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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

J.R.,

Defendant and Appellant.

G045868

(Super. Ct. No. DP020676)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Richard Y.
Lee, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant
and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su,
Deputy County Counsel, for Plaintiff and Respondent.

J.R. (Mother), appeals from the order made at the combined jurisdictional and dispositional hearing declaring her son, J.W., a dependent child under Welfare and Institutions Code section 300¹ and removing him from parental custody. She contends: (1) there is insufficient evidence to support the order; (2) the court failed to properly consider relative placement; and (3) the failure to conduct the jurisdictional hearing within statutory time limits requires dismissal of jurisdiction. We reject her contentions and affirm the order.

FACTS & PROCEDURE

Detention

Then nine-year-old J.W. was taken into protective custody on December 13, 2010, after he claimed his father had punched and kicked him, giving him a black eye.² At the time, Mother was incarcerated due to a probation violation. Both parents had lengthy histories of unresolved substance abuse. Mother had an extensive criminal history that included numerous arrests and convictions for prostitution and being under the influence of controlled substances, her last conviction being in May 2009. Father also had an extensive criminal history that included drug-related convictions, assault, battery, and domestic violence, and his parental rights to another child (J.W.'s half-sibling) had been terminated.

The parents left J.W. to live with his maternal great-grandmother, Wanda O., from about age three. While one or the other of the parents periodically lived with J.W. in Wanda's home, they both would often go for months without seeing him at all. J.W. had serious behavioral problems and suffered from Attention Deficit Hyperactivity

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² Father does not appeal and, accordingly, we do not discuss facts pertaining to him in detail.

Disorder (ADHD). He was often violent towards school staff and other children, had been repeatedly suspended from school in second grade for a total of 15 days, and had been removed from sports teams due to his aggressive behaviors.

The amended petition, which was eventually sustained, alleged J.W. came under section 300, subdivisions (a) [serious physical harm], (b) [failure to protect], and (j) [abuse of sibling]. The petition alleged Father had on more than one occasion used excessive discipline, including hitting J.W. in the head with a hand causing J.W. to sustain a black eye, placing J.W. at risk for physical injury and emotional harm; both parents had unresolved substance abuse problems and histories of drug-related criminal behavior, with no documented completion of a substance abuse treatment program; both parents had neglected J.W.'s emotional and psychological needs by failing to seek psychological treatment and assessment to address his severe aggressive behavioral problems placing the child at risk for physical and emotional harm; and J.W.'s half-sibling was previously a dependent due to Father's drug abuse and domestic violence, and Father's parental rights had been terminated.

The detention hearing was held on December 16, 2011. J.W. was ordered detained, the parents were appointed counsel, a pretrial hearing was set for January 19, 2011, and a jurisdictional hearing was set for February 3, 2011.

Jurisdictional/Dispositional Reports

January 2011

In its first jurisdictional/dispositional report, the Orange County Social Services Agency (SSA) social worker reported that after detention J.W. was placed in the home of the maternal grandmother, Glenice C. The principal from J.W.'s elementary school explained what led to J.W.'s detention. Father usually brought J.W. to school in the morning. J.W. was in a special education class and took Ritalin. He was defiant, angry, needy, rarely listened, had numerous academic problems, and was repeatedly suspended from school due to his behavior. Father had been given referrals for

counseling for J.W., but had not followed through. Teachers at the school were intimidated by Father. The school had only one contact with Mother in the previous year.

On December 10, 2010, J.W. was again suspended from school after lashing out at a teacher. Father picked up the child from school. When J.W. returned to school on December 13, he had a noticeable black eye. In Father's presence, J.W. told the principal he had fallen on a rock. Later, J.W. reported Father punched, kicked, and hit him with a belt because he got suspended. J.W. said Father hit him in the past hard enough to leave bruises and a black eye. Fearing more abuse, J.W. lied to Wanda and others about how his injury happened. J.W. said Mother did not discipline him because she was never around—he could not remember the last time he saw her. He said Father hit Mother frequently.

The social worker interviewed Wanda, who appeared very frail and tearful. Wanda said Father scared and intimidated her, and if he knew what she was saying about him, ““he would kill me.”” Wanda saw the marks under J.W.'s eye on December 10, 2010, but did not question his story about falling on a rock. She knew Father had a temper and had seen Father be rough with J.W. Wanda also knew J.W. was afraid of Father, but she did not make a report to any authorities because ““[she] didn't understand he would be in danger.”” Wanda said she and J.W. just tried to be good and quiet at home so they would not make Father mad. Wanda said she had planned to start taking J.W. to counseling, and could not say why J.W. had not been in therapy previously. Father would not give J.W. his Ritalin. J.W.'s maternal grandmother, Glenice, was also aware of J.W.'s injury, but she did not report it to anyone. Father told her that J.W. had fallen on a rock.

Wanda and Glenice both described how the parents had left J.W. in Wanda's care for the last six or seven years. They said both parents had drug issues and would lock J.W. in the closet when they were using drugs. The parents did not maintain contact with J.W., or give Wanda money for food or necessities. Both parents would

sometimes go for months without seeing J.W., but at other times, they would see him daily. Sometimes one of the parents would take J.W. to live with them for a while, but they always ended up bringing him back to Wanda. Mother had recently become very religious and spent her time “preaching all over” and not taking care of J.W.

Mother admitted knowing Father had disciplined J.W. excessively in the past by hitting him with a belt and in the head with his hand, but she hoped the current allegation was not true. Mother admitted a lifelong substance abuse history including cocaine and methamphetamine. She claimed she completed a Prop. 36 substance abuse program after her last drug-related arrest in 2008, but she had no documentation. Mother took no responsibility for J.W.’s behavioral problems, and claimed she had taken him to his doctor for Ritalin, and she also tried talking to him. Mother wanted the petition dismissed because she was in prison when J.W. was detained and, thus, bore no responsibility for his injuries. Mother was to be released from prison soon and planned to live with Wanda.

Father denied hitting J.W. He could not explain why he did not follow through with recommended counseling for J.W., and he was unaware of J.W. ever being seen by a psychiatrist or therapist, or even a dentist. The family doctor had prescribed Ritalin for the child.

February 2011

In its next report, SSA explained J.W. continued to reside with the maternal grandmother, Glenice. The home was described as very dark and smelling heavily of cigarette smoke. J.W. was unwilling to talk to the social worker. At school, an attempt to “mainstream” J.W. into a regular class failed when he told the teacher to “shut her pie hole.” Mother continuously tested positive for marijuana. She told the social worker she had a medical marijuana card due to inflammation from an old injury. The social worker advised Mother she would need to bring the card to court and sign a release for

her medical records. Mother agreed. The parties stipulated to continue the jurisdictional hearing to March 29 due to unavailability of Mother's counsel.

On February 16, SSA removed J.W. from his current placement, and he was placed at Orangewood Children's Home (Orangewood). The maternal grandmother, Glenice, had passed away, but no one told the social worker. J.W. eventually reported to his school principal that he had been living with Wanda and Mother for the past several weeks. Mother said J.W. was lying and he had only been at Wanda's house for a couple days. The principal at J.W.'s school said that due to his uncontrollable behavior, J.W. needed to be in a school that was much more structured.

March 2011

On March 25, 2011, SSA reported it was recommending reunification services for Mother but no services for Father. J.W. continued in his placement at Orangewood and was adjusting well but still having behavioral problems. His teachers reported that by moving him to a smaller class, he was learning to redirect his behavior. He was in therapy, but when J.W. had a pre-placement interview for foster care, he told the prospective foster parents he had once set another child's hair on fire.

Father's drug tests were negative. Mother continued to test positive for marijuana, but SSA had not yet received confirmation she had a medical marijuana prescription. Mother was seeing a therapist, Irene Bernal, to whom she reported her marijuana use was medicinal. The social worker told Bernal she should work with Mother on her marijuana use because the juvenile court would not view it as medicinal. Mother mentioned to the social worker that if J.W. could not be placed with the maternal great-grandmother, Wanda, she wanted him placed with her relatives, Donnett and Donny O., who lived in New Mexico.

At the March 29, 2011, hearing, Father asked for a psychological evaluation of J.W. Minor's counsel objected to an Evidence Code section 730 psychological evaluation but was not opposed to counseling. Mother asked for a Court

Evaluation Guidance Unit (CEGU) evaluation of J.W. She also requested J.W. be released to her under a conditional release to intensive supervision program (CRISP), or in the alternative J.W. be placed with Wanda, or with a friend, Carrie M. The court stated it would not subject J.W. to an Evidence Code section 730 evaluation but ordered CEGU counseling and evaluation. It directed SSA to evaluate Wanda and Carrie for possible placement. The parties agreed to continue the jurisdictional hearing to May 3 because the court was not available for a contested hearing. On April 27, J.W. was placed in a foster home.

May 2011

On May 3, 2011, Mother filed a seven-page, largely handwritten document titled “motion to dismiss” laden with religious references. In it she railed against the social worker, and leveled accusations of invasion of privacy and interference with her “sovereign rights.” She also filed another handwritten document asserting the court lacked jurisdiction, proclaiming her “sovereignty,” and referring to her “Sovereign Protect[or] Hector T[.]”

At the May 3 hearing, Mother objected that her court-appointed counsel “cannot represent my conscience” regarding the two “motions” and asked to speak directly to the court. After discussing it with Mother, court-appointed counsel surmised Mother wanted to proceed in propria persona. The court then questioned Mother extensively and eventually agreed to allow her to proceed in propria persona. Although it relieved Mother’s court-appointed counsel, the court ordered counsel to stand by to assist Mother if necessary and for possible re-appointment. Mother wanted her motions heard that day and initially objected to the jurisdictional and dispositional hearing being continued, but she eventually agreed to continue all the hearings to May 18 because witnesses were unavailable and the court was otherwise engaged.

On May 16, Mother filed another handwritten motion to dismiss, claiming she was a sovereign authority and had not delegated her sovereignty to the court or SSA.

She claimed the social worker had committed “treason” against her. The document included a page signed by the “Sovereign Lord . . . Hector.”

On May 18, Mother appeared in court with Hector who she described to the court as her “Sovereign Lord Protector,” “the defender of my faith, []my developer, my reflection worker, my administrator” Mother asked that Hector be allowed to be present and speak for her. The court denied her request.

After argument, Mother’s motions to dismiss were denied. Mother then declared she was asserting her “sovereign immunity” and “arrest[ing] the court . . . until further notice.” When the court asked what she meant, Mother explained she would be back with her “legislator” after consulting with her “Sovereign Lord Protector Christian King in Christ Hector” The court again attempted to explain to Mother the nature of the proceeding and the potential appellate process. It urged Mother to accept appointed counsel, but she declined. Mother requested the jurisdictional hearing be held on May 27, but the judge was unavailable that day, and it set the hearing for June 9.

June 2011

On June 7, 2011, SSA reported the social worker had visited J.W. in the foster home, and asked him if he wished to remain there. J.W. replied Mother was “suing” the social worker and he did not want to talk to the social worker. The foster parents explained Mother was causing J.W. to be conflicted because she kept telling him he was coming home soon. J.W. was refusing some visits with his parents. Mother behaved strangely at some visits. Father’s drug tests were all negative; Mother continued to test positive for marijuana.

On June 9, Mother filed another handwritten motion to dismiss and a petition for writ of habeas corpus demanding J.W.’s immediate release to her, again referring to her “sovereignty” and religious rights. The court heard argument and denied both motions after repeatedly urging Mother to accept appointed counsel. Mother again declared she was “arrest[ing] the court until further notice” and she would not proceed

until she resubmitted her “sovereignty” argument. The court continued the hearing to June 28.

On June 27, SSA reported Mother continued to treat with therapist Bernal, had obtained a job, and claimed she was “withdrawing from marijuana use a few weeks at a time” using “only after certain hours in the evening.” J.W. had refused visits with the parents. He was asked to leave his summer day care program due to inappropriate behavior, and the social worker thought it might be necessary to place him back at Orangewood. On June 28, the parties (including Mother) agreed to continue the jurisdictional hearing to July 21.

July 2011

Prior to the July 21 hearing, SSA reported J.W. was returned to Orangewood in June. Mother’s therapist, Bernal, reported Mother claimed to have been decreasing her marijuana use. Bernal could not say if Mother would protect J.W. if he was returned to her. The social worker did not think J.W. could be safely returned to Mother’s custody in view of her own continued use of drugs, history of violent behavior, and lack of insight into the physical abuse of J.W. The social worker was also concerned that during monitored visits Mother communicated with J.W. in “codes,” which J.W. later told the monitor were words Mother used when she wanted him to “act out.” The social worker considered this a form of emotional abuse demonstrating a lack of concern for J.W.’s mental health. The social worker was also concerned about Mother’s continued use of medical marijuana with no demonstrable plans for caring for J.W. when she was under the influence.

On July 21, Mother filed two more handwritten motions that largely reiterated her prior motions. One was an 11-page motion titled “Motion to Release My Son.” The other was titled “Sovereign Authority Command to Release [J.W.] From Illegal Imprisonment And Return [Mother’s] Son” and was signed by “His Majesty[.]”

At the July 21 hearing, Mother again appeared in propria persona. The court had two other trials starting. Counsel (including Mother's former appointed counsel appearing on stand-by) agreed on an August 29 date for the jurisdictional and dispositional hearing. Mother simultaneously objected to any continuance, refusing to waive time, and demanded all proceedings stop and declared she was "stay[ing]" all further proceedings.

The court gave Mother the opportunity to argue two new motions. Mother demanded that her "Sovereign Majesty, Christian King and Christ Hector," be present to assist her, and she objected to and "arrest[ed]" court proceedings held without her "Sovereign Representation." The court observed that although Hector might be a "sovereign," he was not an attorney and denied her request. After extensive argument, the court denied Mother's motions. The court repeatedly urged Mother to accept appointed counsel, stating it was considering appointing counsel even if Mother objected, but Mother refused. Mother advised the court she had been called by God and would "not ever enter into any contract with [SSA]" because it was against her religious beliefs. The jurisdictional and dispositional hearing was continued to August 29 and a progress review set for August 2.

August 2011

On August 2, Mother appeared and refused to participate in the hearing largely arguing the proceedings violated her sovereignty and religious beliefs. The court appointed counsel for Mother over her objections.

On August 26, SSA reported J.W. was doing very well at Orangewood. J.W. told the social worker he wanted to go to a foster home, his first choice being to live with Wanda. When the social worker said she could not promise J.W. he could live with Wanda, J.W. got angry and said he would refuse to go to a foster home or group home, and would just stay at Orangewood "forever."

The social worker subsequently went to Wanda's home to explore possible placement. Wanda was not there, but Mother was. The social worker thought the home "seemed suitable for placement," and she submitted a referral to the placement unit. She was told placement with Wanda had been denied in May 2011 due to her history with Child Protective Services. The placement team cited as reasons Wanda's knowledge of J.W.'s abuse by Father when the child previously lived with her and her failure to protect him; her failure to follow through with services for J.W.'s behaviors; and her admission she was afraid of Father. The social worker and a supervisor determined Wanda need not be further assessed given her prior placement denial—there was no reason to believe Wanda's situation had changed or that she could provide the safe, highly structured home J.W.'s behavior required.

At the August 29, 2011, hearing, the court was already in the middle of a hearing on another matter that would not conclude for another few weeks, but this case was next in line. The court observed the matter had been continued many times and it intended to exercise tighter calendar control on the case. Mother accused the judge and social worker of breaking the Ten Commandments. She asked that her services be terminated because she had just realized the social worker was "not a heterosexual and my counselor does not believe in God or the Devil." The jurisdictional and dispositional hearing was continued to September 26, with a trial calendaring conference set for September 23.

September 2011

In September, SSA reported J.W. was doing very well at Orangewood, and everyone agreed it was because of the high level of structure. The placement workers were concerned J.W. previously had not done well in his less structured setting, and although they still looked for a possible foster placement, they thought a group home might be the best setting for him.

Father was participating in services and visits. He provided the social worker with documentation that he completed a Prop. 36 program.

The social worker met with Mother and Mother's "Sovereign Lord Protector." Mother had continuously tested positive for marijuana, claiming she had a medical marijuana card, and she quit drug testing in late July. Mother consistently missed at least one of her twice weekly visits with J.W.—missing eight visits in the past two months. Visits with Mother were suspended.

On August 30, the social worker learned Mother was requesting a new social worker and a new therapist because Mother did not believe either was "heterosexual," and Mother did not think her current therapist, Bernal, believed in God. Bernal told the social worker the next day Mother had "fired" her "because she was not a Christian and did not believe in the devil." The social worker found Mother a therapist who identified himself as a Christian and left Mother a message with the information. A month had gone by and Mother had not returned the social worker's call.

On September 26, the hearing was trailed for one day. Mother demanded a jury trial, which the court denied, and was cautioned about being combative and interrupting. She declared, "I have jurisdiction. I have the right to rule and reign over all type of authority, Holy Spirit Rules over all. I charge you before Lord Jesus Christ . . ."

Jurisdictional and Dispositional Hearing

The jurisdictional and dispositional hearing began September 27 and took place over the next three days. Father pled no contest to the allegations of the petition after SSA indicated it wanted to offer services to him.

Testimony of Social Worker

The social worker testified she did not believe J.W. could safely be returned to Mother. The fact Mother refused to believe Father hit J.W., and instead accused J.W. of lying, indicated she would not be able to protect J.W. from Father. Mother denied responsibility for her own actions that caused her to be in prison when J.W. was detained,

failed to obtain recommended psychological treatment for J.W., and left J.W. to be cared for by Wanda since he was three years old. Although Mother claimed she was in prison for a minor parole violation, the original arrest was for willful cruelty to a child and domestic violence. She remained under the influence of marijuana, although she apparently had a prescription.

Mother had stopped therapy, drug testing, and attending visits with J.W. since the last court date of August 29. While Mother consistently attended therapy with Bernal before that, and Bernal said Mother was making good progress, Bernal was unaware of all aspects of the case.

The social worker testified Mother was sometimes calm and appropriate, but at other times very hyper, argumentative, and unreasonable. She could not assess Mother's participation and progress in services because Mother typically would not speak to the social worker directly about the case, and when the social worker asked questions, Mother often yelled and offered religious quotes.

J.W. indicated he wanted to live with Wanda, but Mother was living there and would have to move out before J.W. could be placed there. J.W. had special needs in view of his ADD/ADHD, behavior problems, and need for medication. Mother's behavior was so erratic she could not provide him a consistent, stable home.

Testimony of Mother

Mother testified she last lived with J.W. in 2007, during which time he had no problems. She attended his IEP (individualized education program) meetings in kindergarten and first grade, but not in second grade because she was not living with him. Mother stated her family had kicked her out and Wanda and Father were trying to rule over her. She dealt with J.W.'s multiple suspensions during second grade by talking to him about his feelings and behavior. She was in prison at the time of J.W.'s detention because her boyfriend lied about her committing corporal injury to a spouse. The charge

was dismissed, but she was arrested for violating parole because she was living at a residence other than the one she had reported.

Mother testified she consulted with J.W.'s doctor about his psychological needs and prescription for Ritalin. She agreed Ritalin was working to treat J.W. thus far, and she would continue administering the Ritalin if a psychiatrist said it was necessary. While Mother agreed with J.W.'s IEP and that he needed support at school for his behavior, she also testified J.W.'s only special need was for his mother. Mother believed all of J.W.'s problems were due to the school's failure and SSA. She felt she could manage his ADHD by diet, natural substances, and supplements. She would address J.W.'s psychological and behavioral problems through discussion and discipline in accordance with the Scriptures.

Mother denied having an unresolved drug problem. She had been addicted to methamphetamine, but completed a Prop. 36 program in 2008 and was sober, other than marijuana. Mother did not believe in medicine or pharmaceuticals. She used marijuana for knee inflammation, twice a day, five days a week. She was able to focus completely and drive when using marijuana. Mother admitted she had never obtained a medical marijuana identification card from the State, but had a letter from her doctor for marijuana. She never told that doctor about her methamphetamine addiction.

Mother wanted J.W. returned to her immediately. She had no opinion on whether Father had hurt J.W. If J.W. told her Father hit him, she would believe him and protect him by reporting it to the police.

During her testimony, Mother made contradictory statements as to whether she would comply with court orders. Mother said she would not be bound to a contract or give SSA authority to rule over her. She said if J.W. were returned under court supervision, she would follow the court's rules, but she would not agree to being supervised by SSA and would not participate in any service plan written by SSA. Mother said she would work on her goals in therapy, but she would not allow a social worker to

inspect her home, attend therapy, or drug test until J.W. was first returned to her custody. When the court asked Mother if she could assure the court she would abide by its orders if it returned J.W., she said the court had her word, but then said she would not comply with any court order with which she disagreed, including any order that she participate in an SSA-prepared case plan. Mother said she stopped services because she believed her counselor did not believe in the devil or God, and her social worker was not a heterosexual. She stopped attending visits because she was told they were terminated due to her absences, but she never called to have visits reinstated.

Ruling

The trial court took judicial notice of a case summary sheet showing that on July 4, 2011, Mother had been arrested for driving under the influence, driving with a blood alcohol level of .08 percent or more, driving at an unsafe speed for prevailing conditions, and making an unsafe turn or lane change. The court sustained the amended petition, declared J.W. a dependent child, removed him from both parents, and vested custody with SSA. It ordered reunification services for both parents.

The court found the petition's allegations pertaining to Father and Mother to be true. As to allegation (b)(4) of the petition, which pertained to Mother, the court found she had a long history of drug-related behavior with her last drug-related arrest in August 2008. The arrest summary suggested her substance abuse issues were as recent as 2011. Her extensive criminal history included numerous drug-related convictions. There was no credible documentary evidence Mother ever completed a substance abuse treatment program. Mother regularly used marijuana, which she claimed was for medical purposes. While there was evidence Mother did not appear impaired when using marijuana, there was also evidence her substance abuse was an unresolved problem that would impair her ability to effectively care for, supervise, and parent J.W. She inexplicably stopped drug testing, attending therapy, and visiting J.W. in August 2011, and given her extensive drug history, her sudden refusal to drug test was troubling to the

court. Her recent arrest for driving under the influence was further evidence she still had substance abuse issues. The court noted Mother made conflicting statements about her marijuana usage, telling the social worker she was ““withdrawing”” but testifying she used marijuana twice-daily. Mother agreed she had been using marijuana all during the time J.W. was being repeatedly suspended from school for behavioral issues, indicating her marijuana use interfered with her ability to properly or effectively care for, supervise, or parent him.

As to the other allegation of the petition pertaining to Mother, allegation (b)(5), the court concluded Mother had not taken any responsibility for her actions bringing the case into dependency in the first place. She would not acknowledge Father hit J.W., and had on occasion accused J.W. of lying. She had completely abdicated her responsibilities for her son. Although J.W. had extensive behavioral and emotional issues that started long before dependency, Mother did not attend his IEPs, and took no steps to address his numerous suspensions and inappropriate behavior. There was evidence Mother might have even instigated some of J.W.’s behavior—J.W. reported Mother instructed him to act out by using code words—which constituted emotional abuse and demonstrated a lack of concern for J.W.’s mental health.

After sustaining the allegations of the petition, the court moved on to disposition. It stated it had no confidence Mother would be able to satisfactorily protect J.W. Mother routinely engaged in behavior that put her priorities and needs above her son’s. The court found there were no reasonable means to protect J.W. without removal because reasonable means assumed Mother would comply with court orders, and she had made it clear she would not.

The court ordered services for both parents. When the court urged Mother to participate in services, she said she would not because she did not believe in the court’s “doctrine of demons.”

DISCUSSION

1. Jurisdiction

Mother contends there is insufficient evidence to support the court's jurisdictional findings. We disagree.

“At the jurisdictional hearing the juvenile court determines whether the allegations in the petition that the minor comes within section 300 (and therefore within the juvenile court's jurisdiction) are true. The court's jurisdictional findings must be based on a preponderance of the evidence. [Citation.] If the court finds jurisdiction under section 300, it declares the child a dependent of the juvenile court and proceeds to the disposition phase, where the court considers whether the child should be removed from the parents under section 361.” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432, fn. omitted (*J.K.*.)

“On appeal, the ‘substantial evidence’ test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.] The term ‘substantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]” (*J.K., supra*, 174 Cal.App.4th at p. 1433.)

SSA asserts we need not consider Mother's contention because the jurisdictional findings as to Father are unchallenged. Mother does not respond to SSA's argument. Recently in *In re I.A.* (2011) 201 Cal.App.4th 1484, at pages 1491 through 1492, the court declined to consider one parent's challenge to the jurisdictional order where the parent failed to challenge jurisdictional findings relating to the other parent. The court explained: “Once the child is found to be endangered in the manner described by one of the subdivisions of section 300 . . . the child comes within the court's jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving

the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] As a result, it 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 [him] within one of the statutory definitions of a dependent.”” [Citation.]” (See also *In re P.A.* (2007) 155 Cal.App.4th 1197, 1212.)

We agree with SSA that because the allegations against Father are unchallenged, the jurisdictional order must be affirmed. Mother makes no argument we should nonetheless address findings pertaining to her because they might have consequences in future proceedings. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547 [appeals in dependency matters are not moot if ““the purported error is of such magnitude as to infect the outcome of [subsequent proceedings]””].) Even if that were the case, we would affirm the jurisdictional findings as to Mother because there is abundant evidence supporting them.

The petition alleged jurisdiction under section 300, subdivision (b) [failure to protect] and contained two allegations pertaining to Mother both of which the court found true: (1) her history of substance abuse and drug-related behavior was an unresolved problem that impaired her ability to effectively care for, supervise, and parent J.W.; and (2) she neglected J.W.’s emotional and psychological needs failing to obtain psychological treatment and assessment for his severe aggressive behavioral problems, placing him at risk of physical and emotional harm.

There was substantial evidence Mother simply was not capable of caring for or protecting J.W. Mother had a long history of substance abuse and an extensive criminal record including many drug-related convictions that left her unable to raise her son. She left J.W. in the care of his great-grandmother at age three, maintaining only sporadic contact. Wanda herself could not protect J.W. from Father’s temper because she was scared of him. Mother agreed she last lived with her son in 2007. At the time of

J.W.'s detention in December 2010, he could not even remember the last time he saw his mother. During this time, Mother was becoming preoccupied with religion and, as Wanda described, spent all her time preaching instead of caring for her son. There was evidence Mother could not protect J.W. in the future as she did not believe Father hit him, and accused J.W. of lying. She did not accept any responsibility for J.W. being in dependency.

Contrary to Mother's suggestion that the only drug issues in this case pertain to her legitimate use of medical marijuana, there was substantial evidence she had an unresolved substance abuse problem that impaired her ability to effectively care for, supervise, and parent J.W. Mother admitted she had a methamphetamine addiction. She claimed she stopped using methamphetamine in 2008, but there was no documentation she has ever completed a substance abuse program. Mother admitted she used marijuana twice a day, five days a week, but said it was for medicinal reasons. Although she apparently had a physician's prescription for marijuana, Mother admitted she never told the physician about her methamphetamine addiction, and never obtained a medical marijuana identification card from the State. Furthermore, despite Mother's claim her drug use had no impact on her ability to parent, it was precisely during the time she was using drugs that she was essentially absent from her son's life. And during this time, she was not there to help her son with his significant behavioral and emotional problems.

There was also substantial evidence both parents neglected J.W.'s emotional and psychological needs in that they failed to seek psychological treatment and assessment to address his severe aggressive behavioral problems, placing him at risk of physical and emotional harm. J.W. was defiant and aggressive and diagnosed with ADHD. Mother was absent through much of this time—she admitted not attending any school IEPs during second grade when he was repeatedly suspended due to behavioral problems. The family doctor prescribed Ritalin for J.W., but Father did not give it to him. The court found there was no credible evidence Mother took any actions to correct

or deal with J.W.'s destructive behavior, other than her claim she talked with him about it. And there was evidence that during visits Mother cued J.W. to behave badly.

Mother contends SSA is equitably estopped from alleging Mother neglected J.W.'s emotional and psychological needs because in March 2011, it objected to his being subjected to a formal Evidence Code section 730 evaluation. Mother asserts by objecting to the evaluation, SSA deprived everyone of insight into what J.W.'s needs were. This of course does nothing to address Mother's lack of attention to J.W.'s documented needs before then. Furthermore, the argument was not raised below. "As a general rule, theories not raised in the trial court cannot be asserted for the first time on appeal" (*P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1334 [equitable estoppel cannot be raised for first time on appeal].) In any event, it was Father, not Mother, who requested the formal Evidence Code section 730 evaluation. Mother requested, and SSA recommended, J.W. receive a psychological evaluation as well as counseling through the CEGU, which was already working with him. Mother makes no showing the CEGU evaluation and the treatment it identified was inadequate or inappropriate.

2. Dispositional Order

Mother contends the dispositional order is not supported by the record. Again, we disagree.

Section 361 provides in pertinent part: "(c) 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 . . . : [¶] (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 or guardian's physical custody. . . ."

At the dispositional hearing, the court must decide where the child will live while under its supervision, with the paramount concern being the child's best interest. (*In re Corey A.* (1991) 227 Cal.App.3d 339, 346.) "The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order. [Citation.] 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.' [Citation.] We draw all reasonable inferences from the evidence to support the findings and orders of the dependency court. [Citation.]" (*In re Javier G.* (2006) 137 Cal.App.4th 453, 462-463.)

Whether reviewed under the substantial evidence standard (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [removal findings reviewed under the substantial evidence test]), or the abuse of discretion standard (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49 [dispositional findings reviewed for abuse of discretion]), the result here would be the same. The court's dispositional order is supported by the record.

The court reasonably concluded it had no confidence Mother would be able to satisfactorily protect J.W. She routinely engaged in behavior that put her priorities and needs above her son's. Mother abandoned her son at age three to live with Wanda, providing no funds for his care and maintaining inconsistent contact. At age nine, J.W. could not remember when he last had contact with Mother. She did not protect him from being abused by Father or participate in services to address J.W.'s significant behavioral problems. The court found there were no reasonable means to protect J.W. without removal because reasonable means assumed Mother would comply with court orders, and she had made it clear she would not. Mother filed repeated motions setting out her position that neither the court nor SSA had any authority concerning J.W. Mother was emphatic she would not comply with any service plan prepared by SSA and would only comply with court orders with which she agreed. In the months before the jurisdictional

and dispositional hearing, Mother quit drug testing, quit therapy, quit visiting J.W., and got arrested for drunk driving. She expressed reservations about pursuing recommended treatment for J.W. We are mindful of the fact that when living in the highly structured environment of Orangewood, J.W.'s behavior markedly improved. The record offers no basis for confidence that if placed with Mother, any similar structure could be provided. Accordingly, it was reasonable for the court to remove J.W. from parental custody.

3. Relative Placement

Mother contends the trial court erred by failing to give preferential consideration under section 361.3 to placement of J.W. with relatives including his maternal great-grandmother, Wanda, or Mother's relatives who resided in New Mexico. We find no error.

In March 2011, Mother mentioned to the social worker that if J.W. could not be placed with Wanda, she wanted him placed with relatives in New Mexico. At the hearing on March 29, 2011, Mother requested J.W. be released to her under a CRISP, or in the alternative with Wanda, or her friend, Carrie. The court directed SSA to evaluate Wanda and Carrie for possible placement.

On August 26, SSA reported J.W., who had been placed at Orangewood after his placement with a foster family failed, indicated his first choice was to live with Wanda. The social worker subsequently inspected Wanda's home and because it appeared suitable, she submitted a referral to SSA's placement unit. She learned Wanda was rejected as a suitable placement in May 2011 due to her failure to protect J.W. from Father when J.W. lived with her previously. Accordingly, the social worker determined Wanda need not be further assessed for placement. At the dispositional hearing in September 2011, Mother requested J.W. be immediately placed in her custody, and he would live with her at Wanda's home. There was no request for J.W. to be placed with any other relative.

Under section 361.3, subdivision (a), “preferential consideration shall be given” to relatives seeking placement of dependent children. We review a juvenile court’s decision on relative placement for abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

In *In re Baby Girl D.* (1989) 208 Cal.App.3d 1489, 1493, the court explained the policy underlying relative preference at the disposition stage: “The object of dispositional hearings is to find a temporary caretaker who will meet the child’s physical and psychological needs while cooperating in reunification efforts. A relative, who presumably has a broader interest in family unity, is more likely than a stranger to be supportive of the parent-child relationship and less likely to develop a conflicting emotional bond with the child.” (See also *In re Luke L.* (1996) 44 Cal.App.4th 670, 678.)

Although it is important to accord relatives a “fair chance” to obtain custody of a dependent child, the fundamental duty of the juvenile court is to assure the best interest of the child. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 864.) The “linchpin” of the analysis thus is “whether placement with a relative is in the best interests of the minor.” (*Id.* at pp. 862-863.)

We first consider Mother’s argument concerning placement with Wanda. Mother points out this court’s admonition in *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033, that “[w]hen section 361.3 applies to a relative placement request, the juvenile court must exercise its independent judgment rather than merely review SSA’s placement decision for an abuse of discretion.” Mother complains the court failed in its duty under section 361.3 to exercise its independent judgment. But here, section 361.3 does not apply because great-grandparents are not entitled to preferential consideration. (§ 361.3, subd. (c)(2).)³

³ Section 361.3, subdivision (c)(2), provides, “‘Relative’ means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the

Furthermore, we cannot say failure to place J.W. with Wanda was an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) In its reports, SSA explained why it rejected her as a placement. (See *In re James F.* (2008) 42 Cal.4th 901, 915 [juvenile court may rely on social worker’s report to support findings].) When J.W. lived with Wanda, she had not protected him from Father. Wanda, who was elderly and frail, knew Father had a temper, hit J.W. and treated him roughly, but she was afraid of Father and her response was for her and J.W. to try to be quiet and avoid making him mad. Wanda knew J.W.’s school made recommendations for counseling for J.W.’s behavioral issues, but she did not follow through. After J.W. was placed with his maternal grandmother, Wanda did not protect him by reporting the placement had failed, due to the grandmother’s death.

As for the relatives in New Mexico, we similarly can find no error. There is nothing in this record regarding how close these relatives were, i.e., if either was a “grandparent, aunt, uncle, or sibling” of J.W. entitled to preferential consideration for placement. (§ 361.3, subd. (c)(2).) Furthermore, section 361.3 applies to a relative’s *request* for placement and there is nothing in this record indicating the New Mexico relatives requested placement—just Mother’s mention of them to the social worker early in the dependency as a placement possibility. Mother has not demonstrated any miscarriage of justice with regards to any failure to consider placement with unspecified relatives in New Mexico. (*In re N.V.* (2010) 189 Cal.App.4th 25, 31.)

In her reply brief, Mother raises a new placement-related argument. She contends we should invoke the “disentitlement doctrine” to preclude SSA from participating in this appeal because there is nothing in the record indicating SSA ever

words ‘great,’ ‘great-great’ or ‘grand’ or the spouse of any of these persons even if the marriage was terminated by death or dissolution. *However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.*” (Italics added.)

complied with the court’s March 29, 2011, instructions to evaluate Mother’s friend Carrie for possible placement.⁴ We need not address the argument. (*American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453 [“[p]oints raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument”]; *Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335, fn. 8 [“[T]he rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before’”].)

4. *Delays in Jurisdictional and Dispositional Hearings*

Mother argues the combined jurisdictional and dispositional hearing was not held within the statutory time limits for those hearings. However, the time limitations are not mandatory in the jurisdictional sense; there is no statutory requirement that juvenile court orders or judgments are to be vacated if statutory time limits for hearings are not met. (*In re Richard H.* (1991) 234 Cal.App.3d 1351, 1361-1362.) While we do not condone the extensive delays in conducting the hearings, we note Mother stipulated

⁴ “The disentitlement doctrine is based on the equitable notion that a party to an action cannot seek the assistance of a court while the party ‘stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]’ [Citation.] A formal judgment of contempt, however, is not a prerequisite to exercising our power to dismiss; rather, we may dismiss an appeal where there has been willful disobedience or obstructive tactics. [Citation.]” (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 244.) The doctrine has been applied in dependency cases involving children abducted by the party seeking to appeal the juvenile court orders. (E.g., *In re Kamelia S.* (2000) 82 Cal.App.4th 1224 [a father absconded with his daughter, a dependent child whom the juvenile court had placed in a foster home].) The doctrine also has been applied when a party frustrates the ability of another party to obtain information it needs to protect its rights. (E.g., *In re C.C.* (2003) 111 Cal.App.4th 76, 85-86 [mother’s refusal to participate in a psychological evaluation interfered with the child’s legal right to have her case proceed to the permanency planning stage].) However, we doubt the doctrine of disentitlement would apply in a case such as this because our purpose in reviewing this case *on Mother’s appeal* is not to punish SSA, but to ensure the minor’s best interests are protected.

to many of the continuances, and others were precipitated by Mother's numerous in propria persona motions. Furthermore, Mother cites nothing in the record supporting a conclusion the continuances of the hearings had any effect on the decisions rendered by the juvenile court. Because Mother has not shown she suffered actual prejudice as a consequence of the various continuances or that the postponements led to any miscarriage of justice, reversal on this basis is not warranted. (Cal. Const., art. VI, § 13; see *In re Angelique C.* (2003) 113 Cal.App.4th 509, 523.)

DISPOSITION

The order is affirmed.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.