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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.W.,

Defendant and Appellant.

G046108

(Super. Ct. No. DP021256)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Jane L. Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

Marsha F. Levine, under appointment by the Court of Appeal, for the Minor.

J.W. (Father) appeals from the dispositional order removing his son, J.W., from parental custody. He contends insufficient evidence supports the juvenile court's removal order. We reject his contentions and affirm the order.

FACTS

Detention

Three-year-old J.W. was taken into protective custody on May 12, 2011. A bystander had called the police after witnessing J.W.'s mother, C.J., (Mother)¹ who was intoxicated and yelling at J.W., repeatedly grab the child by the arms pulling him from his stroller and throwing him to the ground, injuring him. Mother admitted drinking two 24 ounce beers, she appeared intoxicated, her speech was slurred, and she had an odor of alcohol. The police were unable to contact Father, but SSA contacted him the next day as he was returning from Las Vegas. When he was detained, J.W. was "very dirty and mildly odorous[.]" He told social workers he did not want to go home with Mother or Father, "mommy hit me," and he wanted to stay at the Orangewood Children and Family Center.

The family had contacts with law enforcement in the past. On February 8, 2011, Mother called police reporting Father absconded with J.W. and her car keys because Mother had been drinking. There was a July 24, 2008, domestic violence incident, in which Mother sustained numerous injuries at the hands of Father, who hit Mother repeatedly when he was drunk. J.W. was positioned between Mother and Father during the incident, forcing Mother to shield the child from Father's blows.

Mother had an ongoing unresolved history of alcohol abuse. Father, who had seven children with five different women, had an extensive criminal history going back to 1980. He had numerous drug-related arrests and convictions. He had numerous domestic violence arrests and convictions involving other women, including arrests for

¹ Mother does not appeal, and therefore, we do not discuss facts concerning her in detail.

domestic violence in 2000, 2002, 2003, and 2006, and misdemeanor domestic violence convictions in 1999, 2001, and 2003. Father was convicted of misdemeanor domestic violence in connection with the July 2008 incident with Mother but although there had been a restraining order issued, he continued to reside with her.

Orange County Social Services Agency (SSA) reported Father said he was often gone from home for work. He was well-aware of Mother's drinking problem and said it had been escalating since 2005. When asked why he left J.W. in Mother's care knowing about her alcohol problems, Father said Mother did not drink every day, and he did not think she would hurt the child. Father had taken Mother's car away and had his adult son checking in on Mother and J.W. while he was gone. Father said if J.W. was released to his care, he would not leave him alone with Mother anymore.

Father told the social worker that following the 2008 domestic violence conviction he completed a "52[-w]eek Batterer's Treatment Program," which included an alcohol treatment component. He had completed a 12-week drug treatment class in the 1980's.

Mother reported Father had a long history of drug and alcohol abuse, and he drank daily. She explained their long history of domestic violence. Although it improved somewhat following Father's completion of the 52-week program in 2009, it soon escalated and currently there was not a week that went by when Father did not hit her and "as recent[ly] as this morning, [Father] put his arm to the maternal grandmother's throat and shoved her out the door."

The petition alleged jurisdiction under Welfare and Institutions Code section 300, subdivisions (a) [serious physical harm] and (b) [failure to protect].² As to Father, the petition alleged he left J.W. in the care of Mother while he was out of the state in May 2011, despite knowing she had an ongoing substance abuse problem (as

² All further statutory references are to the Welfare and Institutions Code.

evidenced by his own report and the fact that in February 2011 he had seen her so inebriated that he took the child and Mother's car keys) impairing her ability to care for J.W., placing the child at significant risk of harm. The petition alleged Father had an extensive criminal arrest record and a history of substance abuse including but not limited to crack cocaine and alcohol, with no documented completion of a substance abuse treatment program. It alleged Mother and Father engaged in domestic violence in July 2008 when he hit Mother several times injuring her while she shielded the child with her body. Despite the issuance of a restraining order, Father continued to reside with Mother. Father had a history of "conflictual relationships" and multiple arrests for domestic violence committed against other women in the presence of children.

At the detention hearing on May 18, 2011, the court denied Father's request for J.W.'s release to his custody and issued detention orders. It ordered visitation for both parents and ordered that neither consume any alcohol or illegal substances.

On June 14, 2011, SSA social worker Jenny Cong reported J.W. had been placed with a maternal great aunt and uncle in late May. The parents' visits went well.

When interviewed after the detention hearing, Father appeared angry with Mother, "but he was able to control himself during the interview." While cooperative, Father "was not happy with drug testing." He admitted his history of domestic violence and drugs. Father said he currently drank beer and used marijuana daily for anxiety. He said his marijuana use had been recommended "by a consultant physician" who was not Father's primary care provider or a psychiatrist. Father did not believe his alcohol and marijuana use impaired his ability to care for J.W. He again admitted he was aware of Mother's alcohol problem, but felt she was not a bad mother and she took care of J.W. He did not believe he had placed J.W. at risk of physical harm because he was not present when J.W. was detained.

Father admitted he had a history of domestic violence against other women with whom he had relationships, and who were mothers of his other children, including

against Linda T. in 2001 and 2002. Three of those women (including Linda), and several other individuals, wrote letters in support of Father and his parenting skills, believing he had changed.

Father's housing was unstable—he moved around staying with various relatives. Father indicated he had decided against moving to a sober living home, but he “just tried to be sober.” At that time, J.W.'s release to Father under a CRISP (Conditional Release to Intensive Supervision Program) was considered inappropriate. Father was referred to random drug testing, domestic violence education, parenting education, counseling, and anger management.

On June 27, 2011, Cong reported J.W.'s placement with the maternal great aunt and uncle continued to go well. Father's housing was still unstable. He tested positive for marijuana six times between May 27 and June 18.

On July 20, 2011, Cong reported Father continued to routinely test positive for marijuana, but he had recently been prescribed anti-anxiety medication. His therapist reported Father attended counseling sessions and seemed motivated to learn and willing to change.

On August 26, 2011, Cong reported Father was participating appropriately in services. Beginning July 26, Father had seven negative drug tests. When Cong spoke to Father on August 24, he indicated he was looking for full time employment. Father said if J.W. was released to him, he could rent a motel room where they could reside, or find a room at a sober living home, and he would have two of his sons who were young adults (ages 18 and 19) take turns watching J.W. when he was at work. The next day, Father contradicted his prior reports about his residence situation. He told Cong he had been living at the home of his former girlfriend, Linda, for the past two months.

On September 14, 2011, Cong reported she was now recommending J.W. be released to Father under a CRISP. Father had continued to progress with services, including counseling and anger management, and was developing a support system.

Cong had assessed Father's housing situation. Father was provided a rent-free room in Linda's home in exchange for his helping with the cooking, yard work, and helping around the house. There were five other adults living in the house including Linda, who slept on the couch in the living room; Linda's 80-plus year old mother, who suffered from memory problems; Linda's disabled adult daughter, who suffered from cerebral palsy; and Linda's adult son and his friend. Although Cong found a few safety threats in the home, she believed they could be remediated. Father's adult sons had been cleared for criminal histories. Father said his sons or Linda could assist with childcare. Although Father's room showed no signs of drugs, Father did indicate the "two younger people in the house occasionally smoke marijuana, but that should not be a problem."

On September 15, 2011, Cong was taken off the case and a new social worker, Mary Weinberg, was assigned to the case. On October 4, 2011, Weinberg reported she was recommending against a CRISP at the time due to "[F]ather's lack of control with his emotions and levels of anxiety." Father had a diluted drug test on September 14, but three negative tests after that.

The maternal great aunt, with whom J.W. was placed and who supervised visits, reported to Weinberg that Father "only wants control of the situation and that his anger and anxiety with the situation is making her nervous around him." Accordingly, she was going to ask her husband (the maternal great uncle) to start supervising the visits. Father had had one weekend visit with J.W. in September, which he claimed had been unsupervised as a precursor to a CRISP, but Weinberg noted the authorized weekend visit was supposed to have been supervised. Mother continued to report, "there are issues between J.W. and [F]ather because [F]ather is an alcoholic and drinks throughout the day. She maintained that [Father] is usually hung over in the morning and that there had been lots of emotional neglect between [F]ather and child. She claimed that [Father] often went to the garage to smoke pot, drink beer[,] and those things could cause his mood changes."

On September 26, Father called Weinberg to report he had heard the maternal great uncle and three-year-old J.W. “shower together daily.” Father said, “‘There’s something wrong with that.’” Weinberg reported, “[Father] stated that he ‘was very upset and that nothing is meshing.’” When Weinberg asked Father if he thought J.W. was at risk of any abuse by the maternal great uncle, Father said “[n]o.” Weinberg assured Father the showering together would be stopped, but suggested he discuss the issue with his therapist because he was so distressed. Father stated he was “very confused and his speech became very fast.” Father said he had to go lay down because he was so upset. Weinberg then called the maternal great uncle who explained “he has issues with his back and that the shower was done together because [J.W.] didn’t want to take showers or get cleaned up so it was just easier and quicker to do it together.” Although the maternal great aunt did not think there was anything wrong with taking “a quick shower of three-year-old boy with his adult uncle,” he agreed he would not do it anymore. A Child Abuse Registry (CAR) Hotline call made by Father was determined to require “no further action by CAR.”

The next day, September 27, Father called Weinberg and he was “still extremely upset about the shower issue” and he wanted J.W. removed from the home immediately. Father again said he had no concerns of sexual abuse or any other risk of abuse from the uncle, but he became more and more upset. Father “began to hyperventilate so badly that he was unable to respond to [Weinberg] who kept calling his name on the telephone.” Weinberg could hear Father “gasping for breath and [she] considered calling 911” Father’s adult son finally came on the line and assured Weinberg she did not need to call 911.

Father’s therapist reported she had discussed the issue with Father, and she “stated that the father loses control of his emotions but that there was no physical abuse. She stated that the father needs to learn how to control his emotions better” Father

missed that day's visit with J.W., without notice, and told his therapist the shower issue was "'consuming'" him and "'I gotta get a grip.'"

The next day Father told social worker Weinberg his anti-anxiety medication had been increased, which was helping, but he was still very upset about the shower issue, even though he again denied believing there had been any abuse or was any risk of abuse. He wanted J.W. removed from the placement nonetheless. Weinberg was concerned about Father's inability to control his emotions and worried J.W. would upset him, as three-year-olds often do to their parents, and he would be unable to remain calm. She was also concerned about Father's diluted drug test and wanted to see at least 60 days of negative results before a CRISP release should be authorized.

In her October 17, 2011 report, Weinberg recommended Father's visits be liberalized to 'supervised', but she continued to believe release to Father under a CRISP to be inappropriate. Father continued to be very upset about J.W. having showered with the maternal great uncle, and demanded J.W. be removed from the placement, even though Father continued to deny believing J.W. was at any risk of abuse. Weinberg again recommended he discuss the issue with his therapist.

Father's treating physician reported that when he last saw Father on September 29, "[F]ather was antsy but became calm." The physician had been prescribing Zoloft for Father's depression and anxiety, said he saw improvement "to the point where he does not worry about [Father's] anxiety." But when asked "if he was comfortable with [F]ather having care and control of a three-year-old child based on what the undersigned explained to him about the prior incident on the telephone[,]'" the physician said "he was 'unable to say at this time.'" He agreed counseling "would be a good idea for the father" and Father's main concern is his son. Weinberg believed a CRISP was not appropriate at this time because "[F]ather has very high emotional anxiety levels that need to be under better control prior to him being the sole care provider for the child."

Testimony

The combined jurisdictional and dispositional hearing began on October 19, 2011. Weinberg testified as to why she did not recommend a CRISP release to Father. She did not feel Father was currently in a position to care for J.W. on his own. Weinberg was concerned about Father's current living situation in which he was already going to be helping to care for an elderly woman with dementia, another adult woman who was disabled with cerebral palsy, doing household chores and handyman work at the house, and then also caring for a three-year-old child. Weinberg believed Father's anxiety and issues with his emotions were not "under good enough control to be able to deal with a three-year-old on a day-to-day basis." She explained there had been a couple disturbing telephone incidents. When she spoke to Father and told him she was advising against a CRISP release, he became overwhelmed and said he had to go lay down. Then a few days later when they discussed the showering incident, he became so distraught that he began hyperventilating. "[Weinberg] offered to call 911 three times." "[Y]ou have to be able to breathe in order to take care of a three-year-old. If you're gasping for breath, your main concern is being able to catch your breath. You [cannot] do that and maintain a three-year-old when your attention is elsewhere." Although Weinberg believed Father's concern regarding the showering incident was appropriate, his intense reaction was of concern to her. Weinberg testified she did not believe Father had resolved his anger management and domestic violence problems. She agreed however that Father's visits with J.W. went well, and Father had stopped using "medical marijuana" for his anxiety.

Cong explained she had recommended the CRISP release to Father because he had made adequate progress with services including anger management and drug testing. Cong testified she had observed Father to be anxious but did not think he displayed "high emotions."

Father testified he would keep taking his anti-anxiety medication "until I get my son back[,] and would continue taking it if that was a condition of return. He

had addressed his domestic violence problems by completing “my 52-week class” after his 2008 domestic violence conviction. Father attended, but did not complete, domestic violence treatment in 2000, 2001, 2002, and 2003, and agreed that even after attending some part of those programs, he continued to engage in domestic violence. But Father said he had since learned to stop and think, talk himself down, walk away, have a higher tolerance, and develop empathy.

Father testified he would protect J.W. from Mother’s alcohol problem by “pray[ing] that she works on her problem like she should” and not allowing J.W. to see Mother if she was under the influence of alcohol. Father testified he considered himself to be an alcoholic, he drank daily up until May 25, 2011, and used marijuana daily until June 22, 2011. He claimed he attended Alcoholics Anonymous (AA) meetings a “couple times a month,” but he did not provide attendance cards to the social worker, did not have a sponsor, and was not currently “working the 12 Steps.” The tool he had learned was “don’t drink.” He agreed that after completing the 12-week substance abuse treatment program in 1993, he returned to daily alcohol and marijuana use. Father admitted he used alcohol and marijuana when J.W. was in his care in the past, but did not think it was a problem because Mother was there too.

Father also presented testimony from witnesses who were his co-workers, friends, and family members. They testified as to Father’s good character, that he took good care of J.W., and that Father never appeared incapable of caring for J.W. due to his intoxication or anxiety.

Ruling

The juvenile court sustained the petition and declared J.W. a dependent child. It found by clear and convincing evidence vesting custody with the parents would be detrimental to J.W. and vesting custody with SSA was necessary to serve his best interests. In ruling, the court observed Father loves his son very much. “He has some anxiety about a number of things. But there are a lot of anxious moments when a parent

raises a child especially when that child is a toddler and is a young boy growing up. There are a lot of anxious times. That's life with a child." The court noted "Father has taken a lot of positive steps to work on his issues. And, in general, the court was positively impressed with Father's demeanor and positive attitude[,] and thought he had a good support system. The court expressed concern Father was "oddly defensive" when responding to questions about his attendance at AA meetings. Father had not been ordered by the court to attend such meetings, and was apparently going on his own, yet he appeared uncomfortable and ill at ease in discussing it.

DISCUSSION

Father contends there is insufficient evidence to support removal of J.W. from his custody. We disagree.

1. Motion to Dismiss Appeal as Moot

SSA and minor's counsel filed motions to dismiss Father's appeal as moot in view of the juvenile court's order on May 21, 2012, returning J.W. to Father's (and Mother's) physical custody. Father agrees we may take judicial notice of that order, and we do so. (Evid. Code, §§ 452, subd. (d)(1), 459.) Father nonetheless opposes the motions to dismiss and requests that we decide the case on its merits.

"An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. [Citation.] However, a reviewing court may exercise its inherent discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review. [Citations.] We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding. [Citations.]" (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404 (*Yvonne W.*))

Because the juvenile court continued its jurisdiction of J.W. after returning him to his parents' custody on May 21, 2012, the basis for its detriment finding at the dispositional hearing could continue to adversely affect Father should J.W. again be removed from his care. (*Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1404.) Thus, out of an abundance of caution, we shall exercise our inherent discretion to resolve the issue despite subsequent events and we deny the motions to dismiss the appeal as moot.

2. *Substantial Evidence Supports the Dispositional Order*

“A dependent child may 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 clear and convincing evidence” (§ 361, subd. (c)) that 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” (§ 361, subd. (c)(1)).

“The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917 (*Cole C.*)). “In this regard, the court may consider the parent’s past conduct as well as present circumstances.” (*Ibid.*) “Although the court must consider alternatives to removal, it has broad discretion in making a dispositional order.” (*Id.* at p. 918.)

Evidence is clear and convincing if it “leave[s] no substantial doubt and [is] sufficiently strong to command the unhesitating assent of every reasonable mind. [Citation.] It has been said that a preponderance calls for probability, while clear and convincing proof demands *a high probability*.” (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899.) Thus, the “burden that must be met to remove a child from the parent’s custody under [section] 361 is substantially greater than that required to support

jurisdiction. [Citation.]” (Abbott, et al., Cal. Juvenile Dependency Practice (Cont.Ed.Bar 2010) § 5.22, p. 313.)

“On review, we employ the substantial evidence test, however bearing in mind the heightened burden of proof.” (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 (*Heather A.*)). “The appellant has the burden of showing the finding or order is not supported by substantial evidence.” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.) “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.” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.)

Using social worker Cong’s September 14, 2011, CRISP recommendation as a dividing line in his argument, Father analyzes each fact or circumstance referred to by SSA in its reports arguing each when viewed in isolation is not adequate to justify the dispositional order. Using this construct, Father thus argues the circumstances that existed *before* Cong recommended the CRISP (e.g., Father’s significant history with domestic violence, his daily alcohol and marijuana use, his extensive criminal history, his neglect of J.W. by leaving him in Mother’s care knowing of Mother’s significant alcohol problems), do not support removal. He then argues nothing that came to light *after* the September 15 assignment of the case to a new social worker, Weinberg, who two weeks later recommended against a CRISP (e.g., Father’s anxiety and lack of control of his emotions, his unstable residential and employment situation, concerns about appropriateness of proposed caretakers, diluted drug test) was sufficient to support the dispositional order.

We cannot engage in this kind of divide and conquer strategy. As this court noted in *In re Hadley B.* (2007) 148 Cal.App.4th 1041, 1048, in the jurisdictional context, the principles underlying dependency proceedings require the juvenile court to consider “all the circumstances affecting the child” “The focus of the statute is on averting harm to the child.” (*Cole C.*, *supra*, 174 Cal.App.4th at p. 917.) “In this regard, the court may consider the parent’s past conduct as well as present circumstances.” (*Ibid.*) “Although the court must consider alternatives to removal, it has broad discretion in making a dispositional order.” (*Id.* at p. 918.)

Under all the circumstances, we cannot say the juvenile court abused its discretion at the dispositional hearing by concluding there was a substantial risk of harm to J.W. if returned to Father’s care. J.W. was detained when Mother, in a drunken rage, repeatedly threw the little boy out of his stroller onto the ground, injuring him. Father admitted he knew of Mother’s alcohol abuse, and that it had been had been escalating since 2005, but he consistently left J.W. alone with Mother. Father thought there was no problem because she did not drink every day and he never really saw her get drunk. But just a few months before the events that caused J.W. to be detained, he had seen Mother get so drunk that he took her car keys away and left the house with J.W., indicating he clearly appreciated the risk her alcohol abuse posed to J.W.

Unlike *In re Savannah M.* (2005) 131 Cal.App.4th 1387, a case Father relies upon, in which a single instance of neglect (leaving the minor alone with a family friend who molested the child), was insufficient for removal, there is much more here. Coupled with Father’s neglect of J.W. by routinely leaving him alone with Mother, is Father’s long history of domestic violence committed against Mother and other women some of whom were mothers of his other children. It is axiomatic Father’s domestic violence propensities posed a risk to J.W. (See *Heather A.*, *supra*, 52 Cal.App.4th at p. 194 [risk of physical harm to children from spousal violence]; *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5 [“Both common sense and expert opinion

indicate spousal abuse is detrimental to children.”.) Father’s long history of domestic violence is an ongoing concern. “[P]ast violent behavior in a relationship is ‘the best predictor of future violence.’ Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of those relationships . . . Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner.’ [Citation.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.) Here, despite attempting domestic violence treatment programs after his numerous prior domestic violence convictions, Father’s domestic violence continued. Following his domestic violence conviction in 2008—an incident in which Mother had to physically shield J.W. during Father’s attack—a restraining order was issued, but Father continued to reside with Mother. And despite completing a 52-week batterer’s program, Mother stated the domestic violence had resumed and there was not a week that went by when Father did not hit her.

In addition to Father’s long domestic violence history, he also had long term issues with alcohol and substance abuse including crack cocaine and marijuana. Father had multiple drug arrests and convictions, yet had never completed a substance abuse program. Father admitted he drank and smoked marijuana daily, even after J.W. was detained.

Father argues there is no nexus between his alcohol and marijuana use and neglect and injury to J.W.; he told social workers he did not believe his own alcohol and drug use would impair his child’s safety. The mere usage of drugs by a parent is not generally, by itself, a sufficient basis on which a finding of harm or risk of harm can be made without some further nexus between such usage and the child at issue. (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453.) But when Father’s drug use is coupled with his long history of domestic violence towards his partners, his long history of other criminal activity, his neglect of J.W. by leaving him in the care of Mother and his inability to recognize the risk she posed, the argument rings hollow. The court could

reasonably infer Father's 25-year history of alcohol and substance abuse directly bore on the risk posed to J.W. Father's reliance on *In re James R.* (2009) 176 Cal.App.4th 129, and *In re David M.* (2005) 134 Cal.App.4th 822, is misplaced. In both cases there was never any injury to the child and no evidence the parent's substance abuse in anyway impeded the parent's ability to care for the child.

Information obtained by Weinberg after J.W. was detained, pertaining to Father's anxiety levels and potentially very stressful living situation, was also highly relevant to whether placing J.W. in Father's custody posed a risk of substantial danger to his physical or emotional well-being. Father's current household situation—the one he would be taking a three-year old child into—was one in which in exchange for his room, he would be helping to care for an elderly woman with dementia and an adult woman with cerebral palsy, and providing housekeeping, cooking, and handyman services. Such a living situation would be inherently stressful even for the most stable of persons. Here, Father has a long history of repeated acts of domestic violence, criminal activity, and substance abuse suggesting he could have great difficulty handling such a stressful environment. Moreover, he has on several occasions following J.W.'s detention demonstrated a continuing inability to control his emotions, confirming that to be the case. Father's therapist agreed Father often lost control of his emotions; the physician who prescribed anti-anxiety medication was unable to say if Father could handle the stress of caring for a three-year old child. In telephone conversations, Father became so distraught he began hyperventilating and Weinberg thought she might need to call 911. Some of those telephone calls pertained to the issue of J.W. taking showers with his uncle. While Father's initial concern was appropriate, it was his subsequent overreaction that was troubling to Weinberg. Despite the maternal great uncle's reasonable explanation for why he showered with the child, his immediate agreement the showering together would stop, and Father's repeatedly agreeing he did not believe there had been or was any risk of abuse, Father clearly could not let the matter go. He had repeated

conversations with Weinberg about the shower issue and told his therapist the shower issue was consuming him. Under all the circumstances, we cannot say the juvenile court abused its discretion by concluding that despite Father's love and concern for his child, and the efforts he was undertaking to deal with his anxiety issues and his substance abuse issues, returning him to Father's custody at this juncture was premature.

Father separately argues that in making its dispositional order, the juvenile court could not rely upon Weinberg's concerns regarding Father's anxiety or inability to control his emotions, his residential situation and household, or the suitability of his young adult sons as caregivers for J.W., because they were not the grounds for jurisdiction that were alleged in the petition. But the juvenile court is not restricted only to the allegations of the petition in making dispositional determinations. (*In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1181-1183 (*Rodger H.*)) Removal orders may not be "premised upon 'completely new' conduct or circumstances that are wholly unrelated to the conduct or circumstances alleged in the sustained petition" without the filing of a supplemental jurisdictional petition (*id.* at p. 1183), but that is not the case here.

Nothing in the record suggests Father's anxiety, lack of control over his emotions, potentially stressful housing situation, or proposal that his young adult sons would care for J.W., were the only reasons J.W. was not returned to his custody. The petition alleged jurisdiction based upon Father's failure to protect J.W. from Mother's alcohol abuse and physical abuse, and his own lengthy history with alcohol and substance abuse, domestic violence, and his criminal history that included numerous arrests and convictions for substance abuse and domestic violence. Facts regarding his continuing anxiety and lack of emotional control directly relate to those core issues of domestic violence and substance abuse, as did concerns that his current housing situation was an inherently stressful one. The juvenile court was entitled to consider additional information pertaining to these circumstances. As noted in *Rodger H., supra*, 228 Cal.App.3d at page 1183, "Of necessity, in virtually every case, the court will have

before it conduct or circumstances . . . not pleaded in the petition. Thus, for example a petition may have alleged child abuse; the social study may report a problem with an alcoholic parent. . . . No authority suggests that these common facts of family history and behavior, that shed light on the charged conduct alleged in a sustained petition, must be expressly pleaded before they may be shown at a disposition hearing.” The “conduct or circumstances shown at the disposition hearing tend to explain the conduct or circumstances alleged in the sustained petition,” and therefore “the conduct or circumstances [presented at the disposition hearing] are not ‘new’ and no new petition need be filed” in order for this evidence to be considered in making the removal order. (*Ibid.*)

DISPOSITION

The motions to dismiss the appeal as moot are denied. The dispositional order is affirmed.

O’LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.