her and father and being at home. Eason was aware of the accusations against father, but she knew they were "not him." She had never known him to be angry. She knew he was on paid leave from his job, but did not ask why. She did not know that father had been arrested within the last six months and it would surprise her to learn that he had.<sup>7</sup> She had not been over to father's former home<sup>8</sup> in the last six months.

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<sup>7</sup> Father's last "arrest" was actually approximately a year before the testimony. He had been arrested in October 2010 for DUI. He was convicted on July 14, 2011.

<sup>8</sup> As we will discuss, father had relocated shortly before this hearing.

### **Testimony of Starlet Robinson Billings**

Billings testified that she often saw the minors when they were in father's care. She lived in Vallejo. Father, T.G., and A.G. visited her on weekends "a lot." However, C.W. did not accompany them. She acknowledged that the minors had not spent time with her or communicated with her in the last six months. Numerous people in the family died in that period, so she often saw father at funerals and related events.

The minors shared personal things with Billings, but never said they were afraid of father. T.G. once expressed concern that father might be sad, but Billings called him and he sounded fine to her. T.G. and A.G. loved father and always wanted to be around him. They had never told Billings that they did not want to live with father.

Billings never saw father under the influence of alcohol or drugs and did not think he had a problem with them. She did not know he had a recent DUI conviction. She did not know that father had a criminal history.

It would surprise Billings if father had told the social worker that he drank every other day. However, it would not surprise or concern her if he had said he used marijuana because "everyone smokes marijuana."

Father had told Billings within the last six months that he thought his neighbors were "messing with" the minors and possibly threatening him. This had concerned Billings enough to come and check on him because he had no one else to help him. She suggested he call the police, but she did not know if he had

done so. She did not think he was overreacting because when he had concerns or suspicions about anything it was usually "on point."

Billings went to the hospital with father and the minors when he claimed they had been molested. He did not say what made him think they had been victimized. He just thought they were scared and not telling the truth. She had no concerns that father was making these accusations when the minors were denying that anything had occurred; nor did she have any concern that father had not said why he thought the minors had been molested.

#### **Father's Testimony**

Father had found a new place to live in a different city shortly before the minors were taken from his custody and now lived there. He no longer had problems with the neighbor.

He was very close to T.G. and A.G., but believed they had noticed a change in his "attitude" from the time the neighbor moved in. He thought they had become scared of him because he was acting "out of character." Father also believed people at his job had noticed his changed attitude. Now that he was living in a different place, however, he believed his attitude was back to where it used to be. He thought T.G. and A.G. recognized the change and wanted to return home.

Father's relationship with C.W. had always been "bumpy." Father testified that she had been "diagnosed with clinical depression" and did not take her medications. She had poor social skills and lacked respect for him and her late mother.

She had made many false statements about him. She also mistreated her sisters.

Father had had three two-hour visits with T.G. and A.G. since they were removed from him. He was supposed to see the minors every two weeks, but the social worker regularly canceled visits, saying that she was sick or on vacation. T.G. and A.G. always asked him when they could come home. C.W. did not attend the visits, and father had not "pressed that issue" because he did not know whether their relationship could be mended.

Father had tried to get along with the neighbor, but things went bad almost immediately. The neighbor told father he was a gang member. He was "like a Cripp [sic] or a Blood or some type of guy like that." The neighbor threatened to kill father and rape his daughter. Eventually the neighbor went from threatening to rape the minors to saying he had already raped T.G. The neighbor said he told T.G. if she said anything he would kill her, and father thought this was the reason T.G. was denying that anything happened. He did not report to the police what the neighbor had said. Father also heard about the alleged rape from a female friend who once lived with him. He had no idea how she would know about that, and did not ask her. This report is what made him take A.G and T.G. to the hospital. He admitted that the friend was schizophrenic and used methamphetamine, and said he moved the friend out their home because of that.

The neighbor also went to stores where father was shopping, as well as to father's workplace, and threatened him. After the

neighbor was arrested for pulling a gun on T.G.'s friend at a Home Depot, father took the threats against himself seriously.

Even before these incidents, the neighbor had made the neighborhood "living H" by pointing his speakers toward father's house and cranking them up in the middle of the night. Father called the police about the neighbor multiple times, and according to father, others in the neighborhood also called.

Father had never been diagnosed with mental health problems. He saw a family therapist six or seven times during that time period. They talked about family issues and the problems with the neighbor. Father also saw a psychologist who said he was fine and able to return to work. Father testified that both the therapist and psychologist "diagnosed me as being fine." Father believed that the psychologist's last name was Rhodes, but could not recall the first name. He did not think he had signed a release as to Dr. Rhodes, but he had signed one with his union and was willing to release the information. He offered to get the "results."

Father believed he had been put on leave because of stress caused by his neighbor, even though he was still "the top performer in all categories" on his job. He did not think he had any mental health concerns at present. However, he was not yet back at work.

Father did not talk to his appliances or think they were talking to him. If he was listening to Rush Limbaugh and disagreed with something Limbaugh said on the radio, he might comment on it. He sometimes unplugged appliances to save money

when his utility bills got too high, but not for any other reason. He unplugged quite a few appliances to conserve on his utility bills. He could not say how many times he had unplugged the refrigerator. He denied that food had ever spoiled or that J.W. had had to buy food for the family because the refrigerator was unplugged.

Father used duct tape to tape balloons to the ceiling for A.G.'s birthday. A month later, when the social worker came, he had not removed the tape. He had duct-taped other places because drafts were coming through and the landlord would not fix his air conditioning and heating unit. Father denied ever telling any social worker that he had put up duct tape to block surveillance cameras, although he did believe his neighbor had the ability to install such cameras. Father also denied that he thought anyone at his workplace was trying to do surveillance on him. Father believed, however, that his neighbor could perform surveillance on him through his work computer.

Father denied drinking daily to the point of intoxication. Some months he might not even have a beer, while at other times he might drink every other day if he was on vacation. He admitted drinking around the minors, but never to the point of intoxication, "except times where I might go out and drink a shot glass." He said he does not understand "that type of quantity." His October 2010 DUI arrest resulted in a conviction in July 2011. He had been drinking "some shots or something, some kind of ice cream type thing" with a friend at a "country club." He indicated he did not know enough about what he was

drinking so he got "overintoxicated and got a DUI." He could not explain why he drank hard liquor if he knew he did not know how to handle it. He admitted he had been required to complete alcohol education classes 15 years prior. He denied telling social workers that he drank daily, but admitted he might have said he drank every other day. Father testified that he sustained "about three" criminal convictions for DUI.

Father testified he had smoked marijuana 10 or 11 times in the last year because of a repetitive motion injury sustained on his job. He has had physical therapy for the problem, "But once they get me back out of that treatment and stuff, then the pain stops and starts up again." Currently, he did not smoke marijuana at all. He had never smoked in the house or around the minors, although he had smoked in his car. He was sure the minors had never seen him smoking. He obtained his medical marijuana prescription only after the minors were removed from his custody. He did not believe he had told the social worker he smoked marijuana. He did not tell AOD assessor Alexander that he smoked it weekly, and if she had written that down, it would have been incorrect. He acknowledged that the social worker told him that getting a marijuana card was not a good idea because marijuana might exacerbate his mental health issues, but he got the card anyway, thinking her advice was irrelevant because he does not have mental health problems.

Even though father did not believe he had an alcohol problem, except when he drank "shots or things like that," he had enrolled in the STARS (Specialized Treatment and Recovery

Services) program in late September 2011 (around a month before the jurisdiction/disposition hearing). He drug tested two or three times per week, attended group several times a week, attended NA meetings three or four times per week, and went to the "First Five" program parenting classes every Tuesday. Initially, he tested positive for residuals of marijuana, but his last test the week before the hearing was negative. He was attending more NA meetings than required because he felt they benefited him. Instead of the one-hour meetings, he attends the two hour meetings because he feels he is benefiting from those sessions. He said he had not used marijuana and had no alcohol since attending NA. He planned to continue participating in the program even if the minors were returned to him and even without a court order.<sup>9</sup>

Father never spanked the minors. He never believed in that type of discipline.

Father never threw things at his home. Father claimed C.W. was the one who did that.

Father felt the minors should not have been removed from him and it would be harmful to them to place them away from him. He and the younger minors went everywhere together; they were his "best friends." Even though his relationship with C.W. was

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<sup>9</sup> Father explained that when he had said he would not comply with the Department's requests unless the court ordered him to do so, it was because he did not like the way the Department presented things to him: he felt the social worker had a "predisposition of how [he] was" and did not want to listen to him.

different, he wanted her back and would engage in any kind of counseling or mediation that might help. Counseling would also help the younger minors to understand why his attitude had changed. The only problem he had ever had that could have caused the minors to feel differently about him was the problem with his neighbor.

Father was now dealing with the stresses of life by going to a parenting class, STARS programs, and AA. He also had a strong family support from parents and siblings, whom he could always call if he needed help.

#### **Testimony of Social Worker Sheila Kearney**

Father's testimony did not change Kearney's opinion that his fear and paranoia regarding his neighbor went beyond any rational basis and had interfered with his ability to parent his children. It would have been reasonable for father to call the police immediately if the neighbor trespassed or threatened him, or to seek a restraining order, but father did neither. Instead, he called to complain that the neighbor was following him around town and pointing music at his house, which sounded delusional. Father's denial that he had mental health issues was a concern. Kearney thought he should undergo a psychological evaluation.

Father had been engaged in services for only a month, and his testimony did not make it appear that he was acknowledging and dealing with his problems. T.G. and A.G. had said they wanted him to deal with drinking and anger management before they would be willing to return home. Father appeared to

acknowledge only that other people had said he had these problems. Kearney opined that it is hard to benefit from treatment if one engages in it only because an attorney or a social worker has advised it.

According to the minors, father had always had "episodes," but recently they had become more frequent. Kearney opined that chronic alcohol and marijuana use can induce or exacerbate mental health problems, and using both together would be especially bad.

### **The Juvenile Court's Findings and Ruling**

The juvenile court found that the allegations of the section 300 petitions, as amended, were true by a preponderance of the evidence.<sup>10</sup> There would be a substantial danger to the

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<sup>10</sup> The amendments included replacing "agitation, delusions and paranoid thoughts" with "anxiety, agitation and paranoid thoughts"; striking the sentence "The father has reported that the TV, the radio, and the refrigerator are talking to him"; striking the sentence "The father puts pieces of duck [*sic*] tape on his ceiling because he believes his neighbors were audio and video taping him" and replacing it with "The father believed his neighbor was audio and video taping with surveillance equipment"; striking the sentence "The father's untreated mental illness places the children at substantial risk of physical harm, abuse and/or neglect" and replacing it with "The father's psychiatric problems have caused him to be placed on leave from his job"; replacing the word "daily" with "frequently" in the sentence alleging father's drinking to the point of intoxication; replacing the sentence "The father also smokes marijuana on a daily basis" with "The father also smoked marijuana on a frequent basis up until the time the children were removed"; striking the allegation "There is marijuana in the home"; changing the date of one alleged DUI from 2000 to 1990; and striking the sentences "The father fails to acknowledge the need for substance abuse assessment or

minors' physical health, safety, protection, or emotional well-being if returned home; no reasonable means existed to protect the minors' well-being without removing the minors from father's custody; and reasonable efforts had been made to prevent or eliminate the need for removal. Father's progress toward alleviating or mitigating the causes necessitating placement had been fair.

Although the court believed the neighbor had threatened father, the minors did not observe such threats. The threats had exacerbated father's underlying mental health problems. The minors were frightened by father's unusual behavior and informed the paternal aunt. Father's employer was disturbed enough to put him on leave and to require a psychological evaluation before he could return to work. This further contributed to father's stress and anxiety, which in turn caused behavior such as unplugging the refrigerator.

Father had a history of problems with alcohol and marijuana, which increased when the stress from the neighbor increased, causing a vicious cycle and leading father's violence toward C.W. to increase. Getting a medical marijuana card certainly did not solve the problem.

The minors' loss of their mother and father's attempts to be the sole parent to three children were inherently stressful.

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treatment. Further, the father has refused to comply with the Department's interventions. The father's untreated substance abuse problem places the children at substantial risk of physical harm, abuse and/or neglect."

The situation with the neighbor made the stress level worse. Father was still reluctant to face and address his problems openly and honestly.

The court found the babysitter's testimony about the minors' close relationship with father and desire to return to him credible. But without further services for the family, the risk of returning the minors to father remained high.

The court therefore ordered the minors removed from father's custody and ordered reunification services for father. These services did not need to include a psychological evaluation for now, but did need to include individual counseling for father, which would include an assessment as to whether referral to a psychiatrist would be needed. The court felt that individual therapy would be preferable to a court-ordered psychological evaluation because it would get things moving faster.

The minors were comfortable in their current placement with J.W., but visitation should be increased once father had shown he could participate honestly in a psychological assessment and individual therapy.

## **DISCUSSION**

### **I. Substantial Risk of Serious Harm**

Father contends the minors were not at substantial risk of serious harm in his custody because (1) he had never physically harmed the minors and (2) he had taken sufficient steps to deal with his mental health and substance abuse issues by the time of the jurisdiction/disposition hearing. We disagree.

"Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness caused by the parent's inability to provide regular care for the child because of the parent's mental illness, developmental disability or substance abuse. A jurisdictional finding under section 300, subdivision (b) requires: "(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.]' [Citations.] 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 . . . . [Citation.]" (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

"Evidence of past conduct, without more, is insufficient to support a jurisdictional finding under section 300. There must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]" (*In re James R., supra*, 176 Cal.App.4th at p. 136.)

We review a challenge to the sufficiency of the evidence to support a jurisdictional finding under the substantial evidence standard, resolving all evidentiary disputes in favor of the court's rulings and drawing all reasonable inferences to support them. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

"Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from

evidence are the domain of the trial court, not the reviewing court." (*Id.* at p. 451.)

Substantial evidence supported the juvenile court's jurisdictional findings. Father's mental health and substance abuse problems had put the minors at substantial risk of physical harm as of the time of their detention, and the changes he had made to deal with his problems were not yet sufficient to show that the risk had been eliminated.

The evidence showed that father's problems had caused the minors, their sister J.W., and father's employers reasonably to be alarmed about his mental state and the risk of harm to the minors it created as of the time of detention. Viewing the evidence most favorably to the court's ruling, it showed, among other things, that father had physically ejected C.W. from the home, thrown things around the house, caused food to spoil by repeatedly unplugging the refrigerator, driven under the influence of alcohol and marijuana with the minors in the car, formed a delusion about the younger minors' molestation and subjected them to an invasive medical procedure, repeatedly wandered the streets for hours leaving the minors unattended, and caused them to feel so unsafe in his custody that they pleaded for rescue.

At the jurisdiction/disposition hearing, father characterized his aberrant behavior as a short-term response to the stress caused by his neighbor, and therefore safely in the past because he had relocated. But ample evidence proved this characterization to be inaccurate.

As to substance abuse, father's history of DUI's long preceded the neighbor's arrival, and the minors said drinking made father angry and volatile, yet he continued to deny that alcohol was a problem for him. Despite the social worker's warning that marijuana could exacerbate mental problems, he obtained a medical marijuana card. Although he denied recent marijuana use, the court could have inferred that if father returned to work and again incurred repetitive motion stress on the job -- the alleged reason he obtained the marijuana card -- he would resume using marijuana. Thus, despite father's very recent engagement in drug testing and treatment, the court could reasonably conclude that he had not made sufficient progress in alleviating his substance abuse problems to ensure the minors' safety in his custody.

As to his mental health issues, despite father's confidence that he was fit to return to work, he had not done so or explained why not. Nor had he furnished the court with any evidence from the therapist and the psychologist who had supposedly "diagnosed" him as "being fine," aside from the therapist's letter, which merely restated without comment what father had told her.

Moreover, father's testimony suggested not only that he was in denial about his mental problems, but that his thinking in some respects, especially as to his ex-neighbor, remained irrational. Though he conceded that the stress his neighbor caused him had adversely changed his "attitude," he did not acknowledge that his actions showed a mental disturbance.

The court evidently concluded that father's explanation for unplugging the refrigerator was not credible. The evidence also showed father still believed that his neighbor -- whom father "kn[e]w" to be a Crip or a Blood because the neighbor allegedly said so -- had the capacity to stalk and persecute him everywhere, even through his computer at work. Furthermore, father failed to admit that there was anything wrong with his reaction to his belief the minors had been molested and his insistence that they be examined. Nor did he explain why he found his neighbor's alleged claim that the neighbor had raped the minors, supported only by the assertion of a methamphetamine-addicted schizophrenic, more plausible than the minors' denials. In short, the evidence as to father's mental problems at the time of the jurisdiction/disposition hearing gave the court sufficient reason to find that the minors would still be at substantial risk of physical harm in father's custody.

## **II. Reasonable Means to Protect the Minors**

Father contends the juvenile court should have returned the minors to his custody because there were reasonable means to protect them without removal. We disagree. Substantial evidence supported the court's contrary finding.

In addition to what we have discussed already, there is the following evidence: Father and the minors had repeatedly come to the Department's attention by referrals from 2008 to the present. In December 2010, father refused the Department's offer of informal services. After the minors were detained,

father consistently denied any problems and refused to do anything recommended by the Department without a court order. Even after submitting to an AOD assessment, undertaking drug testing, and entering the STARS program, father continued to deny that he needed these things, even though he acknowledged benefiting from them. Although no expert had yet confirmed his recovery from his substance abuse and mental health problems, he asserted that the mere fact he no longer lived near his troublesome ex-neighbor -- who father still thought had the ability to spy on him through electronic means -- was enough to ensure the minors' safety in his care. Though he said he wanted joint counseling with the minors, its only apparent purpose in his eyes was so the minors would understand why his "attitude" had changed. This evidence, considered together, was more than enough to show that no reasonable means existed to protect the minors' safety without removing them from his care.

**DISPOSITION**

The juvenile court's jurisdictional and dispositional orders are affirmed.

\_\_\_\_\_  
MURRAY, J.

We concur:

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NICHOLSON, Acting P. J.

\_\_\_\_\_  
HULL, J.