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

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

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

JEREMY M.,

Defendant and Appellant.

F073092

(Super. Ct. No. 517363)

**OPINION**

**THE COURT\***

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

Brian Bitker, 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 Levy, Acting P.J., Poochigian, J. and Smith, J.

Jeremy M. (father) appeals from the juvenile court's jurisdictional findings and dispositional order as to his now nine-month-old son David. Father contends there was insufficient evidence to adjudge David a dependent child under Welfare and Institutions Code section 300, subdivisions (b) and (j)<sup>1</sup> and to remove David from his custody. We affirm.

### **PROCEDURAL AND FACTUAL SUMMARY**

Father and Nancy (mother),<sup>2</sup> a married couple, are the parents of David and now three-year-old Jeremiah. Mother also has two daughters, 10-year-old S.M. and nine-year-old Selena.

In September 2015, the Stanislaus County Community Services Agency (agency) took newborn David into protective custody because father and mother were in reunification with S.M., Selena, and Jeremiah, but were not complying with their reunification services.

The agency was first alerted to the family in March 2013, when Jeremiah was admitted to the hospital for shortness of breath and appeared to be malnourished. Approximately a week later, an emergency response social worker made an unannounced visit to the family home and found it cluttered, dirty, and hazardous. The floors were caked with dirt. There were stacks of dishes and pots containing old food in the kitchen and cockroaches and animal feces in every room. Mother told the social worker she struggled with mental health issues and had been diagnosed with bipolar disorder. She stopped taking her medication years before and had learned to cope without it. The agency offered father and mother voluntary family maintenance services, which required

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Mother is not a party to this appeal.

them to keep the house clean, complete a parenting class and followup with a public health nurse. It also required mother to complete a mental health assessment.

Mother and father did not participate in their family maintenance services or make themselves available for home visits. Their situation took on renewed urgency in October 2013, when Selena went to school with bruising under both eyes. She said Jeremiah punched her in the eyes and that he hit her a lot. She also said her parents stayed mostly in their room. Father said that Jeremiah hit Selena in the face with a truck and that he and mother had not been communicating with the agency because they were sick. The social worker found the home to be cluttered and dirty.

Two days later, the social worker returned and took the children into protective custody. Mother became agitated and threatened the social worker. Father tried to calm her and reminded her of what happened in Kansas. Mother responded saying she did not care about being arrested because she had been arrested many times in Kansas. She also stated that Kansas child protective services had taken her children and had not returned them for four years. The agency placed the children in foster care.

In February 2014, the juvenile court exercised its dependency jurisdiction over S.M., Selena, and Jeremiah and provided mother and father reunification services. Mother was ordered to complete an anger management assessment and a parenting program, and participate in individual counseling and mental health services. Father was ordered to participate in individual counseling and complete a parenting program.

In May 2014, the family began a trial visit. However, not long after, the family was evicted and the children were placed with paternal grandparents while mother and father obtained housing. Mother and father, however, did not find housing and had sporadic contact with the children. In addition, they did not enroll the children in school or take the children to medical appointments. As a result, the trial visit was terminated in November 2014 and the children were placed with relatives.

By December 2014, mother had completed an anger management assessment and anger management was incorporated into her individual counseling. She was evaluated by a psychiatrist who did not find any psychiatric reason why she could not safely parent the children. However, she was not consistently attending her individual counseling sessions and had not completed her parenting program. Nor had father. Consequently, the juvenile court terminated their reunification services as to S.M., Selena and Jeremiah in January 2015 and set a section 366.26 hearing, which was pending in September 2015 when mother gave birth to David.

In September 2015, a social worker met with mother and father at the hospital. Mother told the social worker she received prenatal care and tested negative for drugs. She denied any current drug use and said she previously used marijuana but had not used it for five years. She said she was diagnosed with attention deficit hyperactivity disorder and attention deficit disorder but had not taken any medication to treat these disorders since she was 15. She did not disclose any other mental health issues. She said she completed parenting education and had three more sessions to complete individual counseling and anger management. She said the family would reside with a paternal uncle after she and David were released from the hospital. She and father had diapers, wipes, clothes and a bassinet for David.

Father denied any substance abuse history and told the social worker he was diagnosed with posttraumatic stress disorder when he was much younger and was prescribed medication but had not taken it since he was 20 or 21 years old. He said he had one parenting group session left and did not remember how many individual counseling sessions he still needed to attend. Mother and father also drug tested for the social worker and tested negative for any illicit substances. The social worker contacted the uncle to arrange to inspect his home but he was unable to meet her there that day. The next day, the agency placed a protective hold on David and arranged to place him in foster care.

The agency filed a dependency petition on David's behalf, alleging he came within the juvenile court's jurisdiction under section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). The petition alleged as to subdivision (b) that there was a substantial risk that David would suffer serious physical harm or illness as a result of mother and father's inability to supervise or protect him and provide him with adequate food, clothing, shelter or medical treatment. As factual support, the agency cited mother and father's child welfare history pertaining to S.M., Selena and Jeremiah and their failure to reunify with them and their unsuccessful trial visit. The agency also alleged that mother acted strangely during a visit with the children in February 2015 and admitted to family members that she was using methamphetamine and that mother struggled in the past with mental illness and was diagnosed with bipolar disorder. The petition also alleged one count under section 300, subdivision (j) that mother and father failed to reunify with the older children.

The juvenile court ordered David detained pursuant to the petition and set a combined hearing on jurisdiction and disposition (combined hearing). The agency referred mother and father for individual counseling and mother for a substance abuse evaluation. Mother submitted a hair follicle for analysis and the results were negative.

In its report for the combined hearing, the agency advised the juvenile court that David would not be safe in his parents' custody. They had not benefited from services or a trial visit and displayed questionable parenting skills even during visitation. For example, during a visit in October 2015, then three-year-old Jeremiah grabbed David and left a mark on his head. Mother and father appeared to be amused by Jeremiah's behavior, remarking that Jeremiah "choked out a Bull Mastiff" and damaged their van. The agency recommended that the court find the allegations in the petition true and deny mother and father reunification services under section 361.5, subdivision (b)(10).<sup>3</sup>

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<sup>3</sup> The juvenile court can deny a parent reunification services under section 361.5, subdivision (b)(10) when it finds by clear and convincing evidence that the parent's

In November 2015, the juvenile court conducted a contested combined hearing. Mother testified that she completed all ten of the parenting group sessions, seven of the required 10 individual sessions and three parenting labs. She denied ever telling any family members that she used methamphetamine and she denied using the drug. She also testified that she was diagnosed with bipolar disorder when she was a teenager but that the psychiatrist who recently evaluated her did not prescribe any medication for her. She said the older children were removed from her custody because her house was dirty and her reunification services were terminated because she and father were living in a one-bedroom home, which was inadequate for the children.

Mother further testified that she and father were paying her brother-in-law rent to live in his house with him and his family. She learned from her parenting class the importance of keeping a clean home and described her daily cleaning routine. She also regularly attended her classes and visited David. Asked why she did not follow through before, she said she did not understand she was at risk of losing her children.

Father testified that he completed nine of ten parenting classes in the prior case. He did not complete the last class because the trial visit was terminated two days before he finished the class and he could not make it because of his busy work schedule. He did not complete his individual counseling classes because his reunification services were terminated. Father testified that the children were removed because they lived in a one-bedroom apartment, which was inadequate. He testified that his apartment was dirty the day the social worker first entered his home but was clean two days later when she came to take the children into protective custody. Following father's testimony, the juvenile court asked for the sibling case file so she could see the pictures of the house at the time the children were removed.

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reunification services for any sibling or half sibling of the child (sibling) were terminated because the parent failed to reunify with the sibling and to subsequently make reasonable efforts to treat the problem that led to the sibling's removal.

At the conclusion of the hearing, the juvenile court sustained the petition, ordered David removed from parental custody and ordered mother and father to participate in reunification services. In ruling, the court stated that it was very familiar with the family, having seen the family over a significant period of time. The court noted that mother and father had not completed their services even though they had 12 months in which to do so and were not asked to do very much. The court was concerned that mother and father believed the older children were removed because their home was dirty when it was “far more than dirty” but “completely unsanitary.” The court acknowledged the home they were living in was neat and clean but noted that they had only lived in that home for two months and had not actually demonstrated they were capable of keeping a clean and sanitary home. The court expressed concern that Jeremiah was malnourished and neglected and that during a recent visit Jeremiah hit David on the head even though mother and father knew that Jeremiah was capable of harming him and could have taken appropriate steps to protect him.

The juvenile court ordered the agency to submit a reunification plan and advised mother and father that their reunification services could be limited to six months.

This appeal ensued.

## **DISCUSSION**

Father contends there is insufficient evidence to uphold jurisdiction under either section 300, subdivision (b) or (j). We disagree.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, we review the record to determine if substantial evidence supports the conclusion of the trier of fact. In doing so, we review the record in the light most favorable to the court’s determinations and draw all reasonable inferences in support of the court’s findings and orders. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

In order to exercise its dependency jurisdiction over a child, the juvenile court must find by a preponderance of the evidence that the child is described by one or more

of the subdivisions set forth in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) When the court makes multiple jurisdictional findings, as occurred here, we need only find substantial evidence supports one of them to uphold the court's exercise of its jurisdiction. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876.)

In this case, the juvenile court found that David is a child described under subdivisions (b) and (j) of section 300. We conclude substantial evidence supports the juvenile court's subdivision (b) finding and therefore need not review the court's finding under subdivision (j).

Section 300, subdivision (b) applies when "[t]he 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, or ... by the willful or negligent failure of the parent ... to provide the child with adequate food, clothing, shelter, or medical treatment." A finding under section 300, subdivision (b) requires three elements "(1) neglectful conduct by the parent in one of the specific 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 (*Rocco M.*).

"The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.) Evidence of past events may be probative in assessing the current conditions "if circumstances existing at the time of the hearing make it likely the children will suffer the same type of 'serious physical harm or illness' in the future." (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388; italics omitted.)

The defined risk in this case was the possibility that David would be neglected or harmed in mother and father's care. Mother and father had already demonstrated the magnitude of their neglect in that Jeremiah was treated for malnourishment and their house was so filthy that it was unsafe for the children. This implies that the neglect was

ongoing and not a temporary situation as father seemed to imply in his testimony. Further, mother and father had received over 18 months of services but had not completed them or demonstrated they had benefitted from them. A prime example is their acceptance of Jeremiah's out-of-control behavior despite having virtually completed a parenting class.

In challenging the juvenile court's jurisdiction, father refutes each factual allegation. Specifically, he argues there was evidence presented that mother did not use methamphetamine and did not suffer from bipolar disorder. The only allegation remaining, father argues, is the one asserting that he and mother did not reunify with the older children. That allegation alone, he contends, is insufficient to prove risk of harm. Father's contention might have merit if the evidence established that he and mother did not pose any risk of harm to David notwithstanding their failure to reunify with David's older siblings. However, as we have already stated, the evidence demonstrated otherwise.

Based on the foregoing, we can infer that father's unresolved parental neglect and lack of protective parenting skills placed David at a substantial risk of harm. We thus conclude substantial evidence supports the juvenile court's jurisdictional findings as to father under section 300, subdivision (b). For the same reasons, we conclude substantial evidence supports the juvenile court's removal order as we now explain.

Section 361, subdivision (c), the governing statute, provides in relevant part:

“A dependent child shall not be taken from the physical custody of his or her parents ... with whom the child resides at the time the petition was initiated, unless the juvenile court finds by clear and convincing evidence ...: [¶] (1) 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 ... physical custody.”

The statute also requires the juvenile court to state the facts on which it made the decision to remove the child. (§ 361, subd. (d).)

In determining whether to order a child removed from parental custody, the juvenile court is not required to find the child was harmed. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) The juvenile court only has to have some reason to believe that circumstances which place the child at a substantial risk of harm would continue in the future. (*Rocco M., supra*, 1 Cal.App.4th at p. 824.) The parent's level of denial is an appropriate factor to consider when determining the risk to the child if placed with the parent. Ultimately, the purpose of the removal statute is to avert harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.)

We review the juvenile court's removal order for substantial evidence, bearing in mind the heightened burden of proof. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) We conclude substantial evidence supports the juvenile court's order.

David was taken into protective custody because mother and father had failed to reunify with his siblings. More specifically, they failed to rectify the neglectful parenting that necessitated the siblings' removal. Though neither mother nor father had yet harmed David, there was a risk that they would if he were placed in their care. Further, by the dispositional hearing, that risk had not abated. If anything, it was realized when Jeremiah hit David in the head, leaving a mark.

Father nevertheless contends that David could only be harmed if their home once again became filthy and cluttered. Thus, he presumes the risk of danger is the condition of the home. As we stated earlier, the risk he and mother pose is a profound risk of neglect of which a dirty home is just one manifestation.

Father further contends the juvenile court erred in failing to state the basis for its finding the agency made reasonable efforts to prevent David's removal. He argues there were reasonable alternatives to removal such as unannounced home visits to monitor the

cleanliness of the house and to ensure he and mother were meeting David's basic needs. We conclude any error by the juvenile court in failing to state the basis of its finding was harmless because it is not "reasonably probable" (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218) the outcome would have been different had the court expressly identified its reasons. The court was aware that father and mother had not been cooperative in allowing the agency to conduct home visits and that they had a history of moving. The risk to David in father and mother's custody without access to him was simply too high, rendering any option short of removal unviable.

#### **DISPOSITION**

The jurisdictional findings and dispositional order entered on November 24, 2015 are affirmed.