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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ADRIAN H., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

RAQUEL H.,

Defendant and Appellant.

D061134

(Super. Ct. No. NJ14383C)

APPEAL from a judgment of the Superior Court of San Diego County, Michael Imhoff, Judge. Affirmed.

Raquel H. appeals following the jurisdictional and dispositional hearings in the dependency case of her son, Adrian H. Raquel contends the jurisdictional finding is unsupported by substantial evidence. She further contends the erroneous jurisdictional

finding mandates reversal of the dispositional judgment, including the order that she participate in family maintenance services. We affirm.

### FACTUAL BACKGROUND

Raquel met Luis H. when she was 14 years old. She gave birth to their first child in March 2007, when she was 16 years old, and to their second child in September 2009, when she was 19 years old. Raquel and Luis's relationship was marked by escalating domestic violence. They had a history of separating, then soon reuniting, in violation of the juvenile court's restraining orders and the safety plans of the San Diego County Health and Human Services Agency (the Agency). Luis had a history of being deported to Mexico and returning to the United States.

Luis was deported in August or September 2010, but returned to San Diego County within weeks. On September 26, he beat Raquel, put a gun to her head and threatened to kill her. As Raquel fled their home, Luis threw a CD player at her. Raquel told the police that Luis had beaten her five or six times recently, but she had not called the police after those beatings.

Raquel returned to Luis within two weeks of the September 26, 2010 violence. On January 3, 2011, the Agency asked Luis to leave the home. Luis left, but returned within days. The violence continued.

On January 19, 2011, the court ordered Raquel and Luis's two children removed from the home due to repeated exposure to domestic violence, and issued a restraining order against Luis. The same day, Luis assaulted Raquel and took her from the home against her will. Raquel escaped and went to stay with a friend at a confidential address.

On January 26, a social worker met with Raquel and explained the importance of complying with the restraining order and keeping the friend's address confidential. A few hours later, Raquel met Luis and brought him to the friend's home. In February, Luis was arrested at that home and charged with domestic violence and other offenses.<sup>1</sup>

Raquel moved to a domestic violence shelter. In March 2011, she began parenting instruction. In June, she began therapy. That month, she was asked to leave the shelter because she had violated the rules. As a result, she was unable to continue in a domestic violence group she had been attending. Between June and August, Raquel moved frequently, causing an interruption in her parenting education. In August, she enrolled in another domestic violence group.

Meanwhile, in July 2011, Luis was sentenced to prison. On August 3, he was released from prison, deported to Mexico, and prohibited from returning to the United States. In late August, Raquel gave birth to Adrian. Luis is Adrian's alleged father.

On September 1, 2011, Adrian was detained in foster care. On September 2, the Agency filed a dependency petition for him. (Welf. & Inst. Code, § 300, subd. (b).)<sup>2</sup> The petition alleged Luis and Raquel had a significant history of domestic violence, including multiple incidents in which he hit and slapped her, put a gun to her head and threatened to kill her. Raquel had a history of reuniting with Luis. She violated her

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<sup>1</sup> The record lists the other charges as "im[]personate: Make other Liable" and "Obstruct/Resist Exec Officer." It is not clear from the record which charges led to Luis's subsequent prison sentence.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

safety plan with the Agency. Luis was released from custody and Raquel was asked to leave the domestic shelter where she was living.

On September 8, 2011, Luis told the Agency he was living in Mexico and planned to stay there. In October, the social worker telephoned Luis at his home in Tijuana. The woman who answered the telephone said Luis did not live there anymore, and she did not know where he was. In November, Luis gave the Agency a new address in Tijuana. He acknowledged he had not started domestic violence treatment.

At the November 15, 2011, jurisdictional hearing, Raquel testified she had had no contact with Luis since January, and the social worker acknowledged there was no evidence to the contrary. Raquel testified she had not heard from Luis since he was released from custody; she carried a copy of the restraining order in her purse; and if she heard from Luis or saw him, she would call the police. Raquel testified she was living with her sister.

On November 15, 2011, the court sustained Adrian's dependency petition. The court ordered the Agency to detain Adrian with Raquel once the Agency had evaluated Raquel's home and determined it was appropriate. On December 14, the Agency returned Adrian to Raquel.

On December 15, 2011, Raquel failed to appear for an appointment with Community Services for Families. She had appeared for two previous appointments, and failed to appear for two others. Raquel had been consistent in participating in reunification services for her two older children, and the social worker planned to refer her to Intensive Family Preservation Services for Adrian.

At the December 20, 2011 dispositional hearing, the court declared Adrian a dependent; ordered him placed with Raquel on the condition that Luis not live in the home or visit Adrian there; and ordered family maintenance services for Raquel. At the time of the hearing, Luis's telephone had been disconnected, and the Agency had been unable to verify that he was in Mexico.

### THE JURISDICTIONAL FINDING

The purpose of section 300 "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." (§ 300.2.) Section 300, subdivision (b) allows a dependency when "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 . . . to adequately supervise or protect the child . . . ." Section 300 requires proof the child is subject to the defined risk of harm at the time of the jurisdictional hearing. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.) A parent's "[p]ast conduct may be probative of current conditions' if there is reason to believe that the conduct will continue." (*In re S.O.* (2002) 103 Cal.App.4th 453, 461, citation omitted.) The child need not have been actually harmed for the court to assume jurisdiction. (See *In re James R.* (2009) 176 Cal.App.4th 129, 135.) "[V]iolence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

In the juvenile court, the Agency had the burden of proof by a preponderance of the evidence. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; § 355, subd. (a).) Raquel now has the burden of showing the jurisdictional finding is unsupported by substantial evidence. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135, disapproved on another ground by *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) We view the record in the light most favorable to the juvenile court's ruling. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.)

Application of the substantial evidence standard requires affirmance of the jurisdictional finding. The record shows a long pattern of serious domestic violence, with Raquel ignoring restraining orders and safety plans, and returning to Luis after each violent incident. As a part of this pattern, Luis violated restraining orders, and returned to San Diego County each time he was deported. Although Raquel had progressed in services, less than one month before the jurisdictional hearing she had attended only nine sessions of a 52-week domestic violence program. Luis's whereabouts had not been verified, and he had not started domestic violence treatment or provided proof of participation in any other services. The evidence demonstrates a clear risk to Adrian of being exposed to recurring domestic violence. There is thus substantial evidence to support the jurisdictional finding.

#### THE DISPOSITIONAL JUDGMENT

Because the court did not order Adrian removed from Raquel's custody, the Agency's burden of proof at the dispositional hearing was by a preponderance of the evidence. (*In re Jennifer V.* (1988) 197 Cal.App.3d 1206, 1210-1211.) Because Raquel's

challenge to the dispositional judgment is based entirely on the premise that the jurisdictional finding is infirm, we reject that challenge.

DISPOSITION

The judgment is affirmed.

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HUFFMAN, J.

WE CONCUR:

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BENKE, Acting P. J.

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HALLER, J.