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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re M.R., et al., Persons Coming Under the  
Juvenile Court Law.

TULARE COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

I.H.,

Defendant and Appellant.

F063788

(Super. Ct. No. JJV065628B,  
JJV065628C, JJV065628D,  
JJV065628E, JJV065628F,  
JJV065628G)

**OPINION**

APPEAL from orders of the Superior Court of Tulare County. Charlotte A. Wittig, Commissioner.

Hana B. Balfour, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen Bales-Lange, County Counsel, John A. Rozum and Jason Chu, Deputy County Counsel, for Plaintiff and Respondent.

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The juvenile court took dependency jurisdiction over six of I.H.'s (mother) children, her 11-year-old son Carlos R., 10-year-old daughter M.R., 9-year-old son W.M.,

7-year-old son R.H., 5-year-old son David H., and 3-year-old son Robert H. (collectively the children), based on allegations under Welfare and Institutions Code section 300, subdivisions (a), (b) and (g).<sup>1</sup> The juvenile court left the children in mother's custody and ordered family maintenance services. Mother appeals, contending the juvenile court erred in finding jurisdiction under subdivisions (a), (b) and (g), because those findings are not supported by substantial evidence. We disagree and affirm.

### **FACTUAL AND PROCEDURAL HISTORIES**

The children have different fathers. Carlos's alleged father is George A. and his presumed father is Rick M. M. and W. have the same father, Walter M. Rene H. is the father of the youngest three children, R., David and Robert. At the outset of these proceedings, mother was married to Rene and they lived together with the six children. Mother also has a 17-year-old son, Mark A., who lived with his grandparents. While Mark was originally a named dependent in these proceedings, allegations as to him were dismissed at the jurisdictional hearing.

On August 10, 2011,<sup>2</sup> the Tulare County Health and Human Services Agency (Agency) investigated a referral alleging Rene sexually abused M. Mother told the social worker that M.'s father, Walter, was doing this because he did not want mother to receive money for M. and W. The social worker did not detain any of the children because mother was willing to have Rene leave the home. M. and W. remained in Walter's care for the night.

This was not the first referral the Agency received regarding the family, as they had a history of 12 referrals for possible child abuse. A 1994 referral alleging physical abuse of Mark and mother's now adult son Daniel was closed as unfounded as the situation had stabilized. A 2001 referral that alleged Mark had a black eye caused by

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

<sup>2</sup> References to dates are to dates in 2011 unless otherwise noted.

mother punching him in the eye because he was not behaving was closed as inconclusive for Mark and unfounded for Daniel. Mother agreed to get counseling for the children. In June 2002, a referral which alleged physical abuse of Mark and Daniel was closed as unfounded and mother was referred to counseling for the children. In August 2002, a voluntary family maintenance case was opened after the Agency substantiated a referral alleging physical abuse of Mark, Daniel and Carlos based on marks and bruises on the children's buttocks, ribs and back of their legs. Walter was arrested for child abuse and the children were released to mother. Mother, however, refused services and the case was closed in November 2002. In January 2005, two referrals were received alleging M. was sexually abused by another minor and Daniel. The first was evaluated out and the second closed as unfounded for general neglect, as mother substantiated the abuse and was willing to protect M. Two referrals, received in 2005 and 2006, were duplicates of ones the Agency had already investigated. Four subsequent referrals were closed as unfounded.

Social workers met with mother on August 11. Mother said that none of the children, including M., had disclosed anything to make her think abuse was occurring. Mother had taken M. to the police in the past due to allegations of sexual abuse by Rene and Daniel, and if she thought something was going on, she would have taken M. to the police immediately. Mother did not think Rene did anything to M., but she was not sure. When asked how she disciplined the children, mother said she would yell at them and sometimes spank them on the buttocks with her hand. Mother had not allowed Rene back into the home and signed a safety plan in which she agreed not to allow him to have contact with the children pending the investigation.

Social workers interviewed Walter, who said his cousin told him about the sexual abuse and M. later confirmed the abuse. M. told the social worker Rene made her feel uncomfortable, and while she told mother twice before that she had been abused, mother did not believe her. M. said she would feel safe going back home if Rene was not there

and she could lock her room. M. later disclosed that mother had hit her in the past; in one incident, when she and David were arguing, mother slapped her on the face, grabbed her by her hair, hit her with a sandal and threw her against the wall, giving her a black eye. M. said mother hits W. the most.

Social workers interviewed the other children. W. said that mother and Rene spanked him with a belt on his buttocks when he misbehaved, and mother had slapped him on the face with her hand and hit him on his arm with a belt, leaving scratches on his arm. The last incident occurred three weeks before. W. said that M. had seen mother slap him on the face and hit him with a belt. R. told the social worker Rene has hit him with a belt on his head, and mother hits him with a belt on his buttocks. R., however, liked mother and felt safe with her. Carlos told the social worker that mother had spanked him with a belt and slapped him on the face with her hand when he was suspended from school. Carlos, however, felt safe with mother. Carlos said that Mark moved in with his grandparents because he did not like Rene. Mark, however, claimed he got along with Rene, was living with his grandparents due to school, and he felt safe with mother. David disclosed that mother hits him on his hand and buttocks with a belt, however, he felt safe in the home with his parents.

At an August 12 detention staffing, mother agreed to move in with her parents so they could help monitor the situation. A decision was made to return the children, who were placed into protective custody the day before, to mother and proceed to court ordered services, and to detain Rene's children, R., David and Robert, from him due to the allegations of sexual abuse.

On August 15, a social worker attended a "CART" interview for the children and Mark. M. said she lied about being sexually abused by Rene. She claimed Walter made her lie so he could get more visits. M. said that her paternal step-grandfather had molested her in the past. Both M. and W. said Walter made them lie about being physically disciplined by mother. None of the other children disclosed sexual abuse by

Rene or further physical abuse by mother. The Agency filed a dependency petition that day, alleging the children came within the provisions of section 300, subdivisions (a) (serious physical harm), (b) (failure to protect) and (g) (no provision for support).

Two days later, the social worker received an immediate referral alleging that W. was abused physically. W. had a small cut on his left ear lobe that was fairly red and pink. He told the social worker that when he was visiting Walter on August 13, Walter pulled his ear because he was sliding on the kitchen tile. When W. refused to stop, Walter pushed his head against the door, pulled on his hair, and pulled “hard” on his ear twice, which hurt and caused him to cry a little. Mother took W. to the doctor, who confirmed the injury resulted from someone pulling on his ear.

In a later interview, M. said she saw Walter pull W.’s ear and yank it hard, and that the ear was bleeding and W. was crying. She also saw Walter push W.’s head against the wall. M. did not feel safe around Walter and preferred to be with mother. W. told a social worker that Walter had punched him and hit him with a belt in the past, leaving marks and bruises, and he told mother about this, but she did not do anything at the time. Walter admitted pulling W.’s ear, but claimed he only did so once and he did not see any marks or bruises on W. Walter claimed mother used this form of discipline on the children when they did not listen to her. Walter admitted needing help with the kids.

On August 19, mother reported to a social worker that Rene got into an argument and physical altercation with her, during which Rene hit her several times and destroyed everything in the home. Mother said the children were all present when this happened. The sheriff was called out and arrested Rene. The social worker who came to mother’s home observed marks on mother’s face, slashes in the couches, a few holes in bedroom walls, and some damaged household items left in the garage. M. said that Rene destroyed things in the home. The children confirmed that Rene destroyed some furniture and got into a physical altercation with mother. Mother said none of the children were hurt

during the incident. R. and David got some of the items Rene destroyed and showed them to the social worker. The social worker confirmed that Rene was in jail and had been charged with cutting a utility line and battery.

Nearly a week later, the social worker spoke with M. about this incident. M. said she was outside with her siblings when everything happened, that she did not see anything and no one got hurt. After Rene was arrested, “they” went inside the home and saw the ripped couches and furniture that was destroyed. The social worker also spoke with mother about the incident. Mother said Rene was at the house when she returned there from picking up the children at school. She was speaking with Rene inside their bedroom when he became violent toward her. Mother ran out to the living room and told the children to go outside the house. Mother admitted Rene had been abusive to her behind closed doors in the past.

The social worker spoke with the children regarding the incident between mother and Rene. Carlos stated they came back from school and realized Rene was at the home. Rene was breaking everything because he was angry with mother. Carlos did not see Rene hit mother and said he and his siblings were mainly outside the home, while mother and Rene were inside. Eventually mother called the cops, who came and took Rene into custody, and Rene cut the telephone line once he realized mother was calling the cops. Carlos said that in the past, mother and Rene had been physical with each other during arguments, and Rene had punched mother before. While W. did not see anything because he was not there the day of the incident, he did say that in the past mother and Walter argued and fought with each other. He recounted a time when mother and Rene argued and fought with each other, and that “she won at that time” because she got physical with Rene as well. W. feels scared and sad when mother and Rene yell at each other.

The social worker met with mother to discuss her case plan. Mother denied needing services and Agency intervention, and did not sign the case plan. Mother had

enrolled M. into counseling, but she believed everyone else was doing fine, she wanted to put everything behind them, and she was too busy to complete services. The social worker reported that mother appeared to think all of the concerns were due to Walter and Rene, and not her. When the social worker told mother the other children disclosed abuse and inappropriate discipline by her, mother said she spoke with the children and they told her they never said that. The next day, mother told the social worker she believed W. also needed counseling, and that she might get individual counseling for herself. Mother had also spoken with a family resource center about parenting.

On September 7, the Agency filed a third amended petition (petition), which became the operative petition, alleging the children came within the provisions of section 300, subdivisions (a), (b) and (g).<sup>3</sup> The petition contained six separate allegations under subdivision (a) pertaining to mother's physical abuse of five of the children which placed the youngest child, Robert, at risk, Rene's physical abuse of R. and David which placed Robert at risk, and Walter's physical abuse of W. which placed M. at risk. There were eight separate allegations under subdivision (b) pertaining to (1) mother's failure to protect R. and David from Rene's physical abuse which placed Robert at risk, (2) Rene's failure to protect R. and David from mother's physical abuse, which placed Robert at risk, (3) Rene's and mother's failure to protect R., David and Robert from domestic violence, and (4) mother's failure to protect W. from Walter's physical abuse which placed M. at risk. With respect to subdivision (g), as pertinent here, the petition alleged Rene had left his three children without provision for support.

A social worker spoke with Rene on September 13. Rene denied using physical punishment on his children. When asked about the incident with mother, Rene said he was in the home for two to three days before mother came. He asked mother what was

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<sup>3</sup> The Agency previously filed an amended petition and a second amended petition.

going on, but mother refused to answer and was packing some of her clothes. He denied destroying anything in the home, except for a drawer in his bedroom, and denied cutting the phone line or hitting mother. After this conversation, the Agency tried, but was unable, to contact Rene. Mother told the social worker on October 25 that she spoke with Rene on the telephone and told him about the situation; Rene had not made any effort to show he wanted to be present in court and involved in the situation; and Rene had not given her any information about his whereabouts.

On October 31, a social worker contacted M.'s therapist, Margarita Borrego, who said she did not have much information as she had seen M. only four times. M. did tell Borrego that Walter made her lie about the sexual abuse allegation against her paternal step-grandfather and about mother hitting them. M. did not mention anything else about physical abuse and was not very specific about anything. Borrego believed mother and M. could improve their communication skills and mother could benefit from parenting classes.

A contested jurisdictional hearing on the petition was held on November 1. The court granted the Agency's request to dismiss three of the petition's allegations under section 300, subdivision (a), regarding Rene's physical abuse of his children and mother's conduct placing Mark and Robert at risk, and six of the allegations under section 300, subdivision (b), regarding mother's and Rene's failure to protect from each other's physical abuse of the children, and mother's failure to protect W. and M. from Walter's physical abuse. The Agency submitted on the social worker's reports and the court granted the Agency's request to take judicial notice of the case file.

Mother testified on her own behalf. She denied hitting Carlos, R., David, M. and W. with a belt, hitting them on the arms and hands, or slapping them in the face or on any other part of their bodies. Mother testified she never struck any of the children. Mother also denied flinging M. against the wall and giving her a black eye, or grabbing her hair. Mother was unaware that M. had accused her of doing those things until August 16, when

the children were removed from her. Mother denied ever pulling W.'s hair or throwing him against the wall. The Agency had been called approximately five times in the past 15 years to question the children about abuse accusations. No criminal action was ever taken against mother as a result of these investigations. Mother claimed she disciplined Carlos and W. by taking their toys away, such as hiding the cords to their video games, or not allowing them to play sports. She disciplined R. just by looking at him; she had no problems with him and he obeyed her when she said no.

Mother married Rene on January 30, 2004. She had never seen Rene use physical force when disciplining Carlos, M., W., R. or David. She claimed that Rene never disciplined his children, R., David or Robert, because they were too little, and he disciplined the older kids appropriately by taking their cords away or not letting them go to their friend's parties. None of the children had complained to her that Rene used physical force on them and she had never seen any injuries on the children that would indicate physical force had been used on them. When mother was told the children said Rene physically abused them, mother did not think of anything that might have happened in the past to substantiate the children's claims.

Mother separated from Rene after the August incident and filed for divorce. Mother said that Rene had struck her or "been physical" towards her during their marriage, but never in the children's presence. Mother claimed they were not frequently "physical" towards each other. Although the children did not see the physical abuse because she and Rene were in their room, mother admitted the children could hear them arguing in an aggressive or violent tone. Mother also admitted she and Rene argued in the children's presence, but claimed the arguments never resulted in pushing, shoving or striking each other. Mother testified on cross-examination that she and Rene argued in their room at night or when the children were gone, that "he doesn't abuse me, we argue," and the children did not see them because the door was closed. Mother denied that the arguments at night involved yelling back and forth, stating the arguments were

about “[w]hat did you waste the money on, typical marriage, you know.” The children never witnessed the arguments because they were either asleep or “we are in our room.”

When mother was asked if she did anything to prevent the children from hearing or being affected by an argument, mother responded, “We would stay in our room until we were both – and we would come out, the kids.” The children never commented to her about hearing their arguments and she never noticed any effect their arguments had on the children. The children’s teachers never complained to her about the children having problems at school or having marks or bruises, although W.’s teachers did notice he was distant from his classmates after the August incident.

Rene had been out of the home since his arrest following the August incident. Mother said she was responsible for his arrest and the children did not see the violence. On cross-examination, mother said that when she saw Rene was home and saw the ripped couches, she told the children to go to the neighbor’s house, which they did. She knew there would be an argument due to the children’s removal and because Rene was accused of sexually abusing M., who she believed over Rene. Mother said the children were present with her when she went up to the house, but when she opened the door and saw the ripped couches and broken glass, she told the children to go next door. The children were at the neighbor’s house until mother went back for them when she called the sheriff.

The juvenile court accepted Walter’s waiver of rights and submission on the basis of the Agency’s reports. After argument of counsel, the juvenile court took the matter under submission. At a hearing three days later, the juvenile court orally announced its decision. The juvenile court found the following allegations true under section 300, subdivision (a): (1) a-1: Mother’s physical abuse of Carlos, M., W., R. and David placed them at substantial risk of suffering serious physical harm, as mother hit them with the belt, hit their arms and hands, and slapped them in the face and on other places on their bodies, and her conduct endangers them and places their physical and emotional health and safety at risk of harm and damage; (2) a-5: Walter’s inappropriate corporal

punishment of W. placed him at substantial risk of suffering serious physical harm as on August 13, Walter used inappropriate corporal punishment against W. and his conduct endangers W. and places his physical and emotional health and safety at risk of harm and damage; and (3) a-6: Walter's conduct toward W. placed M. at substantial risk of suffering serious physical harm.

With respect to the section 300, subdivision (b) allegations, the juvenile court found true the following allegations: (1) b-5: Rene's failure or inability to adequately protect R., David and Robert from domestic violence placed them at substantial risk of suffering serious physical harm or illness based on the August incident in which Rene engaged in a physical altercation with mother, punched her and left marks on her face, slashed the couch, punched holes in the walls of the bedrooms, destroyed some furniture and damaged household items, which conduct endangered the children and placed their physical and emotional health and safety at risk of harm and damage and created a detrimental home environment; and (2) b-6: mother's failure or inability to adequately protect all of the children from Rene's domestic violence placed them at substantial risk of suffering serious physical harm or illness based on the August incident, mother knew or reasonably should have known of the domestic violence and failed to protect, and mother's conduct endangered the children and placed their physical and emotional health and safety at risk of harm and damage and created a detrimental home environment.

Finally, the juvenile court found true an allegation under subdivision (g) that R., David and Robert had been left without provision for support, as the whereabouts of their father, Rene, were unknown and reasonable efforts to locate him had been unsuccessful. The court found all of the children were described by section 300, subdivisions (a) and (b), and R., David and Robert were also described by subdivision (g).

The juvenile court proceeded to disposition. The parties did not present additional evidence. The court adjudged the children dependents and ordered family maintenance services for mother. Her case plan included: (1) a prohibition against using corporal

punishment; (2) completion of a domestic violence assessment and order to follow any recommended treatment; and (3) parenting at the Agency's discretion. The juvenile court ordered reunification services for Walter and Rene, and removed M. and W. from Walter's custody, giving Walter visitation, and R., David and Robert from Rene's custody.

### **DISCUSSION**

Mother challenges most, but not all, of the juvenile court's jurisdictional findings. She asserts there is insufficient evidence to support the following findings: (1) a-1: that her physical abuse of Carlos, M., W., R. and David placed them at substantial risk of suffering serious physical harm (§ 300, subd. (a)); (2) b-6: her failure or inability to adequately protect the children from Rene's domestic violence places the children at substantial risk of suffering serious physical harm or illness (§ 300, subd. (b)); and (3) g-1: R., David and Robert had been left without provision for support, as their father Rene's whereabouts were unknown and reasonable efforts to locate him were unsuccessful (§ 300, subd. (g)).

Mother does not challenge the following allegations the juvenile court also found true: (1) a-5 and a-6, which pertain to Walter's inappropriate corporal punishment of W. that placed both him and M. at substantial risk of suffering serious physical harm (§ 300, subd. (a)); and (2) b-5, regarding Rene's failure or inability to adequately protect R., David and Robert from domestic violence which placed them at substantial risk of suffering serious physical harm or illness. The Agency contends we should decline to review the jurisdictional grounds mother challenges because these additional grounds for jurisdiction exist. We will address her contentions, however, at least with respect to the jurisdictional findings under subdivisions (a) and (b), for the simple reason that not all of the children are covered under every allegation. For example, since Carlos is not included in the a-5 and a-6, or b-5, findings, we are required to review mother's challenges to the other grounds for jurisdiction to determine whether the juvenile court

had jurisdiction over him. Since we undertake that review for Carlos, we do so for all of the children encompassed within the allegations she challenges.

### *Standard of Review*

Section 300 and its subdivisions describe those minor children over whom the juvenile court may exercise its dependency jurisdiction. The juvenile court's jurisdictional finding that a child falls within one of these statutory descriptions must be supported by a preponderance of the evidence. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248; § 355, subd. (a).)

On review, we determine whether the juvenile court's jurisdictional finding is supported by substantial evidence. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.) In so doing, we "must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) Under this standard, the juvenile court, not this court, assesses the credibility of witnesses, resolves conflicts in the evidence, and determines where the weight of the evidence lies. (*Id.* at pp. 52-53.) "We affirm the rulings of the juvenile court if there is reasonable, credible evidence of solid value to support them." (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1319.) "We cannot reweigh the evidence or substitute our judgment for that of the trial court." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 918.)

### *The Section 300, Subdivision (a) Finding*

A child is described by section 300, subdivision (a), if the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent. ... For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm."

“Serious physical harm” under subdivision (a) of section 300 does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury. (§ 300, subd. (a).)

In this case, the juvenile court found that Carlos, M., W., R. and David were at substantial risk of suffering serious physical harm as a result of mother’s inappropriate discipline. That discipline included mother spanking them with a belt on the buttocks, slapping them on the face with her hand, and hitting them on the hand and arm with a belt. While mother correctly points out there is no evidence that the use of such discipline actually caused any of the children serious physical harm, the juvenile court reasonably could conclude from the evidence that there was a substantial risk the children would suffer serious physical harm in the future.

As stated above, a substantial risk of serious future injury may be shown based on the manner in which a less serious injury was inflicted or any other parental actions that indicate the child is at risk of serious physical harm. (§ 300, subd. (a).) Here, mother disciplined the children by hitting them with a belt, not only on the buttocks, but also on the hand and arm. In addition, mother slapped the children in the face. Even if serious injury did not result from the discipline mother employed, her methods create a strong possibility of greater harm in the future. While mother claims the punishment was not severe, it certainly was excessive. The punishment, along with mother’s continuing to expose the children to domestic violence, reveals lapses of judgment that place the children at risk of serious future harm. The juvenile court reasonably could find based on the evidence of that violence that mother had problems with anger and difficulty controlling it. Mother, however, denied having a problem or needing help. The juvenile court could find by a preponderance of the evidence that the children were at risk of escalating violence, which would place them at risk of serious physical harm if mother’s anger issues were not addressed.

Mother asserts the risk of future physical harm could not be too serious because the children were not removed from her custody. The standards for making a jurisdictional finding and for removing a child from parental custody, however, are different. To remove a child from a parent's physical custody, the court must find by clear and convincing evidence there is a substantial danger or risk of danger to the child's physical or emotional well-being if the child is returned home and there are no reasonable means to protect the child without removing him or her. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Jurisdictional findings, however, only require a preponderance of the evidence. (§ 355, subd. (a).) Since the standard is greater for removal than for jurisdiction, the juvenile court reasonably could conclude, based on the preponderance of the evidence, that the children were at substantial risk of suffering serious physical harm, but there was not clear and convincing evidence of a substantial risk of danger if the children remained in mother's care while she received family maintenance services.

Because of the substantial risk of physical harm reflected by mother's actions, substantial evidence supports the trial court's finding that Carlos, M., W., R. and David come within section 300, subdivision (a).

#### *The Subdivision (b) Findings*

Section 300, subdivision (b) provides, in pertinent part, that a child comes within the jurisdiction of the juvenile court if: "The 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 or guardian to adequately supervise or protect the child ...." The statutory definition consists of three elements: (1) neglectful conduct by the parent of one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the child, or a "substantial risk" of such harm or illness. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820 (*Rocco M.*); *In re Ricardo L.* (2003) 109 Cal.App.4th 552, 566-569 (*Ricardo L.*)) "[A]ny matter or information relevant and material to the circumstances

or acts which are alleged to bring him or her within the jurisdiction of the juvenile court is admissible and may be received in evidence” at the jurisdictional hearing. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 198.) “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.” (*Rocco M.*, *supra*, at p. 824, italics omitted.) “Thus previous acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur.” (*Ricardo L.*, *supra*, at p. 565.)

The juvenile court found that mother placed the children at substantial risk of suffering serious physical harm or illness by her failure or inability to adequately protect them from Rene’s domestic violence. Mother asserts the evidence showed she took appropriate steps to protect the children from domestic violence by ending her relationship with Rene, ensuring the children left the premises during the August incident and contacting law enforcement to have Rene arrested. She further asserts there was no evidence that the children were at risk of serious *physical* harm due to domestic violence, as none of the children sustained physical injuries during the August incident, and no risk of them suffering serious physical harm in the future, as there was no evidence she would resume her relationship with Rene. Mother reasons that substantial evidence does not support the juvenile court’s finding that, at the time of the hearing, there was a substantial risk the children would suffer serious physical harm in the future as a result of domestic violence between herself and Rene.

We disagree. There was evidence that mother and Rene engaged in domestic violence throughout their seven-year marriage. Carlos and W. both reported that mother and Rene fought with each other. W. stated that during one argument mother “won” when she “got physical” with Rene, and Carlos knew that mother and Rene had been physical with each other during arguments and that Rene had punched mother. The arguments scared and saddened W. Mother herself admitted while testifying that she and

Rene argued, and that Rene had struck her in the past. Although mother acknowledged that the children could hear their aggressive and violent tones during arguments, she claimed physical abuse between herself and Rene did not occur in front of the children and the children did not see the abuse.

The history of domestic violence culminated in the August incident, in which Rene struck mother and ransacked the house. When mother first reported the incident to the social worker, she stated the children were all present when Rene got into a physical altercation with her, during which Rene hit her several times and destroyed everything in the home. The children confirmed that Rene destroyed furniture and got into a physical altercation with mother, and R. and David even went and got some of the items Rene destroyed to show them to the social worker. From this evidence, the juvenile court could conclude that the children were present during the violence and actually witnessed the attack.<sup>4</sup>

Exposing children to recurring domestic violence is sufficient to establish jurisdiction under section 300, subdivision (b), because of the possibility of accidental physical injury. (*Heather A.*, *supra*, 52 Cal.App.4th at pp. 193-194 [evidence of continuing violence between the father and stepmother in the home where at least one incident occurred in front of father's three-year-old twin daughters sufficient to sustain

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<sup>4</sup> The children and mother later changed their stories about the children's whereabouts: (1) on August 25, M. said she was outside the house with her siblings during the entire incident and did not see what happened; (2) on that same date, mother said she and Rene were speaking inside their bedroom when he became violent and she ran out to the living room and told the children to go outside; (3) on September 1, Carlos said that he did not see Rene hit mother and he and his siblings were mainly outside the house, although they could hear the two cursing and arguing inside the house; and (4) at trial, mother claimed that when she saw the ripped couches and broken glass, she sent the children to the neighbor's house. While this evidence created a conflict, the juvenile court was not required to accept the evidence or believe mother's testimony, as issues of credibility are for the juvenile court to resolve. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 (*Heather A.*).

section 300, subdivision (b) finding because the children were put in a position of physical danger from this violence, since they could wander into the room where it was occurring and be accidentally hit by a thrown object, or by a fist, arm, foot or leg, or by a parent falling against them].) As the court stated in *Heather A.*, “domestic violence in the same household where children are living *is* neglect; it is a failure to protect [children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” (*Heather A.*, *supra* at p. 194; see also *In re Basilio T.* (1992) 4 Cal.App.4th 155, 169 (*Basilio T.*).

Based on the above evidence, the juvenile court reasonably could conclude the domestic violence between mother and Rene placed the children at risk of serious physical harm because the violence occurred in front of them, the children might wander into a room during a violent incident, or that mother might be injured in a violent incident and thereby rendered unable to supervise or care for the children adequately.

Mother argues that because she separated from Rene, filed for divorce, and had him arrested following the August incident, she adequately protected the children from future domestic violence and there was no reason to think the children would continue to be at risk. The harm to the children, however, does not rest solely in her relationship with Rene; instead it rests in her propensity for violent romantic relationships. Besides her violent relationship with Rene, W. reported that his parents argued and fought with each other. Although mother acknowledged domestic violence existed in her relationship with Rene, she was either unwilling or unable to recognize that she had a problem that needed to be addressed. Significantly, mother failed to recognize the harm the domestic violence inflicted on the children. As long as mother refused to acknowledge the problem and get treatment, or otherwise demonstrate a change, the risk of future harm from domestic violence remains.

Given the deference we must accord a juvenile court’s factual findings, the court reasonably could infer from the evidence that because mother had a tendency to become

involved in relationships with persons who are abusive to her and the children, and because she had yet to address the issue fully through counseling, the children were at substantial risk of suffering physical harm due to domestic violence.

Mother asserts such a conclusion rests on pure speculation that she will permit domestic violence to occur in the future. This case is not like *In re Savannah M.* (2005) 131 Cal.App.4th 1387 (*Savannah M.*), on which mother relies, in which the appellate court concluded substantial evidence did not support a finding that two minors were at substantial risk of future harm where the minor's parents made an immediate report when they found a family friend molesting their daughter and the mother confirmed she would never again trust that friend or anyone else to care for the children. (*Savannah M.*, *supra*, 131 Cal.App.4th at p. 1397.) In contrast here, mother has a proven history of being subject to domestic violence, yet did nothing to protect herself or the children until the Agency intervened. That she finally took action is to be commended. Nevertheless, mother denied her role in the violence or that she needed help. The juvenile court reasonably could conclude, based on this history, that without the benefit of intensive counseling and training mother would have difficulty protecting the children from domestic violence in the future.

The other cases mother relies on do not compel a different result. In *In re Steve W.* (1990) 217 Cal.App.3d 10, 13, 16, the court considered the propriety not of a jurisdictional finding, but a dispositional order. *In re Alysha S.* (1996) 51 Cal.App.4th 393, involved a petition for neglect filed one year after a father allegedly touched his daughter inappropriately, which the court found inadequate on a failure to protect theory, as it did not allege that anything happened in the year since the alleged touching or any facts to indicate how the father failed to protect. (*Alysha S.*, *supra*, 51 Cal.App.4th at p. 396.) In contrast here, the evidence established that incidents of domestic violence occurred up to filing of the petition and were likely to continue absent Agency and court intervention.

The ultimate test is whether it is reasonable for the juvenile court to make the ruling in question in light of the whole record. (*Savannah M.*, *supra* 131 Cal.App.4th at pp. 1393-1394.) Even if the evidence is not overwhelming, given the deference that must be accorded to a juvenile court's factual findings, there was substantial evidence to support the jurisdictional finding of a substantial risk of serious harm pursuant to section 300, subdivision (b). (*Basilio T.*, *supra*, 4 Cal.App.4th at p. 169.)

Mother also challenges the juvenile court's determination as to section 300, subdivision (g). Since the juvenile court needed only one basis upon which to find the petition true, this court need find only substantial evidence to support a determination under one, rather than all, of the subdivisions of section 300 that the juvenile court found applicable. Because we have concluded that the juvenile court properly assumed jurisdiction over the children pursuant to section 300, subdivisions (a) and (b), we need not address contentions pertaining to section 300, subdivision (g).

**DISPOSITION**

The juvenile court's orders are affirmed.

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Gomes, J.

WE CONCUR:

\_\_\_\_\_  
Cornell, Acting P.J.

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Franson, J.