

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Jason M., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

Megan M.,

Defendant and Appellant.

D066285

(Super. Ct. No. NJ14917)

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

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel and Erica R. Cortez, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Megan M. appeals a judgment finding her son, Jason M., to be within the jurisdiction of the juvenile court under Welfare and Institutions Code¹ section 300, subdivision (b).² Without declaring Jason a dependant of the court, the court ordered voluntary services to be offered to Megan for an initial period of six months under section 360. Megan contends there was no substantial evidence to support the jurisdictional finding because there was no evidence her son was at risk for future injury at the time of the hearing due to her neglect. We disagree and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

A

Jason was brought into protective custody when he was eight months old after a medical examination revealed bruises on both cheeks around the mouth, consistent with inflicted injury, such as someone grabbing the child's face.

Megan is herself a minor dependant of Fresno County in a permanent plan of guardianship. Megan was removed from her parents as a result of her parents' drug use, domestic violence, and chronic neglect. Megan ran away from a foster child placement and associated with "gangbangers" for a year. Megan admitted using marijuana and

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

² Section 300, subdivision (b), was amended effective June 20, 2014, to designate the entirety of former subdivision (b) as (b)(1) and to add a new subdivision (b)(2), which is unrelated to the issues on appeal in this case. (Stats. 2014, ch. 29, § 64.) Because the amendment was not effective at the time of the jurisdiction and disposition hearing, we refer herein to former subdivision (b).

methamphetamines, but stated she stopped using when she realized she was pregnant. She gave birth to Jason at age 15 and has an active restraining order against the alleged father. She lives with her older sister, who is her legal guardian, and her sister's husband.

Jason's alleged father, whom Megan described as a "gang banger," was living in a residential treatment program at the time of the dependency proceedings. He said they used methamphetamines together during their nine-month relationship, which Megan ended when she discovered she was pregnant. He did not want to be involved in the dependency case or future court proceedings stating, "[s]he told me she didn't want me in her life because of drugs and alcohol . . . so I respect it."

B

Megan initially reported she noticed Jason had bruises on the afternoon of May 7, 2014, when her brother-in-law dropped Jason off after babysitting him during the day. She noticed bruises on both of his cheeks, bruising on his left temple, a bruise under his nose, a bruise to the front of his thigh and bruising on his lower back. Megan reported Jason winced when she touched the bruises. When she asked her brother-in-law about the bruises, he said Jason fell down a couple of times and had hit his head on a wall. Megan and Jason spent the night at a friend's house.

The next day, May 8, 2014, Megan told her school counselor about the bruises, which she said looked like someone squeezed him hard. The counselor contacted child protective services and suggested Megan take Jason to Fallbrook Hospital for evaluation.

At Fallbrook Hospital, Megan reported she was concerned a family member had inflicted the injury. A pediatric nurse documented quarter-size bruises on both sides of

Jason's mouth, which were described as light blue with light black "which is very noticeable." She also noted bruises to the upper right leg, upper back, middle and side of back. However, the emergency room physician noted no visible injuries on examination other than a questionable resolved bruise to the forehead.

After an argument between Megan and Megan's sister, a plan was made for Megan to stay with a friend that night. Jason would stay with Megan's sister, but the brother-in-law would have no contact with Jason. Megan's sister reported Megan previously made unfounded accusations of child abuse.

The following day, on May 9, 2014, Jason was examined by a child abuse expert at the Chadwick Center (Chadwick). While waiting for the examination, Megan told the social worker she did not actually see bruising when her brother-in-law dropped Jason off after watching him. The social worker reported, "[Megan] allowed a couple of friends to hold Jason while she used the restroom. [Megan] stated she noticed red marks on his cheeks after using the restroom. She said the red marks turned into bruises as time progressed into the evening hours."

The hospital records noted Megan "has a [history of] bipolar, [oppositional defiant disorder] and is in counseling." The examining physician opined that Jason had "bilateral facial bruises without reasonable explanation." The doctor further opined the bruises on Jason's face were in two different planes and were "not consistent with a simple fall." The Chadwick physician noted the bruising could have occurred at any time "but it is suspicious the story is now changing from the clear time line described prior." The report concluded the facial bruises were consistent with inflicted injury, "like someone grabbing

the face." This was "highly concerning" on such a young child and the report stated, "if left in this environment unchanged [the child] is at risk for further injury."

C

The San Diego County Health and Human Services Agency (Agency) filed a petition on May 13, 2014, on behalf of Jason alleging he comes within the jurisdiction of the juvenile court under section 300, subdivision (b), as a child who has suffered, or is at a substantial risk of suffering, serious physical harm as a result of the failure or inability of his mother to adequately supervise or protect him. Jason was detained at the Polinsky Children's Center.

The social worker spoke with Megan's school counselor. The school counselor observed the bruising on Jason's cheeks saying, " 'it looked like someone had pinched [Jason].' " However, the counselor thought the allegations were exaggerated because she thought Megan was " 'drama ridden.' " The counselor explained Megan was in her office daily concerning peer related issues and was a very emotional person due to her childhood history. The counselor stated Megan is "very immature and has no parenting skills."

The public health nurse who visited Megan once per month in the sister's home was shocked to learn about the incident. She never had any concerns and had not observed Jason with any marks or bruises. Additionally, the nurse had observed Megan, Megan's sister, and the brother-in-law to be appropriate with Jason.

According to the June 3, 2014 jurisdiction and disposition report, after the Chadwick evaluation, Megan's sister asked Megan to send messages to her friends

inquiring if they noticed any bruising when the brother-in-law dropped Jason off at school. Megan received messages back from most of her friends saying they did not notice bruising. However, Megan stated she received a voicemail from a restricted number with an anonymous female caller crying and apologizing for what she had done. Megan believed the unidentified caller was a friend who had moved to Washington.

The social worker expressed concern with the major differences in the details Megan provided and inquired if someone asked her to change her story. Megan denied anyone asked her to change her story. When asked about the other bruising, Megan stated she thought the mark on his forehead and bruising on his back and arm came from falling as her brother-in-law described.

Megan's sister reported Megan had made "good progress" since living with her, but recently had begun to act very "childish" so the family began counseling together. The sister reported Megan was previously diagnosed with bipolar disorder and oppositional defiant disorder, but the dependency court in Fresno County did not authorize medication. The sister also said Megan has a history of making false accusations against people and was "the type of person who will talk herself into a lie."

Megan's service provider from the San Diego Adolescent Pregnancy and Parenting Program (SANDAPP), who had been working with Megan throughout her pregnancy and since Jason was born, reported she had concerns regarding Megan's emotional well-being and suspected Megan had "unresolved mental health issues." The provider began to notice changes in Megan's behavior when Megan began seeing another student who was known to have mental health and substance abuse issues. The SANDAPP provider

reported Megan was "obsessed" with this student and Megan's grades and participation in school suffered as a result. She discussed healthy relationships with Megan and instructed her to attend a weekly group that catered towards high risk kids, including those with emotional problems. She also recommended a parenting class.

Megan's therapist reported Megan used her time in therapy well. Although she had been seeing Megan on a monthly basis, recent sessions were sporadic with multiple cancellations. Nevertheless, the therapist felt Megan showed good parent initiative and was very protective of Jason. The therapist noted there had been arguments between Megan and her sister, describing them both as headstrong. The therapist did not see red flags related to Megan's mental health, but did recommend a psychological evaluation. The therapist prepared an initial treatment plan noting a primary diagnosis of depression and a secondary diagnosis to rule out oppositional defiant disorder. She noted Megan's strengths in engaging in treatment included coming to the sessions in a timely manner, ready to work and bringing issues with which she wants assistance. Obstacles for engaging in treatment included a history of drug use, Jason's unexplained injury and Megan's long time struggle with depression.

The June 3, 2014, jurisdiction and disposition report recommended Jason be placed in licensed foster care. However, in an addendum report dated June 18, 2014, the Agency changed its recommendation regarding placement. The addendum recommended Jason be returned to Megan, but that he be declared a dependent of the court and family maintenance services be ordered.

The addendum report noted, "[w]hile it appears the etiology of Jason's facial bruising will never be known, since the removal [Megan] has demonstrated a level of composure and maturity beyond her sixteen years." Megan maintained daily contact with Jason's caregivers and visited him regularly. Additionally, she had begun in-home parenting education through Community Services for Families, agreed to continue meeting with a public health nurse on a monthly basis, and she had returned to therapy. The addendum further stated Megan's "individual therapist and Jason's caregivers have given [Megan] strong praise for her commitment and devotion not only to him but her level of participation in services, which to date, have been purely voluntary, and her determination not to let a similar incident occur in the future."

D

On June 18, 2014, the court made a true finding that Jason is a child described under section 300, subdivision (b). In explaining its finding, the court stated, "This is a difficult case to sort through. A vast majority of the information regarding the mother, Megan, is very positive. [The] public health nurse that was involved in the case prior to the time of the injuries to the child . . . voiced no concerns. Recently, mother's been engaged in counseling and working with the caretaker of the child. And every comment about mother is appropriate, if not impressive. [¶] What the court has to concentrate on, though, is the age of Jason at the time the injuries were detected, the extensive nature of the injuries, and I think importantly as well, the location of some of the bruising. Anytime there's a bruising to the temple and bruising to the cheeks, head injuries for a child this age, it's very, very concerning. [¶] The court has a medical opinion before it

indicating that without a reasonable explanation, this is indicative of an inflicted trauma. The mother has given at least two different explanations, neither of which the doctors have accepted. Under the current legal standard, that is enough by a preponderance of the evidence to make a true finding."

Without declaring Jason a dependent, the court ordered voluntary services under section 360, subdivision (b), be provided to Megan for an initial period of six months and Jason to be released to her custody. The court stated, "the injuries were significant, but . . . they have since resolved. All of the professionals that have dealt with the mother have been impressed not just with the mother's involvement, but her proactivity in being involved. The mother has been in touch with the Agency. She's been in touch with all of the service providers. [¶] So I believe that given this record, the mother should be offered the voluntary services. If she does not continue in that vein, that level of cooperation, then it comes back to court for dispositional orders. But I believe she's earned the right to do this on a voluntary basis based on the strength of the opinions of all of the service providers, including the social worker, actually."

DISCUSSION

A

We review jurisdictional findings to determine whether they are supported by substantial evidence. Evidence is "[s]ubstantial" if it is "reasonable, credible, and of solid value"; such that a reasonable trier of fact could make such findings." (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) We neither reweigh the evidence nor exercise independent judgment. We merely determine if sufficient facts support the findings

based on our review of the whole record in the light most favorable to the findings, resolving all conflicts and drawing all reasonable inference in support of them. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

If the dependency petition alleges more than one ground for asserting the minor comes within the jurisdiction of the dependency court, we may affirm the juvenile court's finding of jurisdiction if any one of the enumerated statutory bases for jurisdiction is supported by substantial evidence. (*In re I.J., supra*, 56 Cal.4th at p. 773.) In this case, the juvenile dependency petition alleged Jason came within the jurisdiction of the court under section 300, subdivision (b), as a child who has suffered or is at substantial risk to suffer serious physical harm as a result of the failure or inability of his parent to supervise or protect him adequately.

B

Section 300, subdivision (b), states in pertinent part: "[t]he child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." The Legislature declared the purpose of the dependency statutes " '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.*' " (*In re I.G.*, *supra*, 56 Cal.4th at p. 773, quoting § 300.2, italics added by *In re I.G.*) " 'The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.' " (*In re I.G.*, *supra*, at p. 773.) The focus of section 300 is on averting harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.)

The Agency points out there is a split of authority as to whether a single past incident of parental conduct can support jurisdiction under section 300, subdivision (b), or if current or future risk of harm must also be shown. In *In re J.K.* (2009) 174 Cal.App.4th 1426 (*J.K.*), the court held jurisdictional findings based on section 300, subdivisions (a), (b), and (d) may be based solely on "a showing that the minor *has suffered prior* serious physical harm." (*J.K.*, *supra*, at pp. 1434-1435; accord *In re David H.* (2008) 165 Cal.App.4th 1626, 1644 ["in the absence of unusual circumstances not present here (such as a substantial lapse of time between the incident and the filing of a petition or the date of a jurisdictional hearing), an allegation that a child *has suffered* serious physical harm inflicted nonaccidentally . . . is sufficient to establish jurisdiction"].) The *J.K.* court noted the last sentence of section 300, subdivision (b), which states "[t]he child shall *continue* to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness" (italics added), presupposes an initial exercise of jurisdiction either based on a prior incident of harm or a current or future risk, but current risk of harm is relevant to the dispositional phase. (*J.K.*, at p. 1435, fn. 5.)

The case upon which Megan relies, *In re J.N.* (2010) 181 Cal.App.4th 1010 (*J.N.*), disagreed with *J.K.*, *supra*, 174 Cal.App.4th 1426 "to the extent it concludes that section 300, subdivision (b), authorizes dependency jurisdiction based upon a single incident resulting in physical harm absent current risk." (*J.N.*, *supra*, at p. 1023.) The *J.N.* court concluded a single incident of drunk driving with children in the car did not support an exercise of dependency jurisdiction absent a showing of current risk. According to the *J.N.* court, if one applied the *J.K.* analysis to such a case, "a juvenile court could take jurisdiction but would be required to immediately terminate the dependency under the final sentence of section 300, subdivision (b)." (*J.N.*, at p. 1023.) *J.N.* recognized, however, "[t]he nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances." (*Id.* at p. 1026.)

We need not wade into this debate in this case for a couple of reasons. First, we do not need to determine if there is sufficient evidence to support a declaration of dependency because the court did not declare Jason a dependent child of the court. In *In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261 (*Adam D.*), the appellate court concluded the juvenile court properly exercised initial jurisdiction based on neglect under section 300, subdivision (b), and ordered informal supervision under section 360, subdivision (b), where an infant was found to be underweight and dehydrated due to mother's lack of knowledge regarding breast feeding. The appellate court noted, however, it was not necessary to consider if the evidence was sufficient to support a declaration of

dependency because the child was not declared a dependant. (*Adam D.*, *supra*, at p. 1261, fn. 7.)

Second, under either standard, we conclude there is sufficient evidence to support the court's exercise of jurisdiction in this case. Jason was found to have unexplained injuries to his face and head, including his temple, as well as other parts of his body. Megan reported Jason winced with pain when she touched the bruises. We cannot agree with Megan's contention these injuries were not serious. The child abuse experts at Chadwick concluded this type of head injury was consistent with an inflicted injury and was "highly concerning in a young child and if left in this environment unchanged he [was] at risk for further injury." The medical experts did not accept the explanations for the injuries. Given that Jason was only eight months old at the time and he suffered injuries about his head brings him within the category of "children of such tender years that the absence of adequate supervision and care poses and inherent risk to their physical health and safety." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

Contrary to Megan's contention, this case is not similar to *J.N.*, *supra*, 181 Cal.App.4th at pages 1025-1026 in which parents engaged in a single episode of endangering their children by driving them home while intoxicated resulting in an accident. In that case, the court concluded, despite the seriousness of the parents' conduct on the one occasion, there was no evidence from which to infer a substantial risk the behavior would recur. (*Ibid.*)

Nor are the facts here similar to *In re Savannah M.* (2005) 131 Cal.App.4th 1387, in which a 19-month-old child was sexually molested by a family friend. In that case, the

court concluded there was no substantial evidence the child was at a substantial risk of *future* serious physical harm when the jurisdictional hearing took place two months after the incident occurred. Although the parents were under the influence of alcohol on the evening in question and they found it unusual the friend attempted to change their daughter's diaper while they were out earlier in the evening, the court concluded this evidence alone was not sufficient to support a finding of jurisdiction under section 300, subdivision (b). When they discovered the molestation occurring, the parents immediately removed the friend from their home, contacted the police to report the incident and confirmed they would never trust the friend to care for their daughter. (*In re Savannah M., supra*, at p. 1397.)

Here, the Agency filed the dependency petition within days of the initial report of injuries and the order challenged on appeal was entered about one month thereafter. The evidence before the juvenile court at the time was that Megan was a very young mother with a history of substance abuse as well as emotional or mental health issues, due to her own past neglect or abuse. Megan's school counselor described her as "emotional due to her past" and "very immature" with "no parenting skills." Megan's sister expressed concern about Megan's mental health status and described her as having made " 'good progress' until recently which led [the sister] to believe Megan was 'having another spurt' " requiring family counseling. The sister expressed concern Megan was not on medication and suspected she needed an evaluation.

The SANDAPP counselor who worked with Megan had concerns about unresolved mental health issues. She also began noticing changes in Megan's behavior

around the time of the detention due to Megan's interest in a boy at school who also had unresolved mental health and substance abuse issues.

Before Jason's detention, Megan's individual therapist noted her scheduled monthly sessions had been sporadic with multiple cancellations and she had not seen Megan since mid-April. In an addendum report, Megan's therapist gave Megan high praise for her commitment and devotion to Jason as well as her participation in voluntary services after Jason's detention. However, the therapist recognized Megan has an ongoing struggle with depression and a history of drug use.

Additionally, both the Chadwick examiners and the social worker expressed concern about the changes in Megan's stories about the timeline of noticing the bruises. The social worker expressed concern Megan could be protecting someone.

Based on this record, it was reasonable for the court to find Jason not only suffered serious unexplained injuries as the result of his mother's failure or inability to protect him, but he also continued to be at risk for future injury. Thus, there was substantial evidence to support the court's exercise of jurisdiction. After considering all of the evidence before it, the court made a reasonable determination to allow Megan the opportunity to engage in voluntary services for an initial period of six months without declaring Jason a dependant of the court pursuant to section 360, subdivision (b).

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

IRION, J.