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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re JACK W., a Person Coming Under the  
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.J.,

Defendant and Appellant.

F068478

(Super. Ct. No. 516785)

**OPINION**

**THE COURT\***

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q.  
Ameral, Judge.

Monica Vogelmann, under appointment by the Court of Appeal, for Defendant  
and Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County  
Counsel, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Gomes, J. and Kane, J.

Appellant, C.J. (mother), appeals from the juvenile court's jurisdictional finding under Welfare and Institutions Code section 300<sup>1</sup> as to her 14-year-old son Jack and its dispositional order removing him from her custody. She contends the juvenile court's jurisdictional finding and dispositional order are not supported by substantial evidence. She also contends substantial evidence does not support the juvenile court's finding of good cause to deviate from the placement preferences under the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) We affirm.

### **PROCEDURAL AND FACTUAL SUMMARY**

Jack's family consists of his mother and father, Mark, who has a long criminal history involving substance abuse and domestic violence. Jack has Down Syndrome and leukemia, which, at the time of these proceedings, was in remission. In addition, Jack is a member of the Choctaw Nation of Oklahoma through Mark.

Mother and Mark have a history of domestic violence. In 2012, mother was admitted to the hospital because Mark assaulted her the night before. Mother tested positive for methamphetamine at the hospital, where she remained for two weeks. Jack stayed with her while she was in the hospital. As a result of that incident, mother was offered voluntary family maintenance services from February to September 2012. However, her case was closed after she failed to take advantage of the services.

These dependency proceedings were initiated in September 2013, when the Stanislaus Community Services Agency (agency) received a report that mother and Mark were being arrested at mother's home, leaving Jack with no one to care for him. At the time, Mark was on active probation for corporal injury and being in possession of a firearm. He was also subject to a stay-away order prohibiting him from having any contact with the mother or being within 100 yards of her.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Probation officers told the emergency response social worker that mother was being arrested for resisting and obstructing. She had allowed Mark into her home, despite the stay-away order, and refused to let the officers into her home to search for him. He was found hiding in mother's master bedroom.

The officers also told the social worker that mother and Mark had a volatile relationship and she "cover[ed]" for him and refused to cooperate with probation officers until Mark became violent with her. They said domestic violence had been ongoing for approximately three years and the police had responded to a verbal altercation at mother's home three days before.

The social worker and probation officer found over 25 empty "Four Loko" malt beverage bottles in mother's home. Mother said she had been drinking that morning but that the empty alcohol bottles were also left over from a party she had the previous weekend. The social worker tested mother and she tested negative for illicit substances. Mother also said she and Mark were not a couple and denied there was any recent domestic violence between them. She said Mark had been in her home one night and two days and she allowed him in her home to visit Jack. She said she knew about the stay-away order but did not realize she was breaking the law because the police had been at her home three days before and did not say anything about Mark being there.

Mother also told the social worker she had a stroke when she was 24 years old and had undergone four brain surgeries. As a result, she was paralyzed on her left side. The social worker attempted to discuss the allegations of domestic violence and alcohol abuse with mother but she deflected and minimized any concerns.

Mark told the social worker he and mother had been together for 14 years and he was on probation for throwing a hamburger at her face in 2010. He said they had been drinking on the morning of the detention and by 10:30 a.m. he had consumed four bottles of Four Loko.

The social worker discovered, in talking to one of the officers, that mother refused the police entry into her home to look for Mark in April 2013. Mark was found in the master bedroom and Jack was present. As a result of this incident, Mark was required to wear an ankle monitor and the stay-away order was issued.

The social worker also discovered the police responded to mother's house in May 2013 because of a verbal altercation, in June because mother was threatening to shoot Mark in the face, and in July because Mark overdosed on heroin.

The social worker took Jack into protective custody and filed a dependency petition on his behalf alleging under section 300, subdivision (b) (failure to protect) that mother and Mark's domestic violence placed Jack at a substantial risk of harm. The petition also alleged under section 300, subdivision (g) (no provision for support) that Mark was incarcerated and unable to provide care and support for Jack. The agency placed Jack in a group home.

The juvenile court ordered Jack detained and set a contested jurisdictional/dispositional (combined) hearing, which was ultimately conducted in November 2013. The agency sent the required ICWA notices.

Meanwhile, Jack's maternal grandmother, Judy, submitted a placement application, but because someone in her household had a criminal history, the agency could not immediately place Jack with her. The placement specialist identified nine paternal relatives and one maternal relative and sent them placement letters. In October 2013, the placement specialist obtained an exemption for Judy and Jack was placed in Judy's home. However, the agency had to remove him after four days because the agency could not get an exemption for the other member of Judy's household. The agency placed Jack back in the same group home.

In its report for the combined hearing, the agency recommended the juvenile court declare Jack a dependent child, offer mother reunification services and deny Mark reunification services because of the anticipated duration of his incarceration. According

to Mark's probation officer, he was facing eight violation counts and four years in jail. In addition, he continued to contact mother by telephone from jail. They discussed arrangements to meet each other and simulated sexual activities with one another over the telephone.

Prior to the hearing, the ICWA expert filed a declaration stating his understanding that Jack was placed in the home of his maternal grandmother, which met the first placement requirement under the ICWA. Also before the hearing, the Choctaw Nation of Oklahoma filed its notice of intervention.

In November 2013, the juvenile court convened the combined hearing and accepted the Choctaw Nation's intervention. County counsel informed the court that Mark would likely be released from custody within six months and the agency wanted to change its recommendation and offer him reunification services.

Mother testified and denied covering for Mark. She acknowledged being admitted to the hospital in February 2012, but did not remember why. She said she was only in the hospital a few hours. She admitted Mark was in her home the following July, but said Jack let Mark in the house and she allowed him to stay to light fireworks for Jack. Mother also denied hiding Mark in her house and said she would not let the officers in because they did not have a warrant. She denied having any relationship with Mark and did not remember having sexual telephone conversations with him.

Mother denied having a drug or alcohol problem and said only three of the beer bottles found in her home were hers. She also denied drinking any beer the morning she was arrested claiming she only had a few sips. She said she participated in substance abuse treatment in March 2012, but was discharged from the program for too many absences related to her health problems. She did not believe she needed substance abuse treatment but would participate in it if necessary to regain custody of Jack. She did believe, however, that she needed domestic violence counseling.

At the conclusion of the hearing, the juvenile court adjudged Jack a dependent child under section 300, subdivisions (b) and (g), ordered him removed from mother and Mark's custody and ordered them to participate in reunification services. County counsel advised the court that Jack was in a group home and asked the court to find good cause for deviating from the ICWA placement preference. County counsel further advised the court that the Choctaw Nation was aware Jack was in the group home and that the agency was helping Judy secure independent housing so she could take custody of Jack.

The juvenile court found good cause to deviate from the placement preference under ICWA because the agency was working with Judy to obtain placement of Jack and there did not appear to be a more appropriate placement for him in the meantime given his special needs. The court set a hearing in January 2014 to review Jack's placement and a six-month review hearing in May 2014. This appeal ensued.

## **DISCUSSION**

### ***I. Jurisdictional Finding***

Mother contends the evidence is insufficient to support the juvenile court's jurisdictional finding under section 300, subdivision (b). She does not admit engaging in domestic violence but argues, even if she did, there was no evidence Jack was physically or emotionally harmed by it. Mother does not, however, challenge the validity of the juvenile court's jurisdictional finding under subdivision (g) based on Mark's incarceration.

The focus of dependency proceedings is on the protection of minor children. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492 (*I.A.*) .) To acquire jurisdiction over a child, a juvenile court need only "find that one parent's conduct has created circumstances triggering section 300." (*Ibid.*) "[I]t is commonly said that a jurisdictional finding involving one parent is "good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minor] within one of the statutory definitions of a dependent.'" [Citation.]" (*Id.* at p. 1492.)

Here, the juvenile court exercised its dependency jurisdiction over Jack based on mother and Mark’s domestic violence under section 300, subdivision (b) and on Mark’s incarceration under subdivision (g). Consequently, even if we considered reversing the jurisdictional finding as to mother under subdivision (b), the juvenile court would retain jurisdiction over Jack based on the sustained, and unchallenged, allegations against Mark. Therefore, mother’s attack on the jurisdictional finding relative to her conduct alone is nonjusticiable. (*I.A., supra*, 201 Cal.App.4th at pp. 1490-1491 [“An important requirement for justiciability is the availability of ‘effective’ relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties’ conduct or legal status”].) Nevertheless, in an abundance of caution we will briefly address mother’s jurisdictional argument on the merits.

In order to assume dependency jurisdiction over a child under section 300, subdivision (b), the juvenile court must find by a preponderance of the evidence 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 ... to adequately supervise or protect the child.”

“In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court’s findings. Evidence is “[s]ubstantial” if it is reasonable, credible and of solid value.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133 (*T.V.*)) “[W]e draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*Ibid.*)

“Exposing children to recurring domestic violence may be sufficient to establish jurisdiction under section 300, subdivision (b).” (*T.V., supra*, 217 Cal.App.4th at p. 134.) “Domestic violence impacts children even if they are not the ones being physically

abused, ‘because they see and hear the violence and the screaming.’ [Citations]” (*Ibid.*) In addition, it exposes them to the risk of encountering the violence and suffering serious physical harm as a result. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

Here, the evidence showed that mother and Mark had a lengthy and ongoing history of domestic violence, serious enough to warrant police intervention. Mark had a history of assaulting mother, resulting in sufficient injury to require hospitalization and a stay-away order. There is also evidence these instances of violence took place in Jack’s presence and were fueled by alcohol.

The juvenile court does not have to “‘wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ [Citations.] The focus of section 300 is on averting harm to the child.” (*T.V., supra*, 217 Cal.App.4th at p. 133.)

As applicable here, the juvenile court did not have to wait for Jack to be accidentally hit by a thrown object, or by a fist, arm, foot or leg to place him under its protection.

We conclude substantial evidence supports the juvenile court’s jurisdictional finding that Jack is a child described by section 300, subdivision (b).

## ***II. Dispositional Order***

Mother contends the evidence is insufficient to support the juvenile court’s dispositional order removing Jack from her custody. She asserts there is no evidence she physically harmed Jack and that Mark does not pose a threat of physical harm because he is incarcerated. Therefore, she claims, the only other type of harm to which a child can be exposed is emotional harm and there is no evidence Jack suffered such harm in her care.

In order for the juvenile court to order a child physically removed from parental custody, it must find, by clear and convincing evidence, the child is or would be at substantial risk of harm if returned home and there are no reasonable means by which the

child can be protected without removal. (§ 361, subd. (c)(1).) We review the juvenile court’s dispositional findings for substantial evidence. (*T.V., supra*, 217 Cal.App.4th at p. 136.)

Here, the juvenile court removed Jack from mother’s custody because she and Mark were engaged in a pattern of domestic violence and she covered for Mark rather than take steps to protect herself and Jack from him. The court also addressed the issue mother raises here, i.e. that there was no evidence Jack suffered harm. The court stated:

“Jack has special needs, and even though he has been found to be healthy and clean, that doesn’t mean that he isn’t being damaged, because domestic violence is extremely damaging. It is scary. Kids don’t understand when their parents are hollering at each other, throwing things, hurting each other. They don’t understand what’s going on. And for Jack, especially given his condition, it is extremely alarming.”

Under the circumstances, there is sufficient evidence the domestic violence in mother’s home was emotionally damaging to Jack with the potential for being physically damaging as well. In addition, although mother does not raise it, there were no alternatives to removal. The obvious one, voluntary family maintenance services, was made available to her previously and she did not take advantage of it.

We conclude substantial evidence supports the juvenile court’s removal order.

### ***III. ICWA Placement Preference***

Mother contends the juvenile court erred in finding good cause to deviate from the ICWA placement preferences when no evidence was presented on the issue.

Title 25 United States Code section 1915(b) sets forth preferred foster care placements for Indian children. In order of preference, these include a member of the child’s extended family, a foster home licensed or approved by the Indian tribe, an Indian foster home licensed or approved by a non-Indian licensing authority, or an institution approved by an Indian tribe or operated by an Indian organization. Placement may deviate from these preferences providing that “good cause” exists. (*Ibid.*)

ICWA does not define the “good cause” necessary to make a placement other than those preferred under ICWA. Courts have deduced from its legislative history that Congress clearly intended by this term to provide state courts with flexibility in determining the placement of an Indian child. (*Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 641 (*Fresno County DCFS*.)

We review the determination of good cause to deviate from the ICWA placement preference for substantial evidence. (*Fresno County DCFS, supra*, 122 Cal.App.4th at pp. 645-646.) We conclude substantial evidence supports the determination of good cause.

The agency complied with ICWA by placing Jack with Judy and it was the agency’s intention that he would remain with her. However, a member of Judy’s household had a criminal history that forced the agency to remove Jack and return him to the group home. The agency reasoned that Jack was comfortable at the group home and the staff there was able to meet his special needs. At the same time, the agency was working with Judy to establish her own home so she could take custody of Jack. Consequently, the juvenile court’s decision to deviate from ICWA placement was premised on the agency’s representation, in essence, that Jack’s placement in the group home was temporary and necessitated by his special needs. In addition, the juvenile court did not consider Jack’s placement there acceptable in the long run. The court set a hearing to review placement. Under these circumstances, we find no error in the juvenile court’s finding that there was good cause to deviate from the ICWA placement preference.

#### **DISPOSITION**

The order is affirmed.