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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JUAN D. et al.,

Defendants and Appellants.

D066038

(Super. Ct. No. J518933A-C)

APPEALS from judgments and an order of the Superior Court of San Diego  
County, Kimberlee A. Lagotta, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and  
Appellant Juan D.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and  
Appellant Jessica D.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Georgia Gebhardt, Deputy County Counsel, for Plaintiff and Respondent.

Juan D., father of Javier D., Teresa D., and Andrea D. (the children), and Jessica D., mother of the children, separately appeal the jurisdiction and disposition orders<sup>1</sup> declaring the children dependents of the court and removing them from parental custody. Juan contends (1) there was insufficient evidence to support the juvenile court's jurisdictional findings that the children are persons described in Welfare and Institutions Code section 300, subdivision (b)<sup>2</sup> and that Andrea is also a person described in section 300, subdivision (c); (2) there was insufficient evidence to support the orders removing the children from his care; and (3) there was insufficient evidence to support the court's issuance of a no contact order prohibiting visitation between him and Javier. Jessica contends she was willing and able to care for and protect the children and, therefore, the court erred in denying her request to dismiss the children's dependency petitions; (2) the court erred by not conducting an analysis of her as a noncustodial parent under section 361.2; and (3) there was insufficient evidence to support the orders removing the children from her care. We affirm.

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<sup>1</sup> In a dependency case, the disposition order is the first appealable order and constitutes the judgment in the case. (*In re S.B.* (2009) 46 Cal.4th 529, 532; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1250.)

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

## FACTUAL AND PROCEDURAL BACKGROUND

On March 20, 2014, the San Diego County Health and Human Services Agency (the Agency) filed petitions on behalf of 15-year-old Javier, 12-year-old Teresa, and 10-year-old Andrea under section 300, subdivision (b), alleging the children had suffered, or there was a substantial risk they would suffer, serious physical harm or illness because of Juan's inability to supervise or protect them and provide regular care for them due to his "mental illness, developmental disability, or substance abuse." Specifically, the petitions alleged that since November 1, 2013, Juan used alcoholic beverages to excess and was often drunk, and that at least once a month he drove the children while drinking and had gotten into a car accident two weeks earlier when he was driving with Andrea in the car after he had been drinking. The petitions further alleged that the family had been homeless for over a year, Juan made paranoid statements, and the children did not feel safe with Juan and were afraid of him, which rendered Juan unable to provide regular care for the children. The petitions alleged that Jessica "knows the father drinks and has been unable to protect and supervise [the children] . . . ."

Andrea's petition also included a "serious emotional damage" count under section 300, subdivision (c), alleging that she was suffering or was "at substantial risk of suffering, serious emotional damage evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others[.]" Specifically, the petition alleged that from about March 13, 2014, to the present, Andrea "had a mental/emotional disability disorder including but not limited to Major Depressive Disorder, single, severe without psychotic features, requiring hospitalization. The child

is having suicidal thoughts[,] which she attributes to living in a shelter for years and to her father's excessive drinking . . . ."

The Agency's detention report stated that the Agency received a referral on March 13, 2014, alleging that Andrea wanted to kill herself because of Juan's excessive drinking. Andrea was hospitalized under section 5150 at Aurora Behavioral Health Care (Aurora) because she did not feel safe returning to Juan's care. The children and an adult sibling reported that Juan regularly drove under the influence of alcohol. Javier reported that Juan was in a car accident two weeks prior when he was driving drunk with Andrea in the car. He also reported that when Juan was drunk, he had pulled Javier off a playhouse and caused him to scrape and bruise his left leg. Javier told a social worker that he had "flashing thoughts" about killing himself that occurred monthly due to his home life situation, and that Teresa also had those thoughts.

Juan and Jessica reported that they were married when they had their four children together and were presently still married, but had been separated since March 2012. Because they were legally married, there were no custody orders. In connection with a September 2013 report of physical abuse to Teresa and emotional abuse to all of the children by Juan, the Agency reported that Jessica felt Juan had "tricked" her into keeping the children with him. She has a learning disability and thought Juan used it against her when he obtained her signature on a document that allowed him to take all the children. Although Juan had lost the paper Jessica signed, he still kept the children. Jessica heard that Juan had hit Teresa in a Laundromat. She was surprised and concerned that Juan's behavior was escalating because he had not hit the children before. Juan had hit Jessica a

few years ago and she said he "can get scary" and did a lot of cussing and yelling when he gets angry.

The Agency received a report in November 2013 that according to Andrea, Juan got drunk often and hit her, and had left bruises on her. She stated that Juan bought 12 packs or 24 packs of Bud Light Premium, which Andrea thought had twice the alcohol of regular beer. She said Juan had hit her and her siblings and that he had recently gotten so drunk that he tripped and fell on her, causing her to fall and bruise her knee. She also said that Juan had smacked her bottom and laughed about it, which made her uncomfortable. A reporting person told the Agency that Juan had "persecutory delusions." He believed the government had been monitoring him since he called a judge in San Francisco a terrorist. He was obsessed about the monitoring and believed it was connected to his being denied public assistance and disability benefits.

In November 2013, Juan signed a safety plan in which he admitted to "recently misusing alcohol" and being intoxicated in the presence of the children. He agreed not to drink while caring for the children, not to drive with the children while intoxicated, and to attend Alcoholics Anonymous meetings. However, according to all of the children and both parents, Juan continued to drink in excess in the children's presence, drive while intoxicated, and place the children in continual risk with his drinking. All of the children stated they did not feel safe in the home.

The Agency noted ongoing concerns in December 2013 about Juan's excessive alcohol consumption and driving under the influence while he and the children were living in a shelter. The children had sometimes stayed with family friends overnight

because of Juan's excessive drinking. In November 2013, the family was served an eviction notice from the shelter they had been living in for six months. The eviction was due to Juan's drinking and refusing treatment. The children were so upset by Juan's drinking that they called Jessica in Arizona and asked her to come pick them up. Jessica took the children to her home in Arizona, but returned them to the shelter a few weeks later. The children did not disclose what happened at Jessica's house, but indicated it was not a good situation because of Jessica's boyfriend. Jessica had previously taken the children to her home in Arizona in September 2013, but Juan came to Arizona two weeks later and took the children back to San Diego.

Agency social worker Amy Anderson interviewed the children for the detention report. Andrea told Anderson that her "dad is an alcoholic, but he keeps drinking" and that when he was drunk he would wrestle "with anyone who is home." She reported that she stayed outside until 9:00 p.m. Monday through Thursday and until 11:00 p.m. Friday through Sunday to stay away from Juan's drinking. She said she felt like killing herself because her father was drinking.

Teresa said Juan's drinking made him act "like a five year old" and then stated, "like he is [bipolar]. You just never know what kind of mood he will be in." She said he was "really annoying" and would wrestle with the children. She reported that Juan drank "more when he is stressed" and would drink after court and when he was stressed about shelter life, and that she and her siblings would go outside and play at friends' houses when Juan drank in the home. She did not feel safe when Juan drank while driving and

she told Andrea not to get in the car with him when he was drinking. She felt that Juan drank to excess and said she would like to live with her mother someday soon.

Javier reported that Juan drank every day and some days drank throughout the entire day and into the night. He did not feel safe and would leave the house when Juan drank. He said "we all go out and chill with our friends because we don't want to be home."

Anderson interviewed Juan at Aurora on March 14, 2014. The hospital staff told her that Juan had been irate because his daughter was in the hospital and wanted to speak to someone. Juan immediately started to explain to Anderson that he had current investigations against Child Welfare Services (CWS), Welfare to Work, and the federal government for the discrimination he and the children had faced since they had been homeless. He wanted to show Anderson paperwork regarding the FBI's (Federal Bureau of Investigation) illegally recording him and talk about how he had been denied financial assistance due to discrimination in San Francisco, Sacramento, San Diego, and Tucson, Arizona. Anderson reported it was difficult to redirect Juan to discuss the current protective issues regarding the children. Juan admitted to drinking in the home and said he "drank a 12 pack after court on Monday because [he] was upset." He stated, "I drink because I witness my kids being abused constantly." He admitted that there was a spike in his drinking the previous June and attributed the spike to his children seeing him "broken and trashed."

Anderson also interviewed Jessica on March 14, 2014, at Aurora. Jessica reported that she had been living the last two and one-half years in Arizona with her boyfriend and

had recently moved to San Diego to be closer to the children, and that her boyfriend was in the process of moving to San Diego. She was currently living in a shelter in San Diego. She reported that she had been diagnosed with a learning disability, "math descalata [*sic*]," attention deficit hyperactivity disorder (ADHD), seizures, short-term memory loss, and passive aggressive tendencies. She said she loved her children and wanted "them all back with me." Regarding Juan's drinking she stated, "He is a good father. He is controlling and yells and has always drank, but I didn't see any red flags or anything like that." However, she admitted she had not been around him for over two years. When asked if she would be willing to seek custody of the children in family court, Jessica said, "I think so[,] but I would need help." Anderson reported that Jessica "presented as fearful of going against [Juan]'s wishes."

Juan and Jessica both attended a family meeting on March 17, 2014, at Aurora. Andrea reported she did not feel safe returning to Juan's home. Anderson and a hospital social worker asked that Andrea be released to Jessica's care due to concerns about Juan's drinking. Jessica said she did not like the location of the shelter she was staying in and did not feel it was a good place for the children. Juan needed to be redirected numerous times and reminded that the meeting was about his drinking and its effect on the children and not about discrimination and federal cases against him. However, Juan could not stop talking about those topics so he was asked to leave the meeting. Before he left, he stared intimidatingly at Jessica and repeatedly said, "Jessica, Andrea needs to come home to me."

After Juan left the meeting Jessica stated, "[Y]ou see how he is[;] he is controlling and I'm scared to do it on my own." She added, "I have a learning disability and I worry I can't protect [the children] because I can't talk to them like an adult is supposed to talk to them. They can take advantage of me." Anderson asked Jessica if she could protect the children from Juan if he showed up at the shelter or their home and Jessica stated, "I don't know. I want to, but I just don't know."

On March 18, 2014, Anderson interviewed Margaret Slaska, a staff member of the shelter where Juan and the children had been living for the past year. Slaska reported that they had gone to court the week before to evict the family. She had seen Juan intoxicated on several occasions and reported that he had stopped attending therapeutic sessions that the shelter offered and stopped allowing the children to attend support groups. Andrea had told her that Juan was "heavily drinking again" and had been physical with her. She heard reports that Juan had been physically aggressive with Javier and had pushed him against the kitchen counter. She had "serious concerns" about the children being abused and neglected, and stated that Juan had "significant mental health issues."

Anderson also interviewed Juan's adult son and adult daughter. Juan's adult daughter said Juan was "crazy" and had been for about two to three years. She was concerned and frustrated because she felt that Juan was lazy and did not do anything but drink and use the children. Juan's adult son, who lived with Juan and the children, reported that Juan drank beer "at least once a week." He said "my family is homeless and Andrea has been homeless more than half her life. That is the real problem. It's easier to blame my father's drinking compared to the real problem." Juan's adult son admitted that

Juan drank and drove and had done so the night before "with all of us in the car." When asked about Jessica, Juan's adult son said, "I don't know how to explain it. She is a good person and feels safe, but she is not exactly mother material." He added, "She behaves [like] a teenager, not a role figure for two young girls growing up."

Based on the "numerous reports" it had received about Juan's drinking and its effect on the children, the Agency concluded that the children required the protection of the juvenile court due to Juan's "continued drinking and significant risk he places on [the children] by driving in the car with [them]." The Agency also reported that Juan "appears to have [an] undiagnosed mental health issue that causes him to be paranoid and express comments about the FBI, CWS, NSA [National Security Agency], and the federal government spying on him and discriminating and 'abusing me and my children.'" The Agency recommended the children be detained in out-of-home care and that the parents receive services designed to address Juan's drinking and mental health issues and Jessica's ability to protect the children.

At the detention hearing on March 21, 2014, the court found Juan was a presumed father under Family Code section 7611, subdivision (a). Juan and Jessica initially informed the juvenile court that they did not want to be represented by counsel. However, Jessica reconsidered and the court appointed counsel to represent her and separate counsel to represent the children. Juan insisted that the case belonged in federal court. He continued to adamantly refuse appointed counsel and discussed issues unrelated to the dependency proceedings. The children's counsel requested a temporary restraining order (TRO) prohibiting Juan from contacting the children.

The court granted the children's counsel's request for a TRO prohibiting Juan from contacting the children until the jurisdiction/disposition date. The court found that a prima facie showing had been made on the children's petitions and that continued care in the home of both parents would be contrary to the children's welfare. The court ordered the children detained out of the home with liberal supervised visitation for Jessica. The court continued the detention hearing to Monday, March 24, 2014, to allow Juan additional time to consider whether he would be able to represent himself or be willing to be represented by appointed counsel.

At the continued detention hearing, Juan addressed the court at length about various grievances that formed the basis for the discrimination claims he intended to pursue in federal court, and he continued to oppose the appointment of counsel to represent him in the instant dependency case. The Agency's counsel requested a guardian ad litem inquiry to determine whether Juan was able to understand the nature of the proceedings or assist counsel in formulating a defense. The court conducted the inquiry and found that Juan was not competent to go forward in the dependency case and that he did not have the capacity to understand the nature or consequences of the proceedings, and was unable to assist counsel in preparation of the case. Consequently, over Juan's objection, the court appointed a guardian ad litem and counsel to represent him.

Social worker Melinda Gonzalez prepared the Agency's jurisdiction/disposition report. Gonzalez met with each of the children at Polinsky Children's Center (Polinsky) on April 2, 2014. Andrea told Gonzalez she did not want to be separated from her siblings and did not want to go to a foster home. She said, "I want to see my dad but my

brother and sister probably don't, but I do." She told Gonzalez she was tired of "living the shelter life." She did not want to live with Jessica unless Jessica was in transitional housing, but if Jessica had transitional housing she would rather live with Jessica than anyone else. Gonzalez asked Andrea if she had any current suicidal ideations and she said she did not. When asked what kind of help she thought Juan needed Andrea said, "He needs parenting programs and alcohol services so he stops drinking."

Teresa told Gonzalez, "I don't want to see my dad right now. I am scared of him and I can't trust him like I used to." Gonzalez asked if Teresa had had any suicidal ideations. Teresa said she had no current suicidal thoughts. She said she told Javier about six months earlier that she thought of hurting herself but did so out of frustration and never had a plan. When Gonzalez asked Teresa what services she thought her mother needed, Teresa said, "My mom needs stable housing and that's it." Regarding services for Juan, Teresa said, "My dad needs help with his drinking and stable housing and not a shelter. I'm tired of living in shelters with my dad."

Gonzalez asked Javier if he wanted to have supervised visits with his father. Javier said, "I don't want to see my dad. I'm mad at him because of his drinking problems and everything." Gonzalez asked Javier if he had suicidal ideations. Javier said Teresa told him she was praying at night to die and asking God to let her die. She was crying and Javier thought she seemed serious. Andrea had also said she wanted to kill herself, but Javier thought she was not serious and that she said it only because she was frustrated. Gonzalez asked Javier what services he thought his parents needed. Javier said Juan needed to "talk to someone in therapy to talk about what he's been through and

[get] help to stop drinking." He said Jessica "needs help to get herself stable." He then stated that he did not like Jessica's current boyfriend because he cursed at Jessica in front of the children.

Gonzalez met with Jessica on April 4, 2014, and Jessica immediately told her that she wanted her children with her and did not understand why they could not be released to her. Gonzalez explained that Jessica had told social worker Anderson that she (Jessica) could not presently keep the children safe from Juan. Jessica said, "I can protect them." Gonzalez asked what she would do to protect them and Jessica replied, "I will call 911 if the father comes around and I will get help by going to my contact person at St. Vincent [d]e Paul who is my temporary case manager." Gonzalez asked if Jessica was afraid of Juan. Jessica said, "He is very controlling and wants you to do what he only wants." Jessica did not feel she needed a restraining order against Juan. She said she spoke to him almost daily and he told her she needed to come back to him so they could fight the dependency case together. Gonzalez mentioned that the children did not like Jessica's current boyfriend and had observed him yelling at Jessica. Jessica said her boyfriend was a good person. She said he had never hit her but had called her "some names" and she was giving him a second chance.

Gonzalez also met with Juan on April 4, 2014, at the CWS office. Juan told her he was sleeping in his car in downtown San Diego. He jumped from topic to topic and Gonzalez had to keep redirecting him to her questions. He told Gonzalez he had information he could not provide her and that a crime had been committed against him and his family. He blamed his homelessness and current situation on the CalWORKs

program and said he could not discuss anything further except to say he was going to explain to a federal court judge what had happened to him. He said that Andrea had been bullied by a coach and his children had been mistreated by school staff in San Francisco. He believed his children were not in his care because a crime had been committed by school staff. Juan repeatedly returned to these topics. He admitted he was intoxicated when he spoke to Gonzalez on the phone the day before.

When Gonzalez asked Juan what led to the Agency's intervention, Juan said he was dealing with a lot of problems such as being homeless with his children and his children being bullied at school. He said, "I just drank. Drinking is a symptom of witnessing all this abuse." He explained that Andrea hated her life and wanted to kill herself and her coach at school was bullying her. He said that social worker Anderson was "withholding information and portraying me that this is all my fault and it's not. I can stop drinking if I don't get abused by CalWORKs. The drinking will stop. Civil disobedience drinking is what I'm doing. It's a crime that's why I drink. My kids don't feel bad because of my drinking." When asked if he would participate in a psychological evaluation, Juan said, "First I want to go to federal court to show this is a crime and then I will have a psychological evaluation."

Gonzalez expressed the Agency's view that it was not presently safe for the children to return to the care of either Juan or Jessica. Although Jessica had said she was fearful of Juan because of his controlling behavior, she continued to have constant communication with him and did not believe she needed a restraining order to protect herself from him. Jessica expressed that she was unsure whether if she would be able to

protect the children from Juan and was currently residing in the singles section of a homeless shelter. Juan continued to drink alcohol in excess. His drinking appeared to affect his behavior and decision making skills and caused him to place the children at risk for abuse and neglect. Juan did not admit to having an alcohol abuse problem but rather blamed his drinking on the government and public assistance programs. He displayed paranoia, which appeared to be a mental health issue he had not addressed, and he was unwilling to undergo a medical evaluation.

At a hearing held on April 14, 2014, regarding jurisdiction and disposition, Juan and Jessica set the matter for trial. The children's counsel requested and the court issued a modified TRO that allowed Juan to visit the children. Counsel informed the court that Teresa and Andrea wanted to visit Juan but Javier still did not want visitation with him. Juan's counsel informed the court that Juan was still opposed to having a guardian ad litem and appointed counsel. The court denied Juan's requests to revoke the appointment of his guardian ad litem and to allow him to represent himself.

The Agency filed two addendum reports in May 2014 before the contested jurisdiction/disposition hearing. The first addendum report addressed visitation between the children and Jessica and between Teresa and Andrea and Juan. During a supervised visit between Juan and Teresa and Andrea, Juan repeatedly ignored social worker Gonzalez's admonitions to not talk to the girls about the dependency case. He told the girls they had been abused by the system and the abuse had caused them to be taken away from him, and it was not his or Jessica's fault. When Gonzalez again told Juan he could not discuss the case with the children, Juan stated he was only telling the truth. Gonzalez

reported that Juan had "very concerning behavior when this social worker has supervised visits with him and his children."

The second addendum report stated that Andrea was unhappy with her foster placement and told her therapist she would harm herself with a kitchen knife if she had to go back to the foster home. The same day Andrea was admitted to an "Emergency Screening Unit" for evaluation and was kept there overnight. The next day the Agency picked her up at the screening unit and she was admitted into Polinsky.

At the contested jurisdiction/disposition hearing on May 22, 2014, the court admitted in evidence the Agency's detention report, jurisdiction/disposition report and the two addendum reports, and the curricula vitae of Gonzalez and her supervisor. The court heard closing arguments from counsel. The children's counsel asked the court to make true findings on the petitions and issue an order prohibiting contact between Juan and Javier and an order allowing supervised visitation between Juan and Teresa and Andrea. Jessica's counsel asked that the petitions be dismissed and the children be returned to Jessica's care. Juan's counsel requested the court to not make true findings on the petitions and, if it did, to return the children to Juan's care.

The Agency's counsel requested that the children be removed from the custody of both parents. However, the Agency acknowledged Jessica had not lived with Juan "in sometime." Accordingly, the Agency requested that "[i]f the court wishes to treat her as a noncustodial parent who is seeking custody . . . the court . . . find placement with the mother is detrimental by clear and convincing evidence."

After hearing argument from counsel, the court found by clear and convincing evidence that the allegations in the petitions were true and declared the children dependents of the court. The court ordered the children removed from the parents' custody under section 361, subdivision (c)(1). The court directed the Agency to provide the parents reunification services and ordered the parents to comply with those services. The court allowed the TRO against Juan to lapse but found it would be detrimental for Javier to have visitation with Juan. Accordingly, the court ordered there was to be no contact between Juan and Javier.

## DISCUSSION

### I. *Jurisdictional Findings*

Juan and Jessica both challenge the sufficiency of the evidence to support the court's jurisdictional findings.

"At the jurisdictional hearing, the court determines whether the minor falls within any of the categories specified in section 300." (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) Here, the court assumed jurisdiction over all three children under section 300, subdivision (b)(1) and, as to Andrea only, under subdivision (c). Section 300, subdivision (b) authorizes dependency jurisdiction when "[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 . . . to adequately supervise or protect the child, or the willful or negligent failure of the child's parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent . . . to provide the child with

adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . .to provide regular care for the child due to the parent's . . . mental illness, . . . or substance abuse." Section 300, subdivision (c) authorizes jurisdiction when "[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent . . . ."

The purpose of section 300 and the California dependency system in general "is to provide maximum safety and protection for children who are currently being physically, . . . or emotionally abused [or] neglected, . . . 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 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.) 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.)

" "The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child . . . comes under the juvenile court's jurisdiction." ' [Citation.] On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we

determine there is no substantial evidence to support the findings." (*In re Veronica G.*, *supra*, 157 Cal.App.4th at p. 185.)

Evidence is substantial if it is "reasonable, credible, and of solid value." (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) It is the trial court's role to assess the credibility of witnesses and resolve the conflicts in the evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52.) "We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

We conclude that substantial evidence supports the court's jurisdictional findings under section 300, subdivisions (b) and (c).

1. Jurisdictional findings regarding Juan

Juan contends the court erred in assuming jurisdiction over the children under section 300, subdivision (b) because there was no showing of any nexus between his alcohol abuse and mental health issues and the children's suicidal ideations. The juvenile court orally explained its jurisdiction/disposition findings as to Juan as follows: "It is clear that there is a direct nexus between the father's alcohol abuse, the fact that the father drove while the children were in his vehicle, under the influence of alcohol, and the father's mental health issues and paranoid [delusions] that provide a direct nexus

to . . . each of the children's active suicidal ideations. [¶] And although . . . their living situation has not been ideal, I find that there is more than a loss of basic needs, that the children are in danger of very serious injury to their physical and emotional health, based upon the neglect and the direct nexus to the substance abuse with respect to father that causes each of these children to have the emotional pain that they suffer from and is so well documented in all of the reports."

Substantial evidence supports the court's findings. There was overwhelming evidence that Juan drank excessively and drove under the influence of alcohol with the children in the car, and evidence that he had a car accident when he was driving drunk with Andrea in the car. There was substantial evidence that Juan's excessive drinking had caused the children to suffer psychological and emotional harm. The children were upset by Juan's drinking and would frequently stay away from home until late in the evening to avoid being with him when he was intoxicated. Andrea said he would wrestle "with anyone who is home" when he was drunk and that his drinking made her feel like killing herself. Teresa said Juan acted like a five year old and like he was "[bipolar]" when he was intoxicated, and she did not feel safe when he drank while driving. Javier reported that he did not feel safe at home when Juan was drunk and that Juan was drunk when he pulled Javier off a playhouse and caused him to scrape and bruise his leg. Javier had thought about killing himself because of his home life situation. As a result of Juan's alcohol abuse, the family was facing eviction from the shelter they were living in when the Agency initiated this dependency case.

Juan himself admitted his alcohol abuse and told social worker Anderson, "[The children feel] fearful of me because I have less patience, annoying, and wrestling and try to go and be alone." He admitted he drank at home to excess when he was upset, stating "I drink because I witness my kids being abused constantly." However, Juan did not appear to view his alcohol abuse as a problem he needed to address to reunify with the children. He blamed his drinking on abuse by CalWORKs and others and defended it as "civil disobedience drinking." He told social worker Gonzales, "It's a crime that's why I drink. My kids don't feel bad because of my drinking."

The Agency's reports and Juan's statements to the court reveal that Juan was obsessed with the idea that he and the children had been abused by governmental entities and employees and that he needed to pursue a case in federal court to remedy the abuse. Juan blamed the dependency case on abuse by "the system" rather than his own actions and behavior, telling Teresa and Andrea during visitation that abuse by the system had caused them to be taken away from him, and that it was not his or Jessica's fault. The Agency's assessment was that Juan "does not take responsibility for his actions which have brought his three children into protective custody but rather blames the government and the public assistance programs [for] his children being removed from his custody."

The court appointed a guardian ad litem for Juan because it found he was not competent to proceed in the dependency case and did not have the capacity to understand the nature or consequences of the proceedings. The court could reasonably find that Juan's obsession with his grievances against the government and his federal case caused him to be unable to appreciate that his alcohol abuse created a risk of harm to his

children, and that there was a causal connection or "nexus" between his alcohol abuse and his "paranoid [delusions]" and the children's suicidal ideations. Accordingly, the court properly assumed jurisdiction over the children under section 300, subdivision (b) on the ground there was a substantial risk they would suffer serious physical harm as a result of Juan's failure or inability to adequately protect them. Further, the evidence that Juan's alcohol abuse resulted in the family's eviction from the shelter they were living in when the children were taken into protective custody supports a finding under section 300, subdivision (b) that Juan negligently failed to provide the children with adequate shelter due to mental illness or substance abuse. Substantial evidence supports the court's assumption of jurisdiction over the children under section 300, subdivision (b).

Substantial evidence also supports the court's assumption of jurisdiction over Andrea under section 300, subdivision (c), which authorizes jurisdiction when "[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent . . . ."

Andrea was hospitalized under section 5150 because she expressed that she wanted to kill herself because of Juan's excessive drinking and did not feel safe returning to his care. The evidence of her suicide ideation and hospitalization is itself sufficient to support a finding that Juan's alcohol abuse and related behavior had caused Andrea to suffer serious emotional damage and put her at risk of suffering future serious emotional damage. The court properly assumed jurisdiction over Andrea under section 300, subdivision (c).

## 2. Jurisdictional findings regarding Jessica

Jessica contends the court should have dismissed the petitions because she was able and willing to care for the children and posed no risk of harm to them. As noted, section 300, subdivision (b) authorizes dependency jurisdiction when "[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 . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left . . . ."

Regarding Jessica, the court in its oral jurisdiction/disposition ruling stated:

"[T]he concern that the court has with respect to mother is that it is clear that father controls mother and that mother is not in a position at this time to protect these children from the issues that brought them before the court. . . . . I do commend that [in the first addendum report] mother indicates she's very eager and willing to participate in services to reunify with her children, and that is what I hope in this case. [¶] However, mother continues to be in daily contact with father. There are allegations of domestic abuse and domestic violence that mother disclosed to the social worker. The mother has also indicated that the father is very controlling and manipulative and that mother has conceded that she was not able to protect her children from father, and she continues to be in daily contact with father, which does give the court concern that mother's still not in a position to appropriately be able to protect the children from father."

The court's findings support its assumption of jurisdiction over the children as to Jessica and are supported by substantial evidence. The evidence showed that Jessica was

living in the singles section of a homeless shelter and had expressed doubt about her ability to adequately parent the children and to protect them from Juan. Jessica took custody of the children in September 2013 in Arizona, but she did not resist when Juan picked them up two weeks later and took them back to San Diego to live with him.

Jessica had been diagnosed with a learning disability, ADHD, seizures, short-term memory loss, and passive aggressive tendencies. When social workers asked that Andrea be released to Jessica's care at the family meeting on March 17, 2014, Jessica resisted, saying she did not like the location of the shelter she was staying in and did not feel it was a good place for the children. Juan intimidated Jessica by staring at her and repeatedly saying, "Jessica, Andrea needs to come home to me." After Juan left the meeting Jessica told the social workers that Juan was controlling and she was "scared to do it on [her] own." She further told them she had a learning disability and was worried that she could not protect the children because, in her words, "I can't talk to them like an adult is supposed to talk to them. They can take advantage of me." Social worker Anderson then asked Jessica if she could protect the children from Juan if he showed up at the shelter or their home and Jessica stated, "I don't know. I want to, but I just don't know." Anderson also asked Jessica if she would be willing to seek custody of the children in family court. Jessica said, "I think so[,] but I would need help." Anderson reported that Jessica appeared to be fearful of going against Juan's wishes.

Social worker Gonzales reported that although Jessica had said Juan was controlling and she feared him, she continued to remain in constant contact and communication with him. Gonzalez's assessment on behalf of the Agency was that it was

not presently safe for the children to return to the care of either Juan or Jessica. The court was entitled to find the social workers' opinions credible and to give great weight to their assessments. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 53.) Based on the Agency's reports, the court could reasonably find there was a substantial risk that the children could suffer physical harm as a result of Jessica's failure or inability to protect the children from Juan. Accordingly, the court properly assumed jurisdiction over the children despite Jessica's assertion that she was willing to care for them.

## II. *Dispositional Findings*

To remove the children from parental custody, the Agency was required to prove by clear and convincing evidence that "[t]here is or would be a substantial danger to [their] physical health, safety, protection, or physical or emotional well-being [if they] were returned home" and that removal was the only reasonable means of protecting their physical health. (§ 361, subd. (c)(1).) "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.) The court is entitled to consider the parents' past conduct and current situation in determining whether they have progressed sufficiently to eliminate any risk. (*In re S.O.*, *supra*, 103 Cal.App.4th at pp. 461-462; cf. *In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1221.) On appeal, the parent has the burden of showing that there is no substantial evidence justifying removal. (*In re Diamond H.*, at p. 1135; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

1. Dispositional findings regarding Juan

We conclude that the evidence that supports the court's jurisdictional findings as to Juan also sufficiently supports the decision to remove the children from Juan's custody. As discussed above, there was substantial evidence that Juan repeatedly drove while intoxicated with the children in the car and that all three of the children were emotionally harmed by his drinking. There was also substantial evidence that Juan's obsession with the discrimination and abuse he believed he and the children had suffered at the hands of governmental agencies and employees prevented him from fully understanding the issues that led to the children's being taken into protective custody. Juan was homeless at the time of the jurisdiction/disposition hearing as a result of his alcohol abuse and he expressed unwillingness to seek treatment for either his alcohol abuse or paranoid delusions, both of which put the children at a risk of harm.

Social worker Gonzalez reported that Juan continued to drink alcohol in excess and that his drinking affected his behavior and decision making skills and caused him to place the children at risk for abuse and neglect. Juan did not admit to having an alcohol abuse problem but rather blamed his "civil disobedience" drinking on the government and public assistance programs. He displayed paranoia but was unwilling to undergo a medical evaluation. Based on the Agency's reports admitted at the jurisdiction/disposition hearing, the court could reasonably find by clear and convincing evidence that returning the children to Juan's custody would pose a substantial danger to their safety and physical and emotional well-being and that removal was the only reasonable means of protecting them.

## 2. Dispositional findings regarding Jessica

Jessica contends that because she was a noncustodial parent, the court erred by removing the children from her custody under section 361. She argues the court should have applied section 361.2, subdivision (a) and considered whether the children should be placed with her as a noncustodial parent who desired to assume custody.

Jessica is correct that because she was a noncustodial parent throughout the entire dependency case, the court should not have removed the children from her custody under section 361. As this court has noted, "[s]ection 361 addresses a child's removal 'from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated.' (§ 361, subd. (c).)" "[T]here can be no removal of custody from a parent who does not have custody in the first place." (*In re B.L.* (2012) 204 Cal.App.4th 1111, 1116-1117; *In re Abram L.* (2013) 219 Cal.App.4th 452, 460 [children could not be removed from father's custody under § 361, subd. (c)(1) because they were not residing with him when the petition was initiated].); *In re V.F.* (2007) 157 Cal.App.4th 962, 969 [§ 361, subd. (c) " ' "does not, by its terms, encompass the situation of the noncustodial parent" ' "].)

Because Jessica was a noncustodial parent who wanted custody of the children, she fell within section 361.2, subdivision (a), which provides: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the

child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." A detriment finding under section 361.2, subdivision (a) must be made by clear and convincing evidence. (*In re Abram L.*, *supra*, 219 Cal.App.4th at p. 461.)

We conclude that the court's failure to expressly make a detriment finding as to Jessica under section 361.2, subdivision (a) was harmless error. Section 361, subdivision (c)(1) authorizes removal of a minor from a custodial parent when there is clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home" and that removal was the only reasonable means of protecting the minor's physical health. Thus, for the court to deny a parent custody of a child at the disposition hearing, both sections 361, subdivision (c)(1) and 361.2, subdivision (a) require a finding by clear and convincing evidence that placing the child with the parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.

The written orders removing the children from parental custody include the court's finding by clear and convincing evidence that "[r]easonable efforts have been made to prevent or eliminate the need for the removal of the child from the parents' home and make it possible for the child to return to his/her home." The orders state that the "child's custody is continued to be removed from the parents pursuant to Section 361[, subdivision] (c)(1) . . . ." Although the written orders do not expressly articulate a "substantial danger" or detriment finding, the court in its oral ruling stated, "I do find by

clear and convincing evidence that removal of each of the children from the home is appropriate under . . . section 361[, subdivision (c)(1)], finding that there is a danger to the physical health or emotional well-being of each child. And I do find that with respect to each parent." The written orders effectively include a detriment finding because it is necessarily implied from the order removing the children from parental custody under section 361, subdivision (c)(1), accompanied by the express finding that reasonable efforts had been made to prevent or eliminate the removal of the children and make it possible for them to return to their home. (*In re G.P.* (2014) 227 Cal.App.4th 1180, 1196 [detriment finding may be implied].)

Because the court made the finding required by section 361.2, subdivision (a) that placing the children with Jessica would be detrimental to their safety, protection, or physical or emotional well-being, it is harmless error that the court made that finding under section 361, subdivision (c)(1) rather than section 361.2, subdivision (a). As we noted, the Agency's counsel requested that "if the court wishes to treat [Jessica] as a noncustodial parent who is seeking custody . . . the court find placement with the mother is detrimental by clear and convincing evidence." Considering that counsel invoked section 361.2, subdivision (a) and the court was well aware that Jessica was a noncustodial parent who sought custody of the children at the disposition hearing, we view the court's making a detriment finding as to Jessica under the wrong statute as inadvertent and harmless error.

We conclude that evidence supporting the jurisdiction findings regarding Jessica also supports the court's finding that placing the children in her custody at the time of the

jurisdiction/disposition hearing would be detrimental to their safety, protection, or physical or emotional well-being. As we discussed, substantial evidence supports the court's finding that Jessica was not yet able to protect the children from Juan. The evidence also reasonably supports a finding that Jessica was not presently able to adequately parent and provide for the children. Accordingly, the court did not err in denying her request to place the children in her custody.

### III. *Order Prohibiting Visitation Between Juan and Javier*

Juan contends that there was insufficient evidence to support the court's issuance of a no-contact order prohibiting him from visiting Javier.

Generally, a disposition order placing a child in foster care and ordering reunification services must provide for visitation between the parent and child that is "as frequent as possible, consistent with the well-being of the child." (§ 362.1, subd. (a)(1)(A).) As this court has noted, "[v]isitation between a dependent child and his or her parents is an essential component of a reunification plan, even if actual physical custody is not the outcome of the proceedings. . . . However, '[n]o visitation order shall jeopardize the safety of the child.' (§ 362.1, subd. (a)(1)(B).) It is ordinarily improper to deny visitation absent a showing of detriment." (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580.) The substantial evidence standard of review applies to a determination that visitation would be detrimental to the child. (*Id.* at p. 581, fn. 5.) As noted, under that standard of review, we draw all reasonable inferences in support of the court findings and consider the record most favorably to the court's order. (*In re L.Y.L., supra*, 101 Cal.App.4th at p. 947.)

There is a split of authority as to whether section 362.1 authorizes an order denying visitation only if there is substantial evidence that further visits would threaten the child's *physical* safety (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1492), or whether a court may also deny visitation based on evidence of a threat to the child's emotional well-being. (*Mark L., supra*, 94 Cal.App.4th at p. 581 [denial of visitation was supported by substantial evidence that visitation "may harm [the child] emotionally"]; *In re Julie M.* (1999) 69 Cal.App.4th 41, 50 [evidence that children "sustained legitimate emotional damage" from mother's visits could "serve as a basis for curtailing or limiting future visits"]; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008 ["The court may deny a parent visitation only if visitation would be harmful to the child's emotional well-being."].)<sup>3</sup>

In the present case, the court's written no-contact order states: "The court finds it is detrimental for the minor to have visitation with the father. There is to be no contact between the father and the minor." In its oral ruling the court stated: "I do find that, based upon the information contained within the social worker's reports, that Javier has made it clear that he does not want to visit father. The court has found evidence

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<sup>3</sup> In *In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1357 (*Brittany C.*), the Second District Court of Appeal, Division Four, addressed Division Seven's conclusion in *In re C.C.* that a court cannot suspend visitation unless it finds the child's *physical* safety would be threatened by further visits. The *Brittany C.* court observed: "Although our colleagues in Division Seven read section 362.1, subdivision (a)(1)(B) and reached that conclusion, they did not discuss other cases that interpret the same statute to mean that a court may deny visitation upon a finding of detriment. [Citations.] Detriment includes harm to the child's emotional well-being." (*Brittany C.*, at p. 1357, citing *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138; *In re Luke L.* (1996) 44 Cal.App.4th 670, 679; and *In re Christopher H., supra*, 50 Cal.App.4th at p. 1008.)

throughout the reports of a clear nexus between Javier's relationship with his father and the suicidal ideation, as well as the neglect and the safety concerns that Javier feels as a result of father's substance abuse, father's driving under the influence with the children in the vehicle, and father's paranoid [delusions], which have not been addressed, and are recited repeatedly in front of the children, even as recently as the latest supervised meetings, which caused the children and, specifically, Javier, great emotional distress. [¶] And, therefore, I do make a detriment finding, and find that it would be detrimental for Javier to have supervised visits with his father. As there is a direct link between Javier's suicidal ideations, his emotional distress, and his relationship *at this time* with his father, and, therefore, I order a no[-]contact order between father and Javier." (Italics added.)

We conclude there is sufficient evidence to support the court's order denying visitation between Juan and Javier based on the finding that visitation would be detrimental to Javier "at this time." We note that the evidence of detriment is thin in light of statutory mandate requiring visitation "as frequent as possible, consistent with the well-being of the child[.]" (§ 362.1, subd. (a)(1)(A)) and the recognition in case law that visitation is an essential component of a reunification plan. (*Mark L., supra*, 94 Cal.App.4th at p. 580.) However, viewing the evidence in the light most favorable to the court's order, we conclude the court could reasonably find that at the time of the jurisdiction/disposition hearing, the connection between Juan's alcohol abuse and related behaviors and the monthly suicide ideation Javier admitted to having when he was in Juan's custody constituted a sufficient threat to *both* Javier's physical safety and

emotional well-being to justify the order. Thus, under either *In re C.C.*, or the cases supporting a denial of visitation based on evidence that visitation would be harmful to the child's emotional well-being, there is sufficient evidence to support the court's order denying Juan visitation with Javier. However, we expect that at the six-month review hearing and later points in the proceedings, the juvenile court will carefully consider whether the statutory goal of reunification is better served by an order allowing supervised visitation between Juan and Javier than a continuing order denying visitation between the two.

#### DISPOSITION

The judgments are affirmed. The no-contact order prohibiting visitation between Juan and Javier is affirmed.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

McDONALD, J.