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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re L.V., a Person Coming Under the
Juvenile Court Law.

H038110
(Santa Clara County
Super. Ct. No. JD21059)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

A.V.,

Defendant and Appellant.

A.V., mother of the child at issue here, appeals from a juvenile court dispositional order removing the child from mother's physical custody, continuing the child in a foster home, and ordering reunification services for mother. Mother contends that there is insufficient evidence to support the court's jurisdictional finding, and that there is insufficient evidence to support the order requiring her to participate in a substance abuse assessment as part of the reunification plan. We find no error and will, therefore, affirm the court's dispositional order.

BACKGROUND

The Department of Family and Children's Services (the Department) filed a petition as to the child under Welfare and Institutions Code¹ section 300, subdivision (b) [failure to protect] on February 16, 2012. The child, who was 15 years old, had been detained on February 14, 2012. The father's whereabouts were unknown.

Social Worker's Jurisdiction/Disposition Report

The social worker's jurisdiction/disposition report recommended that the section 300 petition be sustained, that the child remain in out-of-home care, and that mother receive reunification services. According to the report, mother met father when she was approximately 13 years old. At the time of the child's birth, mother was 14 years old and father was 17 years old. Father was possessive and controlling of mother, and he became physically abusive towards her shortly after the child was born. Mother eventually ended the relationship and obtained a restraining order against father. Father "became an absent father figure" to the child. Mother and child primarily lived with the maternal grandmother.

Mother met another man when the child was young, and she had two children with the man. After the relationship ended, mother shared custody with the man of their two children, who were eight and nine years old, as well as shared custody of another child, also eight years old, that the man had from another relationship.

Mother most recently had a five-year relationship with a woman. Mother reported that there was "increased arguing and fighting" which "eventually took a toll on the relationship." Although she was sad about the relationship ending, mother indicated that "she had to do what was best for her children and not herself in deciding to terminate the relationship."

¹ All further statutory references are to the Welfare and Institutions Code.

In October 2009, two referrals were made alleging general neglect, physical abuse, and caretaker absence. Mother had voluntarily placed the child at Bill Wilson Center (BWC) after reportedly having several verbal disagreements with the child in a short period of time. While at BWC, the child reported that mother's girlfriend had previously pushed him, which caused him to fall down some stairs. The girlfriend had also pushed him outside the door when he was about to go to sleep and he was wearing only underwear. The girlfriend would not let him back in for a period of time, and mother, who was present, did nothing. The child further reported that he had been trying to speak to mother at work without any success. He also stated that mother had not visited him or attended his counseling sessions, and that she would not let him visit during an upcoming weekend. The child was tearful and missed his siblings. An emergency response social worker called mother three times to set up an office visit, but mother missed each appointment. At some point, BWC reported that the child had left the placement. Mother had apparently picked up the child and taken him home. The emergency response social worker found the allegations of general neglect, physical abuse, and caretaker absence inconclusive because she was unable to interview mother.

In early January 2010, two referrals were made alleging caretaker absence/incapacity. The child had reportedly arrived at BWC on his own on December 21, 2009. BWC staff was thereafter unsuccessful in getting mother to attend an appointment to contract services for the child. An emergency response social worker interviewed mother and child. Mother eventually signed the necessary paperwork for placement at BWC, and requested that the child stay at BWC for one month. The family had already been receiving counseling services through BWC for approximately five months, and a BWC case manager reported that the child's "out of control" behavior had started to stabilize as a result. The emergency response social worker concluded that the allegation of caretaker absence/incapacity was unfounded because mother had been confused about the nature of the BWC paperwork, she had since cooperated with BWC

staff, and BWC was providing services to the family. The child was eventually discharged from BWC on January 24, 2010. Mother reported to the emergency response social worker that the family would continue receiving counseling services. The social worker also spoke to mother's girlfriend, who confirmed that the child and the family would continue outpatient counseling services with BWC.

On February 6, 2012, a referral was made for out of home placement of the child. The child reportedly did not get along with mother at home and was sent to BWC by mother on February 1, 2012.

On February 7, 2012, the child was scheduled to be discharged from BWC. BWC could not continue to care for the child because he kept running away and coming back drunk on a regular basis. After mother signed the discharge paperwork, mother and child had an altercation in the car outside BWC. Mother told the child he could not return home, and the child became verbally abusive. The child returned to BWC and agreed to follow the rules.

On February 11, 2012, BWC contacted mother and asked her to pick up the child. The child had run away the night before and had returned the following morning under the influence of alcohol. Mother stated she was out of town and would have the maternal grandmother pick up the child. However, neither mother nor the maternal grandmother picked up the child. Mother told a BWC case manager that she wanted to give up custody of the child.

Two days later, on February 13, 2012, mother again failed to pick up the child as scheduled. BWC staff attempted to contact mother by phone but she did not respond.

On February 14, 2012, BWC staff reported to an emergency response social worker that the child was a chronic runaway since entering the program. Further, upon returning to BWC, the child was often drunk and high on marijuana. BWC staff reported that they were unable to deal with the child's unsafe behaviors that occur when he runs away from the program. The staff also indicated that the child was not responding to

BWC's program. The staff was concerned for the child's safety because he was frequently running away and because of his drug/alcohol use. The child had rarely attended school over the past two years and had recently begun cutting his wrist. BWC staff further reported that, despite their difficulties with the child, he did not display aggressive behaviors toward staff or peers, he was "fragile" and "cries easily," he participated in the programs at BWC, and he was motivated to receiving help.

That same day, the emergency response social worker informed mother that the child needed to be discharged from BWC. Mother stated that she would not take him home. She reported that the child was aggressive towards his younger siblings and that the family was not safe with him in the home. The social worker explained that if the child was placed in a shelter, mother would be charged with caretaker absence. Mother indicated that she wanted the child placed in a shelter, that she had been trying to get him placed at Rebekah Children's Services, and that she could not find anyone to help her with the placement. Mother did not want to meet with the social worker.

The social worker met with the child who presented as a "tall, thin and sad fifteen year old." The social worker told the child that he would be transported to a shelter. The child cried and indicated that he wanted to remain at BWC. The child reported that he had not had any contact with his father since he was two years old, and that he was primarily raised by his mother.

The social worker called mother and told her that the child had been placed in protective custody at the shelter. Mother did not want to meet with the social worker that day and stated that she was having surgery the next day in Sacramento.

On February 15, 2012, the social worker contacted mother by phone. Mother stated that she was having surgery on February 17, 2012, and that she would not be able to meet with the social worker or attend a court hearing on that day. Mother was willing to attend court, but indicated that it would have to occur the following week. Mother also indicated that she had given birth to the child when she was 14 years old, and that her

relationship with the child's father had been volatile and included domestic violence. The father had not been involved in the child's life. Mother further stated that the child had always been angry and that, even at the age of two, he was pushing televisions off the stands and pinching, biting, and scratching in anger. According to mother, the child's behaviors escalated when he entered middle school and began surrounding himself with a different set of friends. His grades dropped, and he began engaging in a pattern of truancy and defiant behaviors. Mother stated that she was unable to control the child, and that she had been trying to get help for him over the past six years. Mother believed that the child's loss of several relationships may have also contributed to his behaviors. For example, the child previously had close relationships with his maternal grandparents, but he had recently resorted to stealing from his grandmother, and his grandfather had recently married and moved away. Further, mother had younger children with an ex-boyfriend, who had been in the child's life since he was two years old and with whom the child had been close, but mother's strained relationship with the ex-boyfriend had led to the child having little or no contact with him.

On February 16, 2012, the Department filed a petition under section 300, subdivision (b) as to the child. That same day, the social worker contacted mother, who indicated that she would attend a February 17 court hearing because her surgery had been postponed. Mother wanted the child to get better and wanted to eventually reunify with the child. She expressed an understanding that they both had issues that needed to be addressed, and indicated that she was supportive of any environment that would help the child and herself.

On February 17, 2012, the social worker met with mother. Mother indicated that she did not want to relinquish the child and was willing to comply and participate in any services in order to reunify with him. The social worker also met with the child. He admitted to smoking marijuana and drinking alcohol. He also admitted to cutting his wrist, but indicated that he would not resume the behavior. The child showed the social

worker a scar on his wrist that appeared to be healing. The child stated that he was very happy at his current placement. He wanted to remain at the group home for a while and until he received services to address his mental health issues. He was also willing to participate in services to address substance and alcohol use. The child was remorseful about his past behaviors and their impact on his siblings and mother. The child also reported that he had no relationship with his father.

That same day, on February 17, 2012, the juvenile court held a detention hearing. The court ordered that the child be detained and temporarily removed from mother's physical custody, and allowed mother to have visitation with the child. Mother and child had lunch that day, and mother thereafter transported the child to his group home without any incident. Through at least early March 2012, mother and child had daily phone contact.

On February 29, 2012, the social worker was informed that the child had returned to the group home after an outing and was high from marijuana.

Mother was currently unemployed and wanted to stay at home for her children due to their young ages. The social worker had been unable to locate the child's father.

The social worker reported that "there appears to be a lot of love between mother and son." The social worker's assessment of the family included that mother and child "have more of a sibling relationship, rather than mother and son, perhaps due to [her] being a very young mother (age 14)." Further, mother's relationships included domestic violence, "which may have affected [the child's] perception of his ability to defy his mother and not abide by the rules she has imposed." Mother also had a "history of using alcohol that led to DUI's, perhaps because she used these as a form of escape from an overwhelming sense of responsibility, especially being a parent to several children and maintaining a household."

The social worker further reported that both mother and child had indicated that therapy was important to mending their relationship. Mother indicated a need for

supportive services for herself and the child to prevent further incidents from escalating to the point that led to the current investigation. The child indicated that he needed to be out of the home and that he needed services to stabilize. According to the social worker, mother had “done her best in implementing limits and boundaries with her son,” she appeared supportive of the child’s educational and mental health needs, and she was “receptive” to the Department’s recommendations. The child appeared to have a close relationship with his mother and siblings, and he appeared receptive to receiving help for his behaviors.

The social worker believed that the child would not be safe in the family home. According to the social worker, both mother and child realized that they needed time apart although they both cared about each other. Mother expressed sadness about the child being happier out of the home, but acknowledged that he was improving and had a better opportunity to address his needs. The child was also aware that he was not a good influence on his siblings, and he wanted services to help him become a role model.

Mother had two misdemeanor convictions, one in August 2006 and one in July 2008, relating to driving under the influence of alcohol. In 2011, mother was convicted of misdemeanor driving with a suspended license. Although mother denied any current substance abuse, the social worker believed that a substance abuse assessment was necessary to determine the “most appropriate services for her given that she has some DUI’s on her record.” The social worker also reported that mother was “open to participating in [a domestic violence] support group and individual counseling to address her past history with unhealthy relationships.”

Jurisdiction Hearing

The jurisdiction hearing was held on March 9, 2012. At the hearing, the petition was amended to add an allegation that mother had been in two relationships where she was a victim of domestic violence. Mother signed a waiver of rights form and submitted the matter on the social worker’s report. The juvenile court found the allegations in the

petition to be true and that the child came “within the provisions and description of [section 300, subdivision (b)].”

Before the hearing concluded, the Department indicated that there had been an off-the-record discussion about whether mother had “done her classes and what she needed to do for her DUI convictions.” On the record, the Department indicated that it needed proof from mother regarding the classes she had completed with respect to the alcohol-related convictions, or else the Department would request a substance abuse assessment. Upon inquiry from the juvenile court, mother indicated that she had attended some classes, but that she was not taking any further classes because she had injured her back. The court told mother to provide documentation to the Department regarding completion of “DUI classes,” and regarding any stay or waiver she was given for participating in future classes. The court set the disposition hearing for March 23, 2012.

Social Worker’s Addendum Reports

In addendum reports for the disposition hearing, the social worker continued to recommend that the child remain in out-of-home care and that mother receive reunification services. The social worker was able to speak to the child’s father by telephone. Father acknowledged that he had not been involved in the child’s life and blamed mother for this separation. The social worker subsequently left a voicemail message for father informing him of the disposition hearing date, his option to attend, and the possibility of services. Father left a message for the social worker indicating that he was very upset that he was unable to see his son, and he ended the message by stating, “ ‘You know where I live and where to get my money from.’ ”

The social worker reported that the child’s behavior at his current placement in a group home had become increasingly worse. Recent incidents included the child failing to return home after school, leaving the house without permission, getting into an altercation with another resident, and damaging property at the home. The social worker stated that there appeared to be a “significant amount of loss” that the child had

experienced, “which could be the precursors to his acting out behaviors.” Those losses included the child’s father, as well as subsequent father figures that had also left. The social worker believed that mother and the rest of the family needed to “work with service providers in order to begin understanding [the child’s] situation” The social worker also believed that the mother-son relationship had been “strained due to the several problems they have experienced” and that the two needed to work towards mending that relationship before it worsened. The social worker recommended that mother participate in various services, including parenting education, a program of counseling or psychotherapy, a domestic violence victims’ support group, and a substance abuse assessment. The social worker reported that referrals had already been submitted for mother for a parent orientation course and a domestic violence support group, and that the coordinator for the latter group had stated that mother had agreed to attend the next class.

Disposition

The disposition hearing was held on March 23, 2012. Counsel for the Department submitted the matter on the social worker’s report and addendums. Counsel for the child expressed concern about having “so many professionals in [the child’s] life right now,” but did not express a specific objection to social worker’s recommendations.

Counsel for mother argued that mother should not have to participate in a “drug assessment.” According to mother’s counsel, there was “no concern that mother is currently using or that she has a problem with any substances.” Mother’s counsel contended that “the reason why the family is here” was unrelated to “mother’s past DUI convictions,” and that the only reason the Department was seeking the drug assessment was because of those past convictions. Mother’s counsel further stated: “I believe mother should focus on doing her classes with respect to the parenting as well as counseling and family counseling with [the child]. She is committed to doing the domestic violence support group as she acknowledged she has had a history of being in

relationships that have been unhealthy. I think those services are very relevant to why the case is before [the] court.”

The juvenile court observed that the alcohol issue had been discussed at the last hearing, and that mother had been asked to provide “proof of any completion or proof of a waiver” concerning classes she was required to take as a result of her prior alcohol-related convictions. Counsel for mother indicated that mother had been “unable” to “go down and get the paperwork” concerning proof of a waiver since the last court hearing.

Counsel for the Department argued that it was “important” for mother to participate in the substance abuse assessment, given her two prior alcohol-related convictions that were “not that far in the past.” Counsel further contended that the purpose of the assessment was “to determine whether she has a drug or alcohol problem that needs to be addressed so she can reunify with the child. [¶] If the answer is that she does not, then she won’t be referred to services but it would certainly be a shame to have there be an outstanding problem that she just chooses not to get assessed for.”

Mother’s counsel responded that the convictions were from 2006 and 2008, and thus several years old. Further, there was no report that mother had been drinking excessively or having any current issues with substance abuse. Counsel continued to argue that the drug assessment had “nothing to do with” why the child was before the court.

In response to inquiries from the juvenile court, mother indicated that she still drank “[o]ccasionally” and she did not feel she had a problem with alcohol. Regarding the first alcohol-related conviction, mother stated that she was at a club and “wasn’t supposed to be the driver,” but “something ended up happening” and she “ended up being the driver.” Regarding the second alcohol-related conviction, she “was having dinner and . . . some champagne.” According to mother, her blood-alcohol level was 0.08 percent on both occasions.

Counsel for the Department contended that it was “a bit concerning that the mother is so nonchalant about these DUIs,” and that she needed to take responsibility for her actions and issues. Counsel contended that the case was before the juvenile court because mother had been unable to give the child the support, treatment, and help he needed and “that could be in part due to her substance abuse problem.” Counsel argued that mother’s prior alcohol-related convictions and the more recent conviction for driving on a suspended license showed “an issue with judgment that needs to be addressed, and . . . if the judgment is impaired to any degree by current substance abuse or addiction type issues then that needs to be addressed.”

In response to any inquiry from the juvenile court, mother acknowledged that she was still on probation for the first alcohol-related conviction in August 2006 at the time of the second alcohol-related conviction in July 2008. Regarding the more recent conviction for driving with a suspended license, mother acknowledged that her license had been suspended as a result of the prior alcohol-related conviction. Mother stated that she had since gotten her license back.

The juvenile court admitted into evidence the addendum reports and adopted the social worker’s recommendations. Regarding the issue of substance abuse, the court stated: “I am going to order that [mother] do the substance abuse assessment. If it is true that she really doesn’t have an issue with substances they will say don’t do any services, but I am . . . concerned about the two DUIs that were close together and concerned about what impact that has on the mother/son relationship and . . . I understand that . . . [the child] has a lot of anger issues and has from the time he was young, and I think it is worth pursuing” Mother interrupted the court and stated, “I am sure the anger problems don’t have anything to [do] with the DUIs though.” The court responded: “Usually children have anger issues because of the upbringing they have and relationship they have with the parent, and if the parent is using substances, using alcohol inappropriately, that can impact how they treat the child. So . . . I do think it is related. I don’t know how

strong it is but I want to explore that with the [substance abuse] assessment. They may say there is no issue to be followed up, and if that is the case, that is fine. [¶] What I don't want to do is get 6 or 12 months down the road and realize there is an issue we missed because the [substance abuse] assessment did not happen so I am going to order the [substance abuse] assessment.”

By written order, the juvenile court adjudged the child to be a dependent child of the court, and found by clear and convincing evidence that the welfare of the child required that he be removed from mother's physical custody. The court ordered that the child's placement in a foster home continue, and that mother and child be given reunification services. Mother's service plan was to include a domestic violence victims' support group; a substance abuse assessment; parenting classes; and a program of counseling or psychotherapy that addressed the issues of “healthy relationship with son and children, healthy romantic relationship, [and] issues related to loss, anger, young parenthood, [and] establishing a parent relationship with son.”

DISCUSSION

Section 300, subdivision (b) Finding

The Parties' Contentions

Mother contends that there was not substantial evidence to support the juvenile court's finding under section 300, subdivision (b) that the child was at risk of serious physical harm or illness by mother's failure or inability to adequately supervise or protect the child, or by mother's inability to provide the child care due to substance abuse.²

² The allegations found true included that the child was “at substantial risk of harm in the care of his mother . . . because she is unable to meet the child's serious mental health needs”; that the child was placed into protective custody on February 14, 2012, “after his mother refused to pick him up from [BWC], where he was voluntarily placed”; that upon the child's discharge from BWC on February 7, 2012, “mother told the child he could not go home with her”; that since February 11, 2012, “mother had not picked up [the child] from his voluntary placement, which left him without an appropriate (continued)

Mother argues that “although [the child’s] behavior undoubtedly put him at risk of physical harm,” the evidence was insufficient to establish neglectful conduct on her part. Mother further argues that there was not substantial evidence to support a finding that her history of domestic violence or her prior alcohol-related convictions placed the child at risk of serious harm.

The Department contends that substantial evidence warranted taking jurisdiction over the child under subdivision (b) of section 300. The Department also argues that there was substantial evidence to support taking jurisdiction under subdivisions (c) and (g) of section 300.

Analysis

A child may be declared a dependent child under section 300, subdivision (b) if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, . . . or by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.” The Department has the burden of showing, by a preponderance of the evidence, that the

caregiver”; that mother had reported “she could no longer care for [the child] due to his violent and erratic behaviors,” the child had “demonstrated violence and anger” since he was two years old, his “behavior has escalated since 2009,” and “mother does not feel she can care for [the child] without further assessment and intervention”; the child “has untreated substance abuse and mental health issues, and his mother is unable to meet his needs,” he was a “chronic runaway” at BWC and returned drunk and high on marijuana, BWC “could not manage his unsafe behaviors” at the time of protective custody, and “mother is unable to protect [the child] and his siblings from [his] behaviors”; “the treatment staff at [BWC] reported that [the child] was not responding to the programs that he was offered” and the staff “was concerned about his safety due to his running away, substance abuse behaviors and recent cutting behaviors, which place his safety and that of others at risk”; mother has two convictions from 2006 and 2008 related to driving under the influence of alcohol and one conviction from 2011 for driving with a suspended license; and “mother has had two relationships where she was a victim of domestic violence.”

circumstances are such that the child has been or will be harmed due to the parent's failure or inability to provide for the child. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.) There must be evidence of "three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820 (*Rocco M.*); accord, *In re David M.* (2005) 134 Cal.App.4th 822, 829 (*David M.*).

"[T]he purpose of section 300, subdivision (b) is to protect the child from a substantial risk of *future* serious physical harm and that risk is determined as of the time of the jurisdictional hearing." (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1397 (*Savannah M.*); accord, *In re Carlos T.* (2009) 174 Cal.App.4th 795, 803.) "While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm." (*Rocco M., supra*, 1 Cal.App.4th at p. 824.) Jurisdiction thus may be unwarranted where the facts alleged in the petition represent an isolated instance of past parental neglect not likely to recur. (*Savannah M., supra*, 131 Cal.App.4th at p. 1398; *David M., supra*, 134 Cal.App.4th at p. 831.)

On appeal, we review the jurisdiction findings under the substantial evidence standard. "In reviewing the sufficiency of the evidence on appeal, we look to the entire record for substantial evidence to support the findings of the juvenile court. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Instead, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court's order and affirm the order even if there is other evidence supporting a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. [Citations.]" (*In re*

A.M. (2010) 187 Cal.App.4th 1380, 1387-1388 (*A.M.*); accord, *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649 (*Kristin H.*)

In this case, the Department alleged, and carried its burden of proving, that there was a substantial risk the child would suffer serious physical harm or illness as a result of the failure of mother to adequately supervise or protect the child. (§ 300, subd. (b).) The record reflects that between February 11 and 13, 2012, mother failed to pick up the child from BWC despite BWC's request. On February 14, 2012, the child was placed in protective custody after mother was informed that the child needed to be discharged from BWC, and she still refused to take the child home. The child was "fragile" and cried "easily," needed mental health and substance abuse services, and had recently begun cutting his wrist. By failing to take the child home or otherwise provide for his supervision or protection, mother placed the child at substantial risk of physical harm or illness.

Relying on *In re Precious D.* (2010) 189 Cal.App.4th 1251 (*Precious D.*), mother argues that parental neglect or unfitness is required in order to support a finding under section 300, subdivision (b). Mother argues that her "inability to control her incorrigible son did not provide the court with any evidence of parental neglect or unfitness."

In *Precious D.*, the juvenile court asserted dependency jurisdiction over an "incorrigible teenager." (*Precious D.*, *supra*, 189 Cal.App.4th at p. 1253.) The county department of children and family services "admitted that it sought dependency court jurisdiction because of [the child's] incorrigible behavior and her need for court-ordered services, not because of any neglectful conduct by [the mother]." (*Id.* at p. 1259; see also *id.* at p. 1257.) The appellate court held that "the provision of [section 300, subdivision (b)] providing for jurisdiction based on the parent's 'inability . . . to adequately supervise or protect the child' requires that the parent be unfit or neglectful in causing serious physical harm to the child or a risk of such harm." (*Id.* at pp. 1253-1254.) The appellate court concluded that substantial evidence did not support

dependency jurisdiction over the child because there was insufficient evidence of unfitness or neglectful conduct by the mother. (*Id.* at pp. 1259, 1261.) In contrast, in the present case, mother repeatedly failed and eventually refused outright to take the child home upon his discharge from BWC. The record thus provides substantial evidence of neglectful conduct by mother.

Mother also contends that there was only a “hint of alleged parental misconduct in the claim that mother twice refused to pick [the child] up” from BWC. She argues that, “when viewed in its entirety, the record reveals that mother was out of options, and that she failed to immediately pick the minor up only because she recognized that she needed help dealing with his behavioral problems. . . . [M]other cooperated with the Department and expressed she was open to services, and the Department saw no reason to file section 300 petitions on behalf of mother’s other children.”

As noted, we examine the record to determine whether there is any substantial evidence, contradicted or not, to support the juvenile court’s findings. We draw all reasonable inferences and resolve all conflicts in favor of the court’s decision. (*A.M.*, *supra*, 187 Cal.App.4th at pp. 1387-1388; *Kristin H.*, *supra*, 46 Cal.App.4th at p. 1649.) The record reflects that on more than one occasion, mother failed or refused to make herself available to meet with a social worker to discuss issues pertaining to the child. Further, in addition to refusing to take the child home from BWC, mother stated that she wanted to give up custody of the child. Although mother later indicated that she wanted to eventually reunify with the child, the court could reasonably believe that mother would again in the future refuse to take custody of the child and adequately supervise or protect the child, in view of the ongoing and apparently escalating issues involving mother and child. In sum, based on the record, the juvenile court could properly conclude that there was a substantial risk the child would suffer serious physical harm or illness as a result of the failure of mother to adequately supervise or protect the child. (§ 300, subd. (b).) We

therefore determine that there is substantial evidence to support the juvenile court's jurisdictional finding under section 300, subdivision (b).

In view of our conclusion, we need not consider mother's contentions that there was insufficient evidence to support a finding that her history of domestic violence or her history of alcohol-related convictions also caused the child to be described by section 300, subdivision (b). (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 (*Alexis E.*) [reviewing court may affirm juvenile court's finding of jurisdiction if any one of the statutory bases for jurisdiction alleged in the petition is supported by substantial evidence and need not consider whether any other alleged grounds are sufficiently supported].) We also need not consider the Department's contentions that there was substantial evidence to support taking jurisdiction under subdivisions (c) and (g) of section 300. (See *Alexis E.*, *supra*, at p. 451.)

Mother nevertheless argues that the juvenile court "erred by sustaining the section 300, subdivision (b) allegation based on [her] past DUI convictions," even if there is substantial evidence to support the court taking jurisdiction under that subdivision on another ground. According to mother, this issue is not "moot" because "the erroneously-sustained DUI-based section 300 allegation has already negatively impacted" her, as that "finding formed the basis for a subsequent court order requiring [her] to submit to a substance abuse assessment."

We are not persuaded by mother's argument. As we will next explain, even if mother's prior alcohol-related convictions were insufficient by themselves to support taking jurisdiction over the child under section 300, subdivision (b), the juvenile court still had the authority to require mother to participate in a substance abuse assessment as part of the reunification plan, and the court did not err in imposing that requirement in this case.

Order Requiring Participation in a Substance Abuse Assessment

Mother contends that the juvenile court erred by requiring her to participate in a substance abuse assessment as part of the reunification plan because “no substantial evidence established that mother had a current substance abuse problem, or that her participation in a substance abuse assessment would help eliminate the need for dependency court intervention.” In response, the Department contends that the order for a substance abuse assessment was not an abuse of discretion, as the juvenile court “properly identified [mother’s use of alcohol] as a potential impediment to reunification.”

“The overarching goal of dependency proceedings is to safeguard the welfare of California’s children. [Citation.]” (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1228 (*Nolan W.*)). At the dispositional hearing, “[t]he 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. [Citations.] We cannot reverse the court’s determination in this regard absent a clear abuse of discretion. [Citation.]” (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006 (*Christopher H.*); accord, *In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) When applying this standard of review, the court’s “findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.” (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712, fns. omitted.) Thus, “ “[t]he abuse of discretion standard measures whether, given the established evidence, the lower court’s action ‘falls within the permissible range of options set by the legal criteria.’ [Citation.]” [Citations.] We do not defer to the trial court’s ruling when there is no evidence to support it.” (*Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 452.) However, “ “[w]hen two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” [Citations.] The burden is on the complaining party to establish abuse of discretion. [Citations.] The showing on appeal is insufficient if it presents a state of facts which

simply affords an opportunity for a difference of opinion. [Citations.]” (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682.)

In general, “section 361.5 requires the juvenile court to order child welfare services for both parent and child when a minor is removed from parental custody.” (*Nolan W.*, *supra*, 45 Cal.4th at p. 1228.) Section 362 provides that when “a child is adjudged a dependent child of the court . . . , the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child” (§ 362, subd. (a).) Further, the “court may direct any reasonable orders to the parents . . . of the child who is the subject of any [dependency proceedings] as the court deems necessary and proper to carry out this section,” including orders “to participate in a counseling or education program.” (§ 362, subd. (d).) “The program in which a parent . . . is required to participate shall 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 California Supreme Court has determined that section 362 “authorizes the juvenile court to order that a parent undergo counseling as a condition of visitation even after dependency proceedings have ended. [Citation.]” (*Nolan W.*, *supra*, at p. 1229.)

The California Supreme Court has cautioned, however, that “the juvenile court’s discretion in fashioning reunification orders is not unfettered. Its orders must be ‘reasonable’ and ‘designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.’ [Citation.] ‘The reunification plan “ ‘must be appropriate for each family and be based on the unique facts relating to that family.’ ” [Citation.]’ ([*Christopher H.*, *supra*, 50 Cal.App.4th at p.] 1006.) . . .” (*Nolan W.*, *supra*, 45 Cal.4th at p. 1229.) The California Supreme Court has further explained: “The Legislature has given juvenile courts broad discretion to fashion reunification orders designed to address the problems that have led to a dependency proceeding. Unfortunately, in a great many dependency cases, parental substance abuse is one such problem. The juvenile court has authority to require a parent to submit to

substance abuse treatment as part of a reunification plan as long as the treatment is designed to address a problem that prevents the child's safe return to parental custody. It is important to note that a parent may choose to waive reunification services. [Citation.] But when a parent accepts services, and when substance abuse treatment is reasonably related to the minor's welfare, the juvenile court has authority to order the parent to participate. (§§ 361.5, subd. (a), 362.)” (*Nolan W., supra*, at p. 1229.)

In *Christopher H.*, the juvenile court adjudged the child a dependent, removed him from the father's custody, and ordered that reunification services be offered to the father. (*Christopher H., supra*, 50 Cal.App.4th at p. 1005.) The court's order regarding the reunification plan included that the father undergo a substance abuse evaluation, participate in any recommended treatment, and submit to random drug or alcohol testing. (*Ibid.*) On appeal, the father argued that the juvenile court's order that he submit to random drug or alcohol testing was improper because the court previously found that his alleged alcohol use did *not* support a jurisdictional finding under section 300. (*Id.* at pp. 1005-1006.) Rather, the dependency petition had been sustained on other grounds. (*Id.* at p. 1005.)

The appellate court determined that the juvenile court's order for random drug or alcohol testing as part of the reunification plan was not an abuse of discretion, even though the juvenile court had found “not proven” the allegation that the father had alcohol-related problems that negatively affected his ability to care for and protect the child. (*Christopher H., supra*, 50 Cal.App.4th at p. 1005; *see id.* at p. 1008.) The appellate court explained that “ “[a] reunification plan formulated to correct certain parental deficiencies need not *necessarily* address other types of conduct, equally deleterious to the well-being of a child, but which had not arisen at the time the original plan was formulated.” ’ [Citation.] However, when the [juvenile] court is aware of other deficiencies that impede the parent's ability to reunify with his child, the [juvenile] court may address them in the reunification plan.” (*Ibid.*)

The appellate court in *Christopher H.* observed that the father had three arrests for driving under the influence, the most recent of which led to his current incarceration and involved alcohol and methamphetamine. (*Christopher H., supra*, 50 Cal.App.4th at p. 1007.) In addition, the child was a “high-risk infant with ongoing medical problems” who presented “a challenge for his caretaker” and who needed “a stable, sober caregiver.” (*Ibid.*) The appellate court explained that the father’s “substance abuse problems pose[d] a potential risk of interfering with his ability to make a home for and care for [the child].” (*Ibid.*) The appellate court determined that, “given [the father’s] repeated driving under the influence convictions and positive blood test for methamphetamine, the [juvenile] court would have been remiss if it failed to address [the father’s] substance abuse even though that problem had not yet affected his ability to care for Christopher. The [juvenile] court reasonably concluded [the father’s] substance abuse was an obstacle to reunification that had to be addressed in the reunification plan. [Citation.] ¶ Random drug or alcohol testing will facilitate [the father’s] compliance with the remainder of the reunification plan. The possibility of random drug tests should provide an added incentive for [him] to avoid illicit drugs and excessive alcohol consumption, either of which will interfere with his ability to provide a suitable home for Christopher and achieve reunification.” (*Id.* at p. 1008.)

In this case, mother had two misdemeanor convictions within a relatively short period of time, one in August 2006 and one in July 2008, relating to driving under the influence of alcohol. At the disposition hearing in March 2012, mother acknowledged that she was still on probation for the first conviction at the time of the second conviction. She also admitted that she continued to drink alcohol. Further, she had yet to complete the classes that were required as a result of one or both of her prior alcohol-related convictions. In addition, the child, a teenager, had several issues that needed to be addressed, including alcohol and marijuana use. The juvenile court observed that the child had a lot of anger issues, that children usually have anger issues because of their

upbringing, and that if a parent is “using alcohol inappropriately, that can impact how they treat the child.” In view of the record, we determine that the juvenile court could reasonably conclude that mother had an unresolved issue with alcohol, and that her continued use of alcohol posed a risk of negatively affecting the child, their already troubled relationship, and her ability to supervise, protect, and otherwise provide a suitable home for the child and achieve reunification. In sum, the substance abuse assessment of mother was reasonably related to the child’s welfare. Therefore, based on the record, we determine that the court did not err in ordering the substance abuse assessment. (See *Christopher H.*, *supra*, 50 Cal.App.4th at pp. 1007-1008; *Nolan W.*, *supra*, 45 Cal.4th at p. 1229.)

We are not persuaded by mother’s contention that her case is similar to *In re Jasmine C.* (2003) 106 Cal.App.4th 177 (*Jasmine C.*), and *In re Basilio T.* (1992) 4 Cal.App.4th 155 (*Basilio T.*).

In *Jasmine C.*, the appellate court reversed a dispositional order requiring the mother, who was the “nonoffending” parent under the petition, to complete a parenting education class. (*Jasmine C.*, *supra*, 106 Cal.App.4th at p. 181; see *id.* at p. 182.) The appellate court explained that the department at the dispositional hearing “made no showing and referred to no evidence that supported” the parenting class condition, the juvenile court imposed the condition “without making any findings or giving any explanation,” and “nothing in the record supported the order, which apparently was based on a rote assumption that [the mother] could not be an effective single parent without parenting classes, something belied by common sense and experience in 21st-century America.” (*Id.* at pp. 181-182.) In a footnote, the appellate court stated that the juvenile court was not “foreclose[d] . . . from reconsidering the parenting class issue upon a future showing of reasonableness. [Citation.]” (*Id.* at p. 182, fn. 5.)

In *Basilio T.*, the appellate court reversed a dispositional order containing a substance abuse component, which included substance abuse testing. (*Basilio T.*, *supra*,

4 Cal.App.4th at pp. 163 & fn. 4, 173.) The only argument offered by the social worker to support the substance abuse component was a concern that the mother’s “behavior and some of her comments regarding an invention she anticipated would bring her billions of dollars were drug induced.” (*Id.* at p. 164; see also *id.* at p. 172.) The appellate court observed that the mother’s counsel had made an offer of proof that the parents indeed had an invention with the potential to make money. (*Ibid.*) The appellate court further determined that nothing in the record indicated that either parent had a substance abuse problem, or that a substance abuse problem led to the conditions that caused the dependency. (*Id.* at pp. 172-173.) In a footnote, the appellate court stated that, “[i]f, during the pendency of the case, evidence of a substance abuse problem arises justifying the inclusion of such a component in the reunification plan, the trial court can modify the reunification plan accordingly and order additional services. [Citation.]” (*Id.* at p. 173, fn. 9.)

In contrast to *Jasmine C.* and *Basilio T.*, where there was no evidence to support the condition at issue in the reunification plan, in this case there was evidence that mother had a problem with alcohol, that she continued to drink alcohol, and that her continued use of alcohol posed a risk of interfering with her ability to supervise, protect, and otherwise provide a suitable home for the child and achieve reunification. Accordingly, we conclude that the court’s requirement that mother participate in a substance abuse assessment is supported by the record, and we find no abuse of the court’s discretion. (See *Christopher H.*, *supra*, 50 Cal.App.4th at pp. 1007-1008; *Nolan W.*, *supra*, 45 Cal.4th at p. 1229.)

DISPOSITION

The disposition order of March 23, 2012 is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.