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

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

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Plaintiff and Respondent,

v.

JOHNATHON D.,

Defendant and Appellant.

F070975

(Super. Ct. Nos. JD132984 &  
JD132985)

**OPINION**

**THE COURT\***

APPEAL from orders of the Superior Court of Kern County. Louie L. Vega,  
Judge.

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

Theresa A. Goldner, County Counsel, and Judith M. Denny, Deputy County  
Counsel, for Plaintiff and Respondent.

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\*Before Detjen, Acting P.J., Peña, J. and Smith, J.

## **INTRODUCTION**

Six-year-old L.D. and four-year-old M.D. (the girls) were taken by their father Johnathon D. from Bakersfield to Texas in the “back of a U-Haul” truck to visit their mother, arriving hungry and sweaty. Mother refused to return the girls to father’s care. Father returned to Bakersfield and contacted the Kern County District Attorney’s Office about returning the girls to his physical custody. Upon their return to California, however, the girls were placed in foster care.

Father appeals the jurisdictional and dispositional findings by the juvenile court, contending the evidence was insufficient to sustain the allegations of the petition that he posed a substantial risk of harm to his daughters, and he maintains the removal order was unnecessary. We will affirm.

## **RELEVANT BACKGROUND**

In June 2014, father—who had physical custody—drove the girls to Texas to visit their mother and grandmother. They traveled for about 24 hours in a U-Haul truck or cargo van, stopping about four times for food and beverages, according to father.

Upon arrival in Texas, mother claims the girls were hot and sweaty, and that L.D. complained she had passed out during the journey. Mother refused to allow father to leave Texas with the girls, although she did not have legal custody of them. Grandmother ordered father from her property.

Father contacted Texas authorities about returning the girls to his custody, but he was advised he would have to return to California without them as authorities refused to get involved in a civil dispute. Eventually, upon returning to California, father contacted Bakersfield authorities and reported the situation.

Ultimately, the girls were returned to California from Texas. Dependency proceedings commenced and the girls were placed together in a foster home.

At the jurisdictional hearing, the court found the allegations alleged in the petitions to be true, to wit, a failure to protect.

At disposition, the court found clear and convincing evidence the girls were in substantial danger, and that absent removal from father's physical custody, there were no reasonable means to ensure their safety. Family reunification services were to be provided for one year, supervised visits were ordered, and father was to participate in domestic violence counseling as a victim and child neglect counseling.

This appeal followed.

## DISCUSSION

On appeal, father challenges the sufficiency of the evidence relating to the juvenile court's jurisdictional and dispositional findings.

In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, whether or not that evidence is contradicted, supports those findings. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

"We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] "[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence ... such that a reasonable trier of fact could find [that the order] is appropriate...." [Citation.]" (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321; see also *In re Angelia P.* (1981) 28 Cal.3d 908, 924.)

"Evidence from a single witness, even a party, can be sufficient to support the trial court's findings. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820; *In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598.)" (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the

juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451.)

### ***The Jurisdictional Findings***

Father contends there was insufficient evidence the girls were at substantial risk of suffering harm in his care, asserting the trip to Texas was an isolated event and there was “scant” evidence of marijuana and alcohol abuse.

Welfare and Institutions Code<sup>1</sup> section 300 provides, in relevant part:

“Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] ... [¶]

“(b)(1) 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 ... or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment ....”

The petition alleged, in relevant part, as follows:

“b-1 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 her father ... to adequately supervise or protect the child. In June 2014, [father] drove the children, [L.D. and M.D.], to Waskom Texas, in the back of a U-Haul truck. Upon arrival the children were hungry and sweaty. The child, [L.D.], reported she passed out in the truck because it was so hot and she was not given enough food or water. [Father] left the children in the care of the mother, ... who is ordered supervised visitation due to the ongoing domestic violence between the two.

“b-2 The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness by the willful or negligent failure of the father ... to provide the child with adequate food, clothing,

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<sup>1</sup>Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

shelter or medical treatment. In June 2014, [father] drove the children, [L.D. and M.D.], to Waskom Texas, in the back of a U-Haul truck. Upon arrival the children were hungry and sweaty. The child, [L.D.], reported she passed out in the truck because it was so hot and she was not given enough food or water.

“b-3 The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness by the inability of the father ... to provide regular care to the child due to the father[']s mental illness, developmental disability or substance abuse. For the past 7 years [father] has smoked marijuana at least twice a week. On November 22, 2013, [father] Pled Nolo Contendere to Vehicle Code Section 23152(b) DUI alcohol/0.08 percent, misdemeanor. [Father] has a history of abusing alcohol for at least the last six years.”

At the proceedings held October 28, 2014, the court accepted several offers of proof, and heard argument from counsel for father, the girls, and the Department of Human Services (Department). Thereafter, it ruled as follows:

“All right. We have here some evidence that obviously is contradictory between the parents and somewhat by the children.

“What is undisputed is that these children went on an extended trip in a very short period of time and they were passengers in a—either a moving van or a cargo van. And the cargo van apparently has air conditioning, at least for the passenger. And the moving van had air conditioning at least for the cab portion of that van.

“The testimony of the children as proffered by counsel and that’s undisputed as well is that the children were sweaty and hot, which would circumstantially support the allegation that they were in the back of a vehicle that did not have proper ventilation or air conditioning.

“The proffered testimony of the father is that they stopped at a couple places to eat, yet the children were hungry when they arrived in Texas. So perhaps it was early on. But the last part of it, they were not provided with food and they were thirsty as well.

“So the court is satisfied that by a preponderance of the evidence that the allegations in (b)(1) and (b)(2) have been shown by the evidence to be true.

“There’s some evidence—I know it’s been called a prescription, but I think actually it’s a recommendation at least under California law—that [father] has a recommendation to use marijuana. I didn’t hear any

testimony as to frequency at least proffered. We do have the reports that discuss that in more detail. So I think the evidence supports that allegation as well.

“So, at this time, the court will make the more formal findings ....  
[¶] ... [¶]

“And the court finds the allegations as set forth in Counts—well, the 300 subdivision (b)(1), (2) and (3). Strike that.

“Subdivision (b) with the allegations (b)(1), (b)(2) and (b)(3). The [allegations] 4 and 5 were stricken.<sup>[2]</sup> So those remaining allegations are found true.”

Reviewing the record evidence in the light most favorable to the court’s determinations, we find those determinations to be supported by substantial evidence.

The evidence established the girls were transported from California to Texas in a moving or cargo van, unrestrained, over a 24-hour period. Mother’s offer of proof supports this finding: she would have testified the girls arrived in a cargo van and there were no seats for them. At four and six years old, both girls should have been restrained. Further, while the girls could communicate with their father from the cargo area, only the passenger compartment of the vehicle had air conditioning. Thus, the girls did not have adequate ventilation during the extended trip. The evidence in support of this finding includes mother’s offer of proof that the girls were hot and sweaty upon arrival, as well as the exhibits offered depicting the type and dimensions of the U-Haul or cargo van used to transport the girls from California to Texas. The social study is further evidence of the unrestrained transportation and the lack of proper ventilation during the trip.

While father’s offer of proof included evidence they stopped about four times for food and beverages, including stops at a McDonald’s and a Burger King, his evidence was contradicted by L.D.’s statement to a Texas child protective service worker and others that she was given a piece of pizza and some water.

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<sup>2</sup>The Department moved to dismiss allegations b-4 and b-5, without prejudice, prior to argument.

We find the juvenile court drew reasonable inferences from the evidence before it in making its determinations, and the evidence substantially supports those findings. (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193.)

Father's argument that the evidence is insufficient because the trip from California to Texas was an "isolated event" is not persuasive. We note the record reveals father originally claimed he could not remember what type of vehicle he and the girls traveled in; he denied it was a U-Haul, but could not describe the vehicle. When father was told the girls would not be returned to his custody for this reason, he became angry and told the social worker: "I don't fucking want them" and "You fucking keep them."

Further, the record reveals he did not appreciate the danger he placed his children in by transporting them unrestrained in the back of a cargo or moving van with less than suitable ventilation or air conditioning. The purpose of section 300 is to provide maximum safety and protection for children who are at risk of being physically or emotionally abused or neglected and "to ensure [their] safety, protection, and physical and emotional well-being." (§ 300.2; see *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215.) Where father failed to appreciate the risk he placed his children in, the juvenile court could reasonably infer the girls remained at risk. In assessing risk to a child, the juvenile court is not confined to a snapshot in time and it 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." (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.) Therefore, isolated or not, the court did not err by ensuring the girls' safety.

Whether there was substantial evidence concerning the allegations regarding alcohol abuse or marijuana use in allegation b-3 is not relevant in light of our holding that substantial evidence does support the allegations asserted in b-1 and b-2 of the petitions. (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451 [reviewing court need not consider other alleged statutory grounds for jurisdiction where it affirms one of multiple statutory bases].)

In sum, we find substantial evidence supports the juvenile court's jurisdictional findings.

### ***The Dispositional Findings***

Father next contends there is insufficient evidence to support the juvenile court's order removing the girls from his custody pursuant to section 361, subdivision (c)(1).

At the time of the proceedings, section 361, former subdivision (c)(1) provided:

“A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances ....

“... There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.”

“The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) Although the juvenile court's findings must be based on clear and convincing evidence, we review an order removing a child from parental custody for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.)

“The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103–1104.) On a challenge to an order removing a dependent child from his or her parent, we ‘view the

record in the light most favorable to the order and decide if the evidence is reasonable, credible and of solid value.’ (*Kimberly R. v. Superior Court* [(2002)] 96 Cal.App.4th [1067,] 1078.) We draw all reasonable inferences from the evidence to support the findings and orders of the dependency court. (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193.)” (*In re Javier G.* (2006) 137 Cal.App.4th 453, 462–463.)

Here, the juvenile court found, in relevant part, as follows:

“There’s still some very unsettled issues here. And based on what I have before me, I’m going to follow the recommendations.

“I’d be certainly open to a 388 petition in less than the six-month period that we’re gonna be setting here. Once we can clarify the issue regarding domestic violence that you talked about, the appropriateness of the home or homes, either or both.... [¶] ... [¶]

“... The court has read and considered the social worker’s report dated December 4, 2014, and makes the following findings and orders based on that information:

“... The children ... are adjudged dependent children of the court pursuant to ... Section 300 subdivision (b). The children are placed in the care, custody and control of the department for suitable home placement. That’s the Department of Human Services. There’s clear and convincing evidence that there’s a substantial danger to the physical health, safety, protection or physical or emotional well-being of the children or there would be if the physical custody of the children is not removed from the parents and there are no reasonable means to protect the children’s physical health without removal of the children from the physical custody of the father .... [¶] ... [¶]

“The children are ordered removed from the physical custody of the presumed father ... based upon the facts set forth in the sustained petition, the report of the social worker and the evidence presented....

“The children’s out-of-home placements are appropriate and necessary. The mother has made no progress toward alleviating or mitigating the causes for the children’s placement in out-of-home care. And the presumed father has made no progress toward alleviating or mitigating the causes for the children’s placement in out-of-home care.”

Reunification services were to be provided, and father was to participate in domestic violence counseling as a victim and child neglect counseling. Both parents were to participate in random drug and alcohol testing. In the event of a positive test, either or

both parents would be required to complete substance abuse counseling as well. Both parents were permitted supervised visitation with the girls twice a week for two hours.

In support of his contention that substantial evidence does not support the juvenile court's dispositional findings, father points to a variety of evidence revealing he has a good relationship with his girls, including the social worker or department reports concerning his supervised visits with them. The record certainly supports this. However, there is also substantial evidence to support the juvenile court's findings.

As previously noted, father did not appreciate the substantial danger he placed his children in. The girls faced significant harm and were placed in substantial danger when father allowed them to be transported from California to Texas in the back of a cargo or moving van, unrestrained and in the absence of proper ventilation or air conditioning. Further, the record reveals past circumstances where father ignored the danger he placed his children in, including an occasion in 2013 where he permitted L.D. and M.D. to be left alone with a known sexual predator. Additionally, despite a valid restraining order in place against mother after she struck father with her car, and an order from the family law court permitting mother only limited and supervised visitation with the girls, father ignored those orders by having contact with mother and facilitating extended visits between her and the girls. Moreover, again despite a restraining order following the domestic violence between the two, father and mother appeared together, seeking to visit the girls on the same date and time shortly before the dispositional hearing. And, during that same period, father canceled a number of visits with his children. In fact, four dates coincided with mother canceling her own visits with the girls: November 6, 2014; November 12, 2014; November 13, 2014; and November 20, 2014. Notably, too, there was a question regarding father's housing. The Department indicated father advised them previously he would be moving from "the Hughes address" to "a new house on Ferguson"; however, he failed to provide updated housing information, and on the date of the hearing, provided the Department with the address on Hughes. The Department, thus, had not had a chance to evaluate the residence.

We disagree with father that removal was not necessary here. The juvenile court was not required to take a wait and see approach. According the juvenile court the deference to which its findings are entitled, we find there is sufficient evidence to support its finding that the girls faced substantial danger to their physical health, safety, protection, or physical or emotional well-being were they to be returned to father's custody. (*In re Javier G.*, *supra*, 137 Cal.App.4th at pp. 462-463.) The juvenile court was focused, as it should have been, on averting any potential harm to the girls. (*In re Cole C.*, *supra*, 174 Cal.App.4th at p. 917; *In re J.K.*, *supra*, 174 Cal.App.4th at p. 1433.)

#### **DISPOSITION**

The jurisdiction and dispositional orders are affirmed.