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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re A.C., JR., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

A.C., SR.,

Defendant and Appellant.

G045817

(Super. Ct. No. DP021101)

O P I N I O N

Appeal from orders of the Superior Court of Orange County,
Dennis J. Keough, Judge. Affirmed.

Pamela Rae Tripp, under appointment by the Court of Appeal, for
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie
Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

* * *

INTRODUCTION

A.C., Sr. (Father), and A.B. (Mother) are the parents of A.C., Jr. (the Minor), who was born in September 2010. Father appeals from the juvenile court's jurisdictional order finding the Minor came within the provisions of Welfare and Institutions Code section 300, subdivisions (a) and (b),¹ and from the dispositional order declaring the Minor to be a dependent child of the juvenile court and vesting custody with the Orange County Social Services Agency (SSA). Mother has not appealed.

Substantial evidence supported the juvenile court's jurisdictional and dispositional findings, and the juvenile court did not abuse its discretion by requiring Father to attend a child abuser's treatment program. We therefore affirm the jurisdictional and dispositional orders.

FACTS AND JUVENILE COURT PROCEEDINGS

I.

Events Leading to Detention and the Petition

In April 2011, Father was living with his girlfriend, K.W., her eight-month-old daughter (G.C.), and the Minor in the home of Father's grandmother. K.W., Father, and the two children slept in one bedroom of the house. Father was unemployed and stayed home to care for the Minor and G.C. while K.W. worked and attended an externship.

On April 12, 2011, G.C. was taken to the hospital and found to have multiple broken bones, bruises, and abrasions. The treating physician found fractures in G.C.'s lower left arm and a broken left fibula, which were consistent with child abuse. A radiologist confirmed the fractures were transverse, which "requires more force to break

¹ Code references are to the Welfare and Institutions Code. Section 300, subdivision (a) is referred to as section 300(a), and section 300, subdivision (b) is referred to as section 300(b).

the bone than does a spiral fracture.” Neither Father nor K.W could provide a reasonable explanation for G.C.’s injuries. Allegations of physical abuse to and severe and general neglect of G.C. were deemed substantiated, and the allegation of general neglect of the Minor by Father also was deemed substantiated. The Minor was taken into protective custody based on the substantiated allegations regarding both G.C. and him. K.W. was arrested for failing to protect G.C.

The juvenile dependency petition (the Petition), filed on April 14, 2011, alleged serious physical harm under section 300(a) (Count 1) and failure to protect under section 300(b) (Count 2). The SSA detention report, dated the next day, stated: “The [Minor] was placed into protective custody due to multiple unexplained fractures and bruising on the eight-month-old child [G.C.] who resides in the same home as the [Minor] and is the child of [Father]’s live-in girlfriend, [K.W.]. [F]ather has been the sole caretaker of his child and the child [G.C.]. Although the mother [(K.W.)] has been arrested and is incarcerated, she and [Father] denied any knowledge as to how the child [G.C.] was injured. The condition of [F]ather’s home was found to be uninhabitable and unsafe and a substantiated child abuse report was made on January 5, 2011 for this same reason. [¶] [Mother] is fearful of [F]ather due to domestic violence to her by [F]ather and moved out of the home in February 2011. . . . [Mother’s] whereabouts are unknown.”

At the detention hearing on April 15, 2011, the juvenile court found a prima facie case under section 319 and ordered the Minor detained.

II.

Facts from the Jurisdictional Hearing

The jurisdictional hearing was held on September 13, 2011. The juvenile court received in evidence as exhibits 1 through 6, respectively, the SSA reports dated May 12 and 31, June 8, July 25, August 24, and September 1, 2011. The court also

accepted certified copies of court documents regarding Father's probation violations. The SSA reports and court documents established the following facts.

A. The Minor

The Minor was born prematurely (27-week gestation period) and spent the first three months of his life in the hospital's neonatal intensive care unit (NICU). He suffered from hydrocephalus (caused by bleeding on the brain), was monitored for cerebral palsy, and used an apnea monitor because an older sibling (Mother and Father's first child) died of sudden infant death syndrome (SIDS) the previous year. SSA had been involved with the family in 2010 because Father was an adult engaged in a sexual relationship with Mother who, at that time, was a minor.

In January 2011, just two weeks after the Minor was released from the NICU, SSA investigated and substantiated a child abuse report regarding him. SSA found the home to be unsafe due to dog feces on the floor, a bad odor, broken windows covered with plywood, the concrete kitchen floor covered in dirt, trash, food particles covering the living room carpet, the house smelling of smoke, and the Minor's bassinet containing blankets and toys which increased his risk of SIDS. Father and Mother had missed critical appointments with the Minor's pediatrician and were not feeding him adequately. One month later, Mother left the home after she and Father had fought. She claimed to be afraid of him. Police officers conducted a welfare check of the home and reported "everything checked out ok."

B. G.C.'s Severe Injuries

On April 12, 2011, G.C. was taken to the hospital, where she was observed to have a bruised left eye, abrasions on her forehead, scratches on her abdomen, and an abrasion on her left foot, and bruising on the inside of her right thigh. G.C.'s treating physician found fractures to both bones in her left arm and a possible broken bone in her left leg. Police officers observed that G.C. was obviously in pain as she cried whenever she was moved and her left hand was in an unusual position. Consultation notes from

Children's Hospital of Orange County, prepared by Dr. Daphne Wong, later confirmed the treating physician's assessment that G.C.'s injuries were nonaccidental and consistent with child abuse.

On May 9, 2011, G.C. underwent a skeletal survey and X-rays which revealed additional injuries, including a healing fracture to the right humerus (upper arm) and left fibula that were not seen in the original X-rays. Dr. Wong explained those fractures were "acute" at the time of G.C.'s original scan on April 12, meaning they were less than seven days old at that time. Dr. Wong noted the acute fractures sometimes cannot be seen until the healing process begins, usually seven to 14 days from the date of injury.

C. Social Worker and Police Interviews

1. G.C.'s Father

At the hospital on April 12, 2011, a social worker and a police officer interviewed G.C.'s father, C.C. He said that at about noon that day, K.W. dropped G.C. off at his home. K.W.'s sister, S.W., who also was at C.C.'s home, noticed bruising on G.C.'s face. When C.C. and S.W. questioned K.W. about the bruises, she said G.C. had been crying a lot, was not eating, and bruised easily. C.C. had never seen K.W. harm G.C. and had never seen bruises on her. C.C. had not seen G.C. for nearly two weeks and had been asking K.W. over the past four to five days to see her, but K.W. kept telling him G.C. was ill. C.C. thought K.W. was "stalling in letting him see her." S.W. attempted to talk "mother to mother" with K.W. to find what had happened to G.C., but K.W. would not say anything except to repeat, "[o]h me and [Father] are fine." C.C. noticed G.C. was in discomfort from the moment she arrived and screamed when he moved her arm. Later that day, S.W. and C.C. contacted the police. A patrol car soon arrived and took S.W., C.C., and G.C. to the hospital.

C.C. explained he lived with K.W. and G.C. until March 15, 2011, when he and K.W. ended their two-year relationship and she went to live with Father. C.C. stated

that, while he lived with K.W., she was a good mother, he had never seen her harm G.C., and he had never seen bruises on G.C. Both C.C. and S.W. expressed concern that Father had issues with anger and a history of domestic violence against Mother.

2. K.W.

On the same day that G.C. was hospitalized, the social worker interviewed K.W. at a park. The social worker had planned to interview both K.W. and Father, but K.W. reported that “when [Father] found out that the police would be arriving at the park for her, he left her at the park because he did not want to have any problems with his probation officer.” K.W. stated that Father looked after G.C. while she worked. K.W. expressed no concerns about Father caring for the children, although she did report that at times he acted “as if he doesn’t like kids” and that the paternal great-grandmother had described him as “a child abuse case waiting to happen.” K.W. had noticed that G.C. had scratches on her forehead, but Father told her it was probably “rug burn” from rubbing her head against the carpet. K.W. denied harming G.C. and claimed she did not take G.C. to the doctor after noticing bruises on her because she thought G.C. had inherited K.W.’s tendency to bruise easily. When asked if Father had been alone with G.C. that day, K.W. said she had left G.C. alone with Father in the car while she went to an appointment at CalWORKS. When K.W. returned, she noticed two new scratches on G.C.’s forehead. K.W. did not ask Father about them.

3. Father

On the day after G.C. was hospitalized, the social worker interviewed Father. He claimed he did not know how G.C. was injured. Father said he noticed bruises on G.C.’s arms and a black left eye when G.C. returned from a visit with her father, C.C., two weeks earlier. G.C. cried more than usual, but K.W. believed she was ill or teething. When Father was informed that G.C.’s injuries were not accidental, Father asked, “[d]id anyone tell you she fell off the bed?” Father claimed that during the previous week, while caring for G.C., he heard her cry and found her on the floor, on top

of the bassinet leg. Father claimed that after G.C. fell, she had more bruises and the bruising on her left eye was more significant. Father contacted K.W. at her externship and told her about G.C. falling, but Father and K.W. thought nothing was wrong with G.C. and did not take her to the doctor. Father denied domestic violence against K.W. or Mother, but admitted he was on formal probation for driving under the influence. Father denied K.W.'s claim that he and his friends were smoking marijuana at the park.

4. Mother

On April 13, 2011, Mother told the social worker that when Father kicked her out of his grandmother's home, she left the Minor in his care because she believed the Minor was safe at that time. About one and a half weeks before the Minor was detained, Father struck Mother during a visit with the Minor. Mother said she called the police and was told to handle her child custody issues in family court. Mother said she went to family law court after that incident and was informed she could not obtain a restraining order. On April 27, Mother told the social worker she was fearful of Father who, she claimed, followed her, knew where she lived, and knew where she "hangs out."

D. *Condition of the Home*

On April 12, 2011, the day G.C. was hospitalized, a social worker and a police detective inspected the home and found it to be in an unhealthy condition. The home was cluttered, dirty, and smelled of cat urine. The crib did not have a mattress and was filled with pillows, which increased the risk of SIDS, and an electrical cord was behind the crib within an infant's reach.

E. *K.W.'s Arrest, Police Interview, and Guilty Plea*

K.W. was arrested on the day G.C. was hospitalized, and charged with felony child abuse and endangerment. A police officer interviewed her at the jail on April 13, 2011. K.W. related that, although she had been dating Father for about one month, he was the primary care provider for G.C. while she worked, and K.W. estimated Father was with G.C. eight to nine hours per day. K.W. claimed not to know how G.C.

was injured. K.W. believed Father was capable of hurting a child because of his temper and “rages” in which he would bang his head against the wall or pound his fist. Father also had the opportunity to harm G.C. When K.W. asked Father about the bruises on G.C., he replied G.C. bruised easily. K.W. believed Father could have injured G.C. by holding her down while changing her diaper. She also suspected Father might have “flicked” G.C.’s face, causing some bruises. K.W. recalled an incident in which Father was “clearly frustrated with [G.C.]” and tossed her onto the bed. After K.W. and G.C. moved in with Father, G.C. cried more often, was “fussier,” and stopped crawling.

K.W. pleaded guilty. The factual basis for her plea, written onto the plea form, was the following: “[O]n or about 4/12/11 I willfully & unlawfully under conditions & circumstances likely to produce great bodily harm permitted my 8 month old daughter to suffer unjustifiable physical pain including numerous bruises on her face & body[,] a broken arm[,] & a broken leg by failing to protect her from my boyfriend [Father].”

F. Father’s Criminal Record

Father has a criminal record that includes convictions for vandalism, driving under the influence, and resisting or obstructing a public officer, and probation violations. In July 2011, Father’s probation officer informed the social worker that Father had violated multiple terms of his probation, including drinking in public, associating with a known drug user, failing to report to his probation officer, possessing gang tagging crew paraphernalia, and testing positive for marijuana. Police reports confirmed those probation violations.

Father was arrested on April 26, 2011 for a probation violation and on May 12 was sentenced to jail. He was scheduled to be released from jail on June 8, 2011. Father’s probation officer’s report concluded: “At this time it appears [Father] is either unable or unwilling to comply with Court Orders and probation rules. His decision to

engage in alcohol and marijuana consumption at times when he is caring for his child is irresponsible, and potentially dangerous.”

G. Father’s Substance Abuse

In February and March 2011, Father was photographed at his home, smoking marijuana and drinking alcohol, while wearing a T-shirt with the word “Chronic” on the front. Another photograph showed Father wearing a hat with a large marijuana leaf on the front. The probation officer noted in his report: “What is most disturbing about these photos is the fact [Father] was caring for his son at the time these photos we[r]e taken. As a result it seems [Father] was allowing his male associates to smoke marijuana and drink alcohol less than twenty feet from [the Minor]”

Father began using marijuana in 2007 and had a history of becoming “angry and combative” while under the influence of alcohol. On at least one occasion, Father had to be “tased and pepper sprayed” due to his behavior while under the influence. Father also continued to associate with a gang tagging crew and had a hat with the letters “BTBK,” which violated a court order prohibiting him from possessing items with tagging crew insignia.

Father enrolled in random drug testing to commence upon his release from jail. Between his release from jail and August 31, 2011, he was tested 12 times. He tested negative seven times, and positive (specimen dilute) five times.

III.

The Juvenile Court’s Rulings

The juvenile court found the allegations of the Petition, as amended by interlineation, true by a preponderance of the evidence and found the Minor was described by section 300(a) and section 300(b). On Count 1 for serious physical harm, the court sustained allegations that the “unexplained injuries” suffered by G.C. placed the Minor “at substantial risk” of serious physical harm, that Father was a live-in caretaker of

G.C. when she suffered those injuries, that Father's denial of knowledge as to how G.C. was injured was "willfully false," and that Father failed to obtain medical care or contact law enforcement when he noticed G.C. had bruises on her arms and a black eye.

On Count 2 for failure to protect, the juvenile court sustained allegations that "[o]n numerous unknown occasions and specifically [on] or about February 2011, [Father] engaged in domestic violence with [Mother] with the [Minor] present. [Mother] is fearful of [F]ather due to domestic violence. The [Minor] is at risk due to [F]ather's unresolved anger management issues." The court sustained allegations Father has an unresolved substance abuse problem, unresolved anger management issues, and "has been the perpetrator of domestic violence on [Mother] and [K.W.]." The court also sustained an allegation that "the living environment of [the] home where the [Minor] resides with [F]ather and his live-in girlfriend and the great paternal grandmother was found to be unhealthy and unsafe for the [Minor]"

The dispositional hearing was held on September 15, 2011. The juvenile court declared the Minor to be a dependent child of the court under section 360, subdivision (d) and found by clear and convincing evidence that returning the Minor to the custody of Father or Mother would present a substantial danger to the Minor's physical health, safety, protection, or emotional well-being. The court found that Father and K.W. actively concealed G.C.'s injuries and failed to seek treatment for them. The court also found the evidence suggested "[Father]'s involvement may have been more direct." The court noted "what seems to be an immersion by [Father] in . . . a drug culture" and Father "places his own needs and the needs of other individuals ahead of the issues of his son."

The court vested custody of the Minor with SSA, approved SSA's case plan, which required Father to complete a 52-week child abuser's treatment program, and approved SSA's visitation plan.

DISCUSSION

I.

Standard of Review

“We affirm a juvenile court’s jurisdictional and dispositional findings if they are supported by substantial evidence. [Citation.] ‘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.’ [Citation.]” (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1103.)

II.

Substantial Evidence Supported the Jurisdictional Findings.

A. Count 1: Serious Physical Harm (§ 300(a))

Count 1 of the Petition alleged serious physical harm under section 300(a), which applies where “[t]he 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 or guardian.” (§ 300(a).)

As interlined by the juvenile court, allegation a-1 of the Petition alleged the Minor was placed in protective custody for being at risk of physical abuse because G.C., who resided in the same home as the Minor, “was physically abused between the dates of March 29, 2011 and April 12, 2011.” Allegation a-1 also alleged the nature and extent of G.C.’s injuries. Allegation a-2 alleged Father was a caretaker of G.C. at the time she suffered physical abuse, and “[a]lthough the mother, [K.W.], has been arrested and is incarcerated, she and the [Minor]’s father denied any knowledge as to how the child [G.C.] was injured . . . *which denial was willfully false.*” (Interlineation in italics.) Allegation a-3 alleged, “[a]pproximately two weeks ago when [Father] noticed that the

child [G.C.] who resides in his care had bruises on her arms and a black left eye, [F]ather failed to question what occurred, failed to obtain medical care for the child or contact law enforcement.”

Substantial evidence supported the juvenile court’s finding that sustained the allegations of Count 1. Father and K.W. were G.C.’s primary caretakers. Father stayed home to care for the Minor and G.C. while K.W. worked and attended an externship. G.C.’s father, C.C., lived with K.W. and G.C. until March 15, 2011, when K.W. and G.C. went to live with Father. C.C. told the social worker he never saw K.W. harm G.C. and never saw any bruises on G.C., while he lived with them. G.C.’s injuries appeared within a month after K.W. and G.C. moved in with Father.

K.W. told the social worker that Father looked after G.C. while K.W. went to her externship. Although K.W. expressed no concerns about Father caring for G.C., K.W. stated that at times he acted “as if he doesn’t like kids” and that the paternal great-grandmother had described him as “a child abuse case waiting to happen.” When asked if Father had been alone with G.C., K.W. said she had left G.C. alone with Father in the car while she went to an appointment. When K.W. returned, she noticed two new scratches on G.C.’s forehead. K.W. did not ask Father about them.

Father told the social worker he took care of G.C. during the week before she was hospitalized during which period of time, he claimed, she fell off the bed. He claimed that after the fall, her bruises were worse but he and K.W. decided not to take G.C. to the doctor. Father did not seek medical care for G.C. or contact law enforcement.

Father has a criminal record that includes convictions for vandalism, driving under the influence, and resisting or obstructing a public officer, and probation violations. He had a history of becoming “angry and combative while under the influence of alcohol,” and smoked marijuana and drank with his friends while caring for the Minor. In addition, Father associated with a gang tagging crew. After his arrest for a probation violation, his probation officer wrote, “[h]is decision to engage in alcohol and

marijuana consumption at times when he is caring for his child is irresponsible, and potentially dangerous.”

Father argues the evidence did not support the findings on Count 1 because the timeline of G.C.’s injuries “takes father out of the web of suspects.” Dr. Wong noted that G.C.’s injuries were “acute” or less than seven days old when G.C. was taken to the hospital on April 12, 2011. Father contends that during the seven days before April 12, 2011, K.W. stayed home and took care of G.C. K.W. told the police that Father had not taken care of G.C. since “a week ago Monday” (April 4, 2011). Thus, Father argues, only K.W. had the opportunity to inflict G.C.’s injuries.

This argument has factual and logical flaws. First, Father told the social worker that he was taking care of G.C. the week before she was hospitalized and that she was in his care when she fell off the bed and hurt herself. The juvenile court was not compelled to believe K.W.’s statement to the police that K.W., not Father, took care of G.C. the week before she was hospitalized. The juvenile court found that Father’s denial of knowledge of the cause of G.C.’s injuries was “willfully false.”

Second, the fact K.W. stayed home to take care of G.C. and the Minor did not mean Father was never at home and did not have the opportunity to harm them during that time. As one example, K.W. told the social worker she had left G.C. alone with Father in the car while she went to an appointment. Third, even assuming K.W. inflicted G.C.’s injuries, Father failed to seek medical care for G.C. and did not contact law enforcement, placing the Minor at substantial risk if K.W. abused him too.

Father argues K.W. must have been the one who harmed G.C. because she was arrested and charged with felony child abuse. K.W. pleaded guilty to the charge, but the factual basis for her plea was that she “permitted” G.C. to suffer unjustifiable physical pain by “failing to protect her from my boyfriend [Father].” K.W. did not admit she inflicted G.C.’s injuries.

B. *Count 2: Failure to Protect (§ 300(b))*

Count 2 of the Petition alleged failure to protect under section 300(b) which, as relevant here, applies where “[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 or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left” (§ 300(b).) Failure to protect under section 300(b) has three elements: (1) neglectful conduct by a parent, (2) causation, and (3) either serious physical harm or illness to the child, or a substantial risk of such harm or illness occurring. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Allegations b-1, b-2, and b-3 of the Petition are the same as the typewritten allegations of a-1, a-2, and a-3. Allegation b-4 alleged that “[o]n numerous unknown occasions” and specifically in February 2011, Father “engaged in domestic violence with [Mother] with the [Minor] present,” that “[Mother] is fearful of [F]ather due to domestic violence,” and that “[t]he [Minor] is at risk due to [F]ather’s unresolved anger management issues.” Allegation b-7 alleged Father has an unresolved substance abuse problem, and allegation b-8 alleged he has “unresolved anger management issues and has been the perpetrator of domestic violence.” Allegation b-10 alleged, “the living environment of [the] home where the [Minor] resides with [F]ather and his live-in girlfriend and the great paternal grandmother was found to be unhealthy and unsafe for the [Minor].”

Substantial evidence supported the juvenile court’s finding that sustained the allegations of Count 2. The evidence described in part II.A. of the Discussion section supporting allegations a-1, a-2, and a-3 also supported their counterparts in Count 2.

Under allegation b-4, Mother told the social worker that about one and a half weeks before the Minor was detained, Father struck her during a visit with the Minor. Mother was fearful of Father and said he followed her and knew where she lived.

Citing *In re Daisy H.* (2011) 192 Cal.App.4th 713, Father argues the element of causation was not proved for allegation b-4. In that case, the only evidence of domestic violence was that, at least two years before the petition was filed, the father pulled the mother's hair and choked her. (*Id.* at p. 717.) There was no evidence any of the children suffered physical harm from the past domestic violence and there was no evidence of ongoing domestic violence. (*Ibid.*) Here, by contrast, Father engaged in domestic violence against Mother in front of the Minor and shortly before he was detained. Father's behavior placed the Minor at substantial risk of harm.

Substantial evidence supported allegation b-7 that Father had an unresolved substance abuse problem. Father began using marijuana in 2007, had a history of becoming "angry and combative" while under the influence of alcohol, and, on at least one occasion, had to be "tased and pepper sprayed" due to his behavior while under the influence. In February and March 2011, Father was photographed at his home, smoking marijuana and drinking alcohol, while caring for the Minor. Father wore a T-shirt with the word "Chronic" on the front. In July 2011, Father's probation officer informed the social worker that Father had violated multiple terms of his probation, including drinking in public and testing positive for marijuana. Between his release from jail and August 31, 2011, Father was randomly tested for drugs 12 times, and tested positive (specimen dilute) five times.

Substantial evidence supported allegation b-8 that Father had an unresolved anger management problem. As noted, Father became angry and combative while under the influence of alcohol and engaged in domestic violence against Mother. K.W. told a police officer she believed Father was capable of hurting G.C. because of his temper and sometimes Father went into rages and banged his head or pounded his fist against a wall.

Substantial evidence supported allegation b-10. In January 2011, just two weeks after the Minor was released from the NICU, SSA investigated and substantiated a child abuse report regarding him. SSA found the home to be unsafe due to dog feces on the floor, a bad odor, broken windows covered with plywood, the concrete kitchen floor covered in dirt, trash, food particles covering the living room carpet, the house smelling of smoke, and the Minor's bassinet containing pillows and toys which increased his risk of SIDS. On April 12, 2011, the day G.C. was hospitalized, a social worker and a police detective inspected the home and found it still to be in an unhealthy condition. The home was cluttered, dirty, and smelled of cat urine. The crib did not have a mattress and was filled with pillows, which increased the risk of SIDS, and an electrical cord was behind the crib within an infant's reach.

Father argues the allegation of unsafe living conditions "centers around" the lack of a mattress in the Minor's crib, a problem that could be easily fixed without asserting juvenile court jurisdiction. The Minor was born prematurely, suffered from hydrocephalus, and required a sleep apnea monitor. Another child of Father had died of SIDS. Removing the clutter from the crib and acquiring a mattress, while alleviating the threat of SIDS, would not solve the underlying problem of an acute lack of understanding or lack of concern over the Minor's fragile condition and special needs. Nor would cleaning up the crib resolve the problem of a filthy, unsanitary, and unsafe house.

III.

Substantial Evidence Supported the Dispositional Findings and Order.

A. Removal of the Minor from Father's Custody

Father argues the evidence was insufficient to support the juvenile court's order removing the Minor from his custody. We strongly disagree.

Section 361, subdivision (c)(1) provides that to remove a child from parental custody, the juvenile court must find by clear and convincing evidence, “[t]here 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 . . . parent’s . . . physical custody.”

Father contends the evidence did not support removal of the Minor from his custody because there was insufficient evidence to support a finding he caused G.C.’s injuries. Father argues, “[the Minor] could still have been safely maintained in his home once the mattress w[as] obtained by [him] for [the Minor]’s crib and [G.C.]’s mother had vacated the home.” But as we have explained, substantial evidence supported a finding that Father inflicted G.C.’s injuries. Removal of K.W. from the home would not protect the Minor. Buying a mattress for the crib would not in itself make the home safe and sanitary.

Father argues there was no evidence the Minor had been injured or would be placed in substantial risk of injury if kept in Father’s custody. However, “[t]he 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.)

Removal from Father’s custody was necessary to avert harm to the Minor. The evidence supported findings that Father physically abused G.C., had an unresolved substance abuse problem, drank alcohol and smoked marijuana while taking care of the Minor, had an unresolved anger management problem, engaged in domestic violence against Mother in the Minor’s presence, and failed to provide safe and sanitary living conditions for the Minor. Father’s argument that he had been testing clean for drugs except for one test for probation purposes several months before detention is incorrect. The evidence established that out of 12 random drug tests he had tested positive (dilute

test) five times. “It was reasonable for the court to infer based on these circumstances that [the Minor] would be at risk of harm if returned to [Father]’s care.” (*In re Cole C.*, *supra*, 174 Cal.App.4th at p. 918.)

Before the juvenile court removes a child from parental custody, it must find there are no reasonable means by which the child’s physical health can be protected without removal. (§ 361, subd. (c)(1).) Father argues the juvenile court failed to consider alternatives less drastic than removal of the Minor from his custody. He argues he could have safely maintained custody of the Minor because “he was in compliance with his case plan as presented” and “was also successfully testing negative for all drugs.” As we have explained, Father was not testing negative for drugs. Father was not in compliance with the proposed case plan, which included this objective: “Do not break the law. Avoid arrests and convictions.” (Boldface omitted.) After the Minor was detained, Father was arrested for probation violations and jailed. After his release from jail, Father tested positive for five out of 12 random drug tests.

Vesting custody with Father was not an option, and Father suggests no other alternative to removal. “Under these circumstances, the evidence supports the court’s finding that no reasonable means to protect [the Minor] were available without removing [him] from [Father]’s custody.” (*In re Cole C.*, *supra*, 174 Cal.App.4th at p. 918.)

B. Child Abuser’s Treatment Program

The juvenile court approved Father’s proposed case plan, which included the requirement that Father attend a 52-week child abuser’s treatment program. Father contends the juvenile court abused its discretion by requiring him to attend that program because he did not physically abuse G.C.

The juvenile court may direct any parent to participate in a counseling or education program as the court deems “necessary and proper to carry out the provisions of this section.” (§ 362, subd. (c).) The program must be designed to “eliminate those

conditions that led to the court's finding that the child is a person described by Section 300." (*Ibid.*) "The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion." (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

The juvenile court found the Minor to be a person described by section 300(a) because there was a substantial risk he would suffer serious physical harm inflicted nonaccidentally by Father. As we have explained, the evidence supported a finding that Father physically abused G.C., had unresolved substance abuse and anger management issues, and had engaged in domestic violence against Mother, all of which placed the Minor at a substantial risk of harm. Thus, a child abuser's treatment program for Father would be designed to eliminate the conditions leading to the juvenile court's finding the Minor was a person described by section 300(a). We disagree with Father's assertion that K.W.'s guilty plea to the child abuse charges relieved him of any responsibility or charge of wrongdoing. The fact K.W. committed child abuse does not mean Father did not commit child abuse too. The factual basis for K.W.'s guilty plea was that K.W. failed to protect G.C. from Father, not that she directly inflicted G.C.'s injuries.

Father argues the dispositional order placed an unnecessary burden on him similar to the burden placed on the mother in *In re Jasmin C.* (2003) 106 Cal.App.4th 177. In that case, the Court of Appeal reversed a dispositional order requiring a nonoffending mother to complete a parenting class with no evidence the mother could not be an effective parent without the class. (*Id.* at pp. 181-182.) In this case, in stark contrast, Father is an offending parent. The juvenile court did not abuse its discretion by ordering Father to attend a child abuser's treatment program.

DISPOSITION

The jurisdictional order and the dispositional order are affirmed.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.