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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

D.H.,

Defendant and Appellant.

E055153

(Super.Ct.No. SWJ1100522)

OPINION

APPEAL from the Superior Court of Riverside County. Michael J. Rushton,
Judge. Affirmed.

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

Pamela J. Walls, County Counsel, Anna M. Deckert, Deputy County Counsel,
for Plaintiff and Respondent.

No appearance for Minor.

D.H. (Father) appeals from the juvenile court's (1) jurisdiction order, which made his daughter, N.H., a ward of the court (Welf. & Inst. Code, § 300, subd. (b));¹ and (2) disposition order, which placed N.H. outside of Father's and J.E.'s (Mother) physical custody. Father raises a variety of issues on appeal. Father asserts the jurisdiction and disposition orders (collectively "the orders") must be reversed because (1) there is insufficient evidence of N.H. being at a substantial risk of serious physical harm due to Father's alleged domestic violence; (2) there is insufficient evidence of N.H. being at a substantial risk of serious physical harm due to Mother permitting Father to see N.H. prior to the second detention hearing; (3) there is insufficient evidence of N.H. being at a substantial risk of serious physical harm due to Father's cultivation of marijuana; (4) there is insufficient evidence of N.H. being at a substantial risk of serious physical harm due to Father's use of marijuana; (5) the juvenile court ignored the elements of section 300, subdivision (b); and (6) the juvenile court misconstrued the elements of section 300, subdivision (b). In his seventh contention, Father asserts this court should reverse the reunification condition prohibiting Father from using medical marijuana. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. BACKGROUND

In 2011, Mother and Father had been in a relationship for six years, and married for three of those years. N.H. was born in June 2007. Father was previously married

¹ All subsequent statutory references will be to the Welfare and Institutions Code, unless otherwise indicated.

and had adult children from his first marriage. Father was in the United States Navy for 20 years; father left the Navy due to a serious back injury. Father had seven herniated discs and degenerative back disease. Father had difficulty seeing and hearing due to being in an engine room for most of his naval career. Father had only one eye, which is afflicted with cataracts. Father had a medical marijuana card. Father uses medical marijuana because he suffered extreme pain, and marijuana was the only thing that helped him. Mother had a medical marijuana caregiver card.

Father temporarily stopped using marijuana in 2007, when N.H. was born. Father abstained for approximately 18 months, and maintained a successful air conditioning repair business during that time. Father stopped performing air conditioner repairs because he could not move, and was essentially bedridden. Father still owned his air conditioning company, but did not have any customers.

B. FIRST DETENTION

On August 8, 2011, Mother and Father were in the garage at their house in Lake Elsinore, and they were arguing about laundry. Mother and Father both tugged on a pair of shorts, and Father's hand struck Mother's nose. Mother was unsure if Father intended to strike her, but she was scared so she ran across the street to a neighbor's home and called 911. N.H. was not at home during the foregoing incident. When law enforcement arrived, they did not see an injury on Mother's nose, and Mother said she was not injured. When officers arrived at the house, Father was "yelling, agitated, and aggressive." Father was removed from the home by the officers.

Mother said the foregoing incident was the first time Father struck her; however, he previously took pictures off the wall, smashed the pictures on the floor, and pushed Mother. Mother said Father often yelled and was easily agitated. When Father was upset, Mother typically left the home with N.H. to prevent the situation from escalating. Mother believed Father suffered from mental health problems, but Father refused to seek treatment. N.H. said her parents “yell at each other a lot,” but she denied seeing any domestic violence.

When officers were at the house following the strike to Mother’s nose, they discovered 74 marijuana plants growing in the backyard. Father was a producing member of Cooperative Patient Services in Temecula. Approximately six people, including Father, grew marijuana in Mother’s and Father’s backyard. Mother had medical marijuana cards for all the people growing marijuana in the backyard. Marijuana had been growing at the house for approximately one year, and there had been one harvest in the summer of 2010. Mother said the marijuana plants were not a danger to N.H. because they were not flowering.

Vegetables, herbs, and spices were also being grown in the backyard. N.H. said she liked to play in the backyard and water “the plants” with her orange elephant watering can. A child’s playhouse was in the middle of the backyard with toys scattered throughout the yard. N.H. was able to open the door to the backyard and sometimes played in the yard unattended. There was also a storage shed in the backyard that contained a marijuana drying table approximately two feet from the ground, as well as chemicals that were accessible to a child. A child’s bike was inside the storage shed.

A bong was on the backyard patio table, along with children's toys. Mother denied smoking marijuana, and she tested negative for controlled substances via a saliva test. Mother said Father smoked marijuana three times per day, while on the backyard patio. N.H. played on her swing-set in the backyard while Father and other people smoked marijuana on the patio. N.H. said Mother smoked cigarettes on the backyard patio. N.H. said Father smoked inside the house and outside the house, but she was not sure what he smoked. Father sometimes drove N.H. to the drug store to purchase ice cream, and he sometimes drove her home from preschool.

Mother said there was no marijuana inside the house; however, marijuana was found in almost every room of the house. In the dining room, there were jars of marijuana and cups full of hash oil in an unlocked dining room cabinet, approximately four inches off the floor. In the family room, there was a food dehydrator that was used for marijuana. In the living room, there was a large jar of marijuana in an unlocked trunk. In an office next to N.H.'s bedroom there was marijuana in the bottom of a desk, approximately three inches from the floor. In the freezer, with the family's food, there were small containers of marijuana and 24 cups of hash oil. In the past, Mother made butter with marijuana and stored it in the refrigerator. In the garage, there was a marijuana processing area, approximately three feet off the ground, with marijuana on it. A bucket of hash oil was on the garage floor. Children's clothing and toys were also in the garage.

Father was arrested for domestic violence and child endangerment. Mother was arrested for child endangerment. The Riverside County Department of Public Social

Services (the Department) placed N.H. in foster care. On August 10, 2011, Mother filed for a temporary restraining order against Father. On August 10, 2011, the Department filed a petition against Mother and Father. The Department alleged there was a substantial risk of N.H. suffering serious physical harm or illness due to (1) Mother and Father engaging in domestic violence, including yelling, hitting, and pushing; (2) Father abusing marijuana in N.H.'s presence, which limits his ability to supervise N.H.; (3) Mother not protecting N.H. from Father's alleged mental health and anger problems; (4) Mother and Father storing marijuana, hash oil, marijuana plants, and a bong at the house, in areas accessible to N.H.; and (5) Father driving N.H. places while under the influence of marijuana. (§ 300, subd. (b).) The Department further alleged Father was incarcerated and left N.H. without any provision for support. (§ 300, subd. (g).)

On August 11, 2011, the juvenile court found Father to be N.H.'s presumed father, and that the Department proved a prima facie case N.H. came within section 300, subdivisions (b) and (g). The juvenile court ordered N.H. continue to be detained. The juvenile court stated N.H. could be returned to Mother if it was found the marijuana, plants, and paraphernalia were removed from the house and Mother passed a hair follicle drug test. The juvenile court told Mother to not give Father access to N.H., if N.H. were returned to Mother's care, because it would place N.H. at risk. The juvenile court granted Father supervised two-hour visits twice per week, upon his release from incarceration. The juvenile court ordered reunification services for Mother and Father.

C. AUGUST AND SEPTEMBER 2011

N.H. was returned to Mother's care. N.H. told a Department social worker that she played inside and outside at the house. N.H. denied touching the marijuana plants saying, "I'm not allowed to touch the medicine plants." As to the drying bed in the garage, N.H. said, "That is in the garage not on my side." N.H. said she had not touched the drying bed. The Department social worker showed N.H. a photograph of hash oil in a box. N.H. said she had seen the box before and touched it. The social worker asked N.H. what she would want to change in the house. N.H. responded, "I want my mom and dad to stop yelling at each other."

Mother told the social worker Father medicates with marijuana "in the morning, afternoon, and evening everyday." Mother said Father does not drive N.H. when he is under the influence of marijuana. However, Mother maintained that Father smokes marijuana three times per day and sometimes drives N.H. home from school or to get ice cream. Mother said the refrigerator and cabinet, where jars of hash oil were stored, were unlocked. Mother believed she and Father needed counseling, parenting classes, and anger management classes.

Father was released from jail on August 15, 2011, but did not contact the Department about visitation. Father was residing in Fontana. When the Department social worker interviewed Father via telephone, on August 24, Father was hostile and aggressive. The social worker informed Father that Father's attorney did not permit the Department to discuss the allegations with Father. Father responded, "I don't care what the attorney said but I'm innocent and I'm going to prove it to the judge. I will

convince any judge of my innocence.” The social worker explained a social worker’s role in a dependency case. Father replied, “I know what you social workers do but you are all wrong with my family. I was forced to do what I did.” Father also said, “I don’t need any help from anyone.” The social worker terminated the phone call after Father began using profanity and became threatening. On August 31, the Department contacted Father about visiting N.H., but Father declined visitation.

Also on August 31, 2011, at the family court hearing for a permanent restraining order, Mother requested her petition be dismissed. The family court gave Mother and Father a “no negative contact order.” Mother and Father began participating in marriage counseling. Mother enrolled in individual therapy, parenting classes, and anger management classes. Father enrolled in individual therapy. Based upon testing, a therapist found Father had “low propensities toward violence and aggression.” The therapist concluded Father “is not physically aggressive, but can easily draw himself into verbal altercations with others.” The therapist recommended Father take anger management and parenting classes.

On September 9, 2011, the parties were in court for the jurisdiction hearing, but it needed to be continued for purposes of scheduling it as a contested matter. However, during the September 9 hearing, the juvenile court asked Mother if she was aware she could not permit Father to have access to N.H. Mother said she was not aware of that. Mother admitted she had permitted Father to visit N.H. Mother informed the juvenile court that she believed Father could visit, since the temporary restraining order had ended.

The juvenile court informed Mother that if she gave Father access to N.H. again, then N.H. would be removed from Mother's care. Mother explained that N.H. asked about Father, and it was difficult to tell N.H. she could not see Father. The court said it would remove N.H. from Mother's custody. Mother said she would "get through it" with N.H., so the child could stay with Mother.

The juvenile court granted Father supervised two-hour visits with N.H., two times per week. Father told the court to "[k]eep them." Father explained, "I will not, will not allow my parental rights to be subrogated by the Court when I have been found guilty of nothing." Father went on talking about Americans' unalienable rights. The juvenile court interrupted Father and asked him to stop speaking, because Father was using "an elevated tone" and appeared to be "upset." The court asked Father if he wanted supervised visits. Father responded, "I do not." The juvenile court ordered Father not have visitation with N.H.

The juvenile court asked about the status of Mother's restraining order against Father. Upon learning that Mother obtained a no negative contact order, rather than a restraining order, the juvenile court said, "So if the mother would like to keep the child in her care, then her attorney is going to need to prepare a request for a restraining order that will involve the father having no contact with the child and no contact with the mother." Father responded, "Really great job, your Honor." The court explained Father could not go to Mother's house. Father asked to leave the courtroom. The court told Father that he would be excused if he could not stop interrupting the court. Father stood

up to exit, but continued speaking, and then began pacing. The court told Father to either stay and be quiet or leave. Father left.

The juvenile court said, “His erratic behavior in my courtroom is of great concern to me relative to the safety of the child.” The juvenile court continued, “[H]e seemed extremely emotionally unstable. He spoke out of turn in a manner that displayed great disrespect for the Court under the circumstances that can only be viewed as irrational given the consequences. [¶] His mannerisms were also—I’m not a psychologist or a psychiatrist, but they demonstrated great volatility and then, of course, he ended up storming out of the courtroom.”

N.H.’s attorney asked for a complete no contact order. The juvenile court asked the Department if it wanted to leave N.H. in Mother’s custody. The Department expressed concern that Father would not abide by the terms of a restraining order “given his statements about government control and parental rights.” The juvenile court said it was “seriously concerned” that Mother would not protect N.H. from Father due to Mother’s choice to obtain a no negative contact order, rather than a restraining order. The Department believed Mother was minimizing Father’s negative behaviors.

The juvenile court ordered N.H. be removed from Mother custody and placed in foster care. The court said it would reconsider the decision if Mother moved to a confidential location or stayed with a third party. The juvenile court did not issue a restraining order; instead, it allowed Mother to make the decision about whether to seek a restraining order.

D. SECOND DETENTION

After the September 9 hearing, the Department interviewed N.H., who said, “‘Daddy’ was living somewhere else he came back and he is now living at ‘Mama’s house.’” N.H. said she came to court that day in a car with Mother and Father. During an interview of Mother, Mother explained she believed the juvenile court and family court worked together, so she had not understood the ramifications of reducing the restraining order to a no negative contact order. Mother thought N.H.’s visits with Father were acceptable due to the family court order, and she admitted allowing Father to move back into the family home on September 7, 2011. The Department called Father for an interview, but he said “‘Goodbye’” and hung up, after the social worker identified himself. N.H. was placed in her maternal aunt’s (Aunt) home.

The Department filed a first amended petition on September 13, 2011. The first amended petition included all of the allegations in the prior petition concerning marijuana and domestic violence and added allegations that Mother failed to protect N.H. by (1) allowing Father to have unauthorized contact with N.H., including allowing Father to move back into the house, and (2) minimizing Father’s negative behaviors. (§ 300, subd. (b).) The amended petition removed the allegation concerning Father being unable to provide support for N.H. due to being incarcerated.

The juvenile court held a detention hearing on September 14, 2011. At the hearing, minor’s counsel said she would not be opposed to Mother residing in Aunt’s home, where N.H. was placed. Mother’s attorney said she had prepared the restraining order paperwork, and would like Mother to be able to reside with Aunt and N.H. Father

wanted N.H. placed with Mother. Father's attorney argued that N.H. was "quite normal" and had "always been well taken care of by both [Father] and the mother." Father's attorney requested that a restraining order not be issued. The Department "vehemently oppose[d]" Mother residing in the home with N.H. The Department asserted Mother had violated court orders and did not understand the severity of the situation, which caused Mother not to be able to safely care for N.H.

The juvenile court said it was concerned Mother did not obtain the permanent restraining order, permitted Father to return to the home, and was minimizing Father's negative behaviors. The court found a substantial danger existed to N.H.'s health, and detention was necessary to protect the child. The juvenile court granted Mother permission to reside in Aunt's home with N.H., but N.H. was released to Aunt, not Mother. The juvenile court issued a temporary restraining order against Father, protecting Mother, Aunt, N.H., and N.H.'s cousin. However, the court granted Father Department-supervised visitation for one hour per week. Father requested that he be able to contact Mother regarding their criminal cases. The court permitted Father to contact Mother if her attorney was present.

E. JURISDICTION AND DISPOSITION

During a Department interview on October 5, 2011, Mother reiterated she had previously allowed Father to stay at the family home because she received "bad legal advi[c]e" while at the family court. Mother reported that she was taking steps to enroll in college and become a registered nurse. Mother was unemployed in October 2011, but had been N.H.'s primary caretaker. Mother was participating in individual therapy,

domestic violence classes, parenting classes, and anger management classes. Mother said she would like to have custody of N.H. as soon as possible. Mother visited N.H. at Aunt's home two times per week for two hours at a time, and spoke on the telephone with N.H. throughout the week.

When Father was interviewed by the Department on October 5 he was asked what his family needed. Father responded, "My family needs counseling and nothing more. We will use our own insurance." Father was not participating in reunification services. Father and his therapist had mutually agreed to terminate Father's therapy. Father accepted an individual counseling referral from the Department, but declined other services. Father wanted N.H. to stay in her placement, and he wanted to have visits with her. The Department began the process of arranging visits between Father and N.H. N.H. said she liked living with Aunt, but wanted to go home.

On October 19, 2011, the Department filed a second amended petition in the case. In the second amended petition, the Department alleged N.H. was at a substantial risk of physical harm or illness due to (1) Mother and Father engaging in domestic violence, such as yelling, pushing, and hitting; (2) Father abusing controlled substances, which limited his ability to provide adequate care for N.H.; (3) Mother and Father neglecting N.H.'s health, safety, and wellbeing by having marijuana products accessible to N.H. in the family's home; and (4) Mother allowing Father to have unauthorized contact with N.H.

The court held a contested jurisdiction and disposition hearing on October 19, 2011. Mother requested unsupervised daytime visits with N.H. Mother's attorney said

Mother was in the process of divorcing Father. Mother did not want a permanent restraining order against Father, and neither did Aunt. Mother's attorney said Mother would "deal with all of those issues in family law court." The Department agreed with Mother's request for unsupervised visitation in a public setting, even without a restraining order in place.

In an offer of proof, Father's attorney asserted Father temporarily stopped using medical marijuana when the instant dependency case began. Father abstained for two weeks, but he could not move and had to go to the hospital. Marijuana was the only thing that Father found to ease his pain. Father used the hash oil topically, for backrubs; Father claimed the hash oil instantly stopped the pain. Father began using medical marijuana again, due to the pain. Further, approximately 80 percent of the marijuana plants in the backyard were covered by netting, which was staked into the ground, thus making the plants inaccessible to N.H. As far as N.H. watering the plants, she was not watering the marijuana plants, she was watering the various vegetable plants. Father denied that he struck Mother when they were arguing over the laundry. Father explained he speaks loudly due to hearing problems, but he was not physically violent.

During argument, Father's attorney asserted Father is very loud, emotional, and sometimes does not listen, but he is not physically violent. Father's attorney opined that Father's behavior was the result of Father being in serious pain. Father's attorney said, "If you spend some time with [Father] and go over it a little bit, if you get past the yelling and the shouting, perhaps then you can hear that he is speaking from his heart; that he is not a bad person; that he is just trying to be understood." Additionally,

Father's attorney asserted Father was not charged with domestic violence, only child endangerment. The Department argued the marijuana plants were easily accessible to N.H., but otherwise submitted.

Father made a statement to the court. Father said, "Your Honor, I am so sorry that you took me as an angry person. I'm not. I'm disillusioned. I'm hurt. I'm a lot of things, but I'm not angry. I promise you that if you let me see my daughter, no ill will come of it. If you look at my actions throughout this case, they have always been to the benefit of my daughter. That's all I want to say. Please allow me to see my daughter."

Father explained he had not been able to visit N.H. due to the restraining order and not being allowed to go Aunt's house. The court explained visits often do not take place at the child's home. The juvenile court ordered Department-supervised visitation for Father once per week for two hours, and unsupervised visits for Mother. The court found true the allegations in the second amended petition, and adjudged N.H. a ward of the court. The juvenile court ordered N.H. continue to be placed outside of Mother's and Father's care.

In regard to marijuana, the juvenile court said, "As far as father's marijuana use is concerned, I'm not authorizing the father to use marijuana. Marijuana, along with other controlled substances, are prohibited at this point for any party that's involved in a case plan." Father responded, "It's bullshit. I'm done. You people keep the child. I'm done. Fuck all of you bastards."

The juvenile court said, "The record will reflect that the father has stormed out of both doors of the courtroom, called the Court a bastard, or at least somebody in this

room. That's where we are. [¶] So the point I was about to make with the dad is not necessarily that I thought he was an angry person—although his outburst just there would suggest otherwise—it's that I thought he is an individual that is unhinged and unbalanced. That is what gives me cause of concern related to the father. [¶] None of the parties at this point are requesting a restraining order, but I have serious concerns about that at this point.” The court said a deputy was examining the courtroom door to determine if Father “busted it when he knocked his way out of the courtroom.”

Mother said she would obtain a restraining order from family court. The juvenile court remarked that a temporary restraining order was in place, so it could issue a permanent restraining order. Father's attorney informed the court Mother and Aunt “are not asking for [a restraining order]. They are not afraid of him.” Mother responded, “I am.” Mother's attorney said Mother would like a restraining order.

Father's attorney argued Aunt should not be included on the restraining order, because she did not fear Father. The juvenile court stated it could include Aunt on the restraining order because she was N.H.'s caretaker, and it was reasonable to ensure N.H. had a safe home environment. The court asked what prejudice Father would suffer from including Aunt on the restraining order. Father's attorney asserted “[i]ssuing [a] restraining order is always prejudicial.”

The court took a recess and allowed minor's counsel and the Department to contact Aunt. Aunt stated she did not fear Father. However, the Department requested the court include Aunt in the restraining order, since she was N.H.'s caregiver. The juvenile court issued a restraining order against Father protecting Mother and N.H. The

order did not include Aunt. The juvenile court explained it was issuing the restraining order due to (1) a history of domestic violence, (2) Mother’s “lack of willpower” in keeping Father away from N.H., and (3) Father “absolutely blow[ing] up” every time he was in the judge’s courtroom.

The court then explained it had only begun discussing Father’s marijuana usage when Father had his outburst. The court said if Father could show a legitimate medical need for marijuana, verified by a legitimate doctor, then Father could potentially use medical marijuana. The juvenile court said Father’s medical marijuana card was not sufficient; Father would need his medical care provider to verify the pain issues and that marijuana was an appropriate option. The court explained that if Father offered such proof, then there would still be limitations placed on Father’s consumption of marijuana, such as not being allowed to use the drug while caring for N.H. At the end of the hearing, Mother asked for a deputy to escort her out of the court.

DISCUSSION

A. DOMESTIC VIOLENCE

Father asserts there is insufficient evidence of N.H. being at a substantial risk of serious physical harm due to Father’s alleged domestic violence. We disagree.

At a jurisdiction hearing, the petitioner must prove by a preponderance of the evidence that the child comes under the juvenile court’s jurisdiction. ““The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.” [Citation.]” (*In re Lana S.* (2012) 207 Cal.App.4th 94, 103.) ““Before courts and agencies can exert jurisdiction under

section 300, subdivision (b), there must be evidence indicating that the child is exposed to a substantial risk of serious physical harm or illness,” as a result of the parent’s failure or inability to adequately supervise or protect the child. [Citation.]” (*Ibid.*)

“‘[D]omestic violence 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.’ [Citation.] Children can be ‘put in a position of physical danger from [spousal] violence’ because, ‘for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg’ [Citation.] [¶] ‘Both common sense and expert opinion indicate spousal abuse is detrimental to children.’ [Citations.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.)

“A substantial evidence standard of review applies. [Citation.] We review the entire record to determine whether substantial evidence supports the court’s finding. We resolve all conflicts, and draw all reasonable inferences in support of the findings. [Citation.] ‘We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts. The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders.’ [Citation.]” (*In re Lana S., supra*, 207 Cal.App.4th at p. 103.)

The record reflects Father has (1) ripped pictures from the wall and smashed them to the ground, breaking them; (2) pushed Mother; and (3) struck Mother’s nose. The domestic violence in the home places N.H. at risk because she could inadvertently be struck by Father, Mother could fall on her after being pushed, or she could step on

the shards of an object that has been smashed. The violence in the home places N.H. at risk of being seriously hurt. Thus, we conclude the juvenile court's finding is supported by substantial evidence.

Father asserts the evidence does not show a substantial risk of harm to N.H. from the domestic violence because Father never harmed N.H., and N.H. was not present when Father struck Mother's nose. While N.H. has not been physically harmed by the violence in the home, Mother and Father have had verbal arguments while N.H. was in the home. N.H. told a Department social worker Mother and Father "yell at each other a lot." Father's strike to Mother's nose happened when they were arguing over laundry. Since the domestic violence grows out of verbal arguments, and Mother and Father engage in verbal arguments while N.H. is in the home, it is reasonable for the juvenile court to find N.H. is in danger while in the home with Mother and Father, because a domestic violence incident could result from a verbal argument. (See *In re E.B.*, *supra*, 184 Cal.App.4th at p. 576 ["[P]ast violent behavior in a relationship is "the best predictor of future violence.""]).) Thus, we find Father's argument to be unpersuasive.

Next, Father asserts the juvenile court improperly relied on Father's behavior in court as evidence that N.H. is at risk of harm. Father contends it is a "non-sequitur" to assume Father being discourteous to a judge means Father will abuse N.H. Contrary to Father's position, it was not Father's disrespect of the juvenile court that led the court to conclude Father posed a risk to N.H. Rather, it was the volatile nature of Father's mood swings. At one point, Father apologized for his prior discourteous remarks, said he was not an angry person, and he wanted to visit N.H. Shortly after that Father responded to

a court comment by saying, “It’s bullshit. I’m done. You people keep the child. I’m done. Fuck all of you bastards.” Father burst through the courtroom doors with enough force that a deputy had to check if the door was broken.

Father’s fairly rapid mood swings combined with his history of violent behavior reflected a risk to N.H. if placed in a home with Father. As the juvenile court explained, it was not the disrespect shown to the court that reflected a risk to N.H., rather, it was that Father’s behavior demonstrated he was “unhinged and unbalanced,” which presented a risk to N.H.

B. VISIT BEFORE SECOND DETENTION

Father asserts there is insufficient evidence of N.H. being at a substantial risk of serious physical harm due to Mother permitting Father to see N.H. prior to the second detention hearing. (§ 300, subd. (b).) We disagree.

Although the allegation about N.H. being at risk of harm due to Mother permitting Father to have access to N.H. was raised against Mother, Father asserts he has standing to address the finding on appeal because his interests are interwoven with Mother’s interests. (See *In re Desiree* (2010) 181 Cal.App.4th 329, 333 [discussing standing].) For the sake of judicial efficiency, we will assume Father has standing to raise this issue.

The substantial evidence standard is set forth *ante*, so we do not repeat it here. As explained *ante*, substantial evidence supports the juvenile court’s finding that Father posed a danger to N.H. because of his volatile mood swings, history of domestic violence, and history of verbally arguing with Mother when N.H. is present. At the first

detention hearing, on August 11, the Department asked Father not be in the family home if N.H. were returned to Mother's care. Mother told the court she had a temporary restraining order. The juvenile court explained to Mother, "Mom, if you allow dad to have access to the child, if you allow him into the home, you are going to end up putting the child at risk." Mother admitted that less than a month later, on September 7, she permitted Father to have dinner at the house and spend the night at the house. Father did not leave until the evening of September 8. When questioned about the incident, Mother said N.H. asked to see Father, and it is difficult to say "no" to N.H.

Mother's decision to dismiss the restraining order petition, after representing to the court that she had a restraining order, and also permitting Father to come to the house, reflect an inability to keep N.H. and Father apart. Father's violent tendencies and uncontrolled rage place N.H. at risk. Father has smashed pictures at home and flung open courtroom doors with enough force to possibly break a door. Putting N.H. in a home where objects might be flung about or Mother might be pushed or struck is a danger to N.H.'s health. N.H. could inadvertently be struck during a violent episode. Mother's inability to protect N.H. from such harm, by going so far as having Father spend an entire night and day at the home, demonstrates a serious risk to N.H.'s well-being. Thus, we conclude substantial evidence supports the juvenile court's finding.

Father asserts substantial evidence does not support the juvenile court's finding because the juvenile court did not order Mother to obtain a permanent restraining order, and therefore "Mother did not violate an express condition of the court in allowing [N.H.] to see her father." Contrary to Father's position, it was not Mother's violation of

a court order that placed N.H. at risk, it was Mother's inability to keep Father and N.H. apart regardless of a court order. Mother needed to provide N.H. with a safe home environment, which she did not do by permitting Father to spend a night and day in the residence.

C. CULTIVATION OF MARIJUANA

Father asserts there is insufficient evidence of N.H. being at a substantial risk of serious physical harm due to Father's cultivation of marijuana. We disagree.

The substantial evidence standard is set forth *ante*, so we do not repeat it here. The record reflects paraphernalia related to marijuana cultivation was located all around Mother's and Father's home: There were 74 marijuana plants in the backyard where N.H. played and watered plants; there was a storage shed in the backyard containing a marijuana drying table, chemicals, and a child's bicycle; a dehydrator for marijuana was in the living room; and in the garage there was a marijuana processing area, a bucket of hash oil, and children's clothing and toys.

Given that N.H.'s toys and clothing were mixed with marijuana cultivation paraphernalia throughout the property (in the backyard, storage shed and garage), there was a substantial risk of N.H. consuming either marijuana buds or hash oil. The drying tables and processing tools were only a few feet from the ground. The bucket of hash oil was on the ground. Given that N.H. not only appeared to have easy access to the marijuana cultivation areas, but that she played in those areas or at least stored her toys there, we conclude substantial evidence reflects Father's marijuana cultivation activities placed N.H. at a substantial risk of harm of consuming marijuana.

Father asserts there is not substantial evidence of a risk of harm, because there is nothing indicating Father or Mother were absent for prolonged periods of time, such that N.H. would be at risk of playing with the marijuana. We do not find Father's argument persuasive, because the record reflects 74 marijuana plants were growing in the backyard and only 80 percent of them were covered by netting. A child's playhouse was located in the backyard, along with various toys, and N.H. knew how to open the sliding door from the house to the backyard. Further, Mother said N.H. sometimes played in the backyard unsupervised. Given the foregoing evidence of N.H. playing in the backyard unsupervised with exposed marijuana plants, Father's argument about prolonged absences is unpersuasive because even when Father and Mother are home N.H. can access the marijuana plants.

Next, Father argues that if the marijuana cultivation evidence supports jurisdiction, it does not support removal, because the problems could be remedied by locks on the cabinets and limiting N.H.'s access to the plants. While Father may be correct about resolving the cultivation issues, the juvenile court would have still needed to order removal until (1) the domestic violence issues were resolved, and (2) the marijuana cultivation activities were in a child-proofed location. Thus, the removal order would have still needed to be issued.

D. MARIJUANA USE

Father asserts the juvenile court erred because the evidence concerning his marijuana usage being harmful to N.H. does not meet the substantial evidence standard. We disagree.

Marijuana use by itself will not support a finding of a risk to minors. However, if there are other issues connected to the marijuana use, such as secondhand smoke, there may be a risk to minors. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 452.) First, the record reflects Father smoked inside the house and outside the house. Father and other people smoked marijuana in the backyard while N.H. was in the backyard playing on the swing set. As a result, Father's marijuana use likely exposed N.H. to secondhand marijuana smoke.

Second, a bong was on the backyard patio table, and children's toys were on the same table. Additionally, marijuana and hash oil were stored in rooms throughout the house. For example, in the dining room, there were jars of marijuana and cups full of hash oil in an unlocked dining room cabinet, approximately four inches off the floor. The evidence reflects Father's marijuana use put N.H. at risk, because he stored his drugs and paraphernalia in areas easily accessible to N.H. Thus, creating a risk that N.H. would consume the drugs.

Father asserts the evidence is insufficient because there is nothing indicating the marijuana affected his parenting skills or judgment. Father points to the evidence wherein Mother said she does not permit Father to drive N.H. while he is under the influence of marijuana. Father argues there is nothing indicating the amount of marijuana he consumed or how long the intoxicating effects lasted. Father's argument is unpersuasive because even if the marijuana did not affect his judgment, he stored the marijuana and paraphernalia in areas that were accessible to N.H., thus creating a risk to the child's health; and he likely exposed N.H. to secondhand marijuana smoke.

E. IGNORING ELEMENTS

Father contends the juvenile court erred by applying the incorrect legal standard, because the court found N.H. was at risk of harm, but not physical harm. We disagree.

Section 300, subdivision (b), has three elements: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

After Father’s outburst during the jurisdiction/disposition hearing, the juvenile court discussed the restraining order as it was also discussing the jurisdiction and disposition orders. The juvenile court stated it found the allegations in the second amended petition to be true. The juvenile court further explained that it would issue a restraining order because “there is a history of domestic violence. The mother has, in the past, shown a lack of willpower in protecting the child from the father, and on top of that, every time dad is in my courtroom he has absolutely blown up, and I have great cause for concern.” The juvenile court’s comments reflect it understood N.H. had to be at substantial risk of physical harm in order to be a child described by section 300, subdivision (b). Since the juvenile court discussed the substantial risk of physical harm to N.H., we conclude the court applied the correct legal standard.

Father asserts the juvenile court applied the incorrect legal standard because N.H. was not exposed to the physical domestic violence. As set forth *ante*, there is substantial evidence of N.H. being at risk of harm due to the domestic violence in the

home. Thus, we are not persuaded the juvenile court applied an incorrect legal standard, especially in light of the juvenile court's comments detailed *ante*.

F. MISCONSTRUING THE ELEMENTS

Father asserts the juvenile court erred by misconstruing the elements of section 300, subdivision (b), in that the juvenile court based its jurisdiction and disposition findings on whether Father's marijuana use was illegal, rather than whether it exposed N.H. to a risk of harm. We disagree.

The juvenile court found true two allegations related to Father and marijuana:

(1) "The father neglects the health, safety, and well being of the child in that marijuana products in the family residence were easily accessible to the child"; and (2) "The father abuses controlled substances thereby limiting his ability to provide the child with adequate care and supervision, endangering the child's safety and well being, and creating a detrimental home environment."

The juvenile court's findings are not related to the illegality of the drug. Rather, the findings concern how Father's ownership of marijuana products and abuse of marijuana products negatively impact his ability to parent N.H. and provide a safe home for N.H. The foregoing findings are not concerned with the illegality of the drug, but rather how the drug has exposed N.H. to risk. Thus, we conclude the juvenile court applied the correct legal standard.

Father asserts the juvenile court was focused on the illegality of the marijuana because (1) the court put the burden on Father to show his marijuana usage was consistent with his medical needs, when the burden should have been on the

Department; and (2) the court's analysis concerned Father's medical need for the drug, which relates to legality. Father's argument is not persuasive because the discussion Father is referencing did not concern the court's findings related to harm. Rather, Father is referencing the discussion the court had concerning the ban on Father using controlled substances during the case plan.

After the court told Father he had to abstain from marijuana while working on the case plan, Father interrupted the proceedings with an angry outburst. Once the proceedings resumed, the juvenile court explained that it would modify the prohibition order if Father could provide evidence of legitimately needing marijuana for medical purposes. The juvenile court explained it could fashion an order permitting Father to use medical marijuana, while not using it in N.H.'s presence. Thus, the juvenile court was not placing a burden on Father related to the detriment findings, rather, it was placing a burden on Father to provide his medical information if he wanted the court to modify the prohibition on using medicinal marijuana. Further, the court's analysis related to the legality of Father's medical marijuana use did not concern the detriment finding, instead, it concerned instructions on how Father could seek to modify the court's prohibition on using medicinal marijuana. In sum, we find Father's argument to be unpersuasive.

G. MEDICAL MARIJUANA

Father contends the juvenile court erred by imposing a complete ban on Father's marijuana use during the pendency of the case plan, because Father should only be prevented from being intoxicated while in N.H.'s presence. We disagree.

Section 300.2 explains the purpose of that particular Welfare and Institutions Code chapter, and provides in relevant part: “The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.” (See also *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 452 [discussing section 300.2 and medical marijuana].)

The juvenile court needs to protect N.H. from a home where drugs are being abused. The juvenile court stated that it needed proof Father had a legitimate medical need for consuming marijuana before it could authorize Father to use marijuana. Thus, the juvenile court’s order was reasonable because it prevented Father from abusing marijuana, but would permit him to use it if he truly needed it for medical purposes. Accordingly, we conclude the juvenile court’s ban on Father’s medical marijuana use was appropriate, given that Father had not provided evidence of a legitimate medical need for marijuana.

Father asserts the prohibition on marijuana use is not reasonable because it does not protect N.H.—only an order stopping Father from being intoxicated around N.H. is needed. Father’s argument is not persuasive because in order to return N.H. to Father’s care the home needs to be free of substance abuse. (§ 300.2.) Therefore, it is logical to stop the abuse of controlled substances as part of the case plan. Without medical proof that Father has a medical use for marijuana, it appears Father is just abusing the drug. As a result, an order only preventing Father from being intoxicated around N.H. would not be sufficient.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.