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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

IN RE J.C., a Person Coming Under the  
Juvenile Court Law.

H042380  
(Santa Clara County  
Super. Ct. No. 1-15-JD-23078)

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

Plaintiff and Respondent,

v.

L.C.,

Defendant and Appellant.

J.C. (minor) was temporarily detained by the Santa Clara County Department of Family and Children's Services (Department) after police officers executing a search warrant at D.C.'s (father) house discovered cocaine and arrested father and L.C. (mother). The juvenile court sustained the allegations of a Welfare and Institutions Code section 300, subdivision (b) petition filed on behalf of minor and exercised jurisdiction over him.<sup>1</sup> The juvenile court did not declare minor a dependent of the court, instead ordering mother and minor to complete informal services under the Department's supervision. (§ 360, subd. (b).) Mother appeals from that order, arguing that there was not substantial evidence that mother knew or should have known about the drugs at

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

father's house and also that there was not substantial evidence of any current risk to minor. For the reasons stated here, we will affirm the judgment. (§ 360, subd. (b).)

### **I. JUVENILE COURT PROCEEDINGS**

Mother and minor lived with minor's maternal grandparents and not with father. According to a jurisdiction and disposition report and an attached police investigation report, in late January 2015 the Santa Clara County Specialized Enforcement Team obtained a search warrant for father's house based on suspicion that father used the house for drug sales. On the evening of the search, police began surveillance outside father's house. An officer saw mother leave the house with minor and lock the door. Mother returned with minor shortly thereafter and re-entered the house. Father later pulled into the driveway in a carpet cleaning van. He and a passenger were detained based on the search warrant. An officer asked father if there was cocaine in the house and father said there was cocaine "for personal use in a pouch in his room ... ."

The police knocked on the front door to the house and announced that they had a search warrant. An officer opened the door when he heard movement that "did not sound like it was approaching the door ... ." The officer saw mother pick up minor (who was three years old at the time) and walk toward the door. Police found an unregistered, loaded handgun in the house after mother told them where it was hidden. The police were assisted by "NDC Zeus," who appears to be a Narcotics Detection Canine named Zeus. An officer directed Zeus to search the master bedroom and the dog "alerted to a brown travel like pouch" located on top of the sink counter in the master bathroom. Inside the travel bag, an officer found a small amount of cocaine, numerous baggies, and an electronic scale. That cocaine "was basically in plain view," according to the officer's investigation report. The officer also found white powder in a watch holder near the travel bag that he believed might be a "cutting agent" for use when preparing cocaine for sale.

In a trash can under the sink an officer lifted a diaper and found an untied baggie with cocaine in it. The officer reported that there was enough cocaine in the baggie for use by an adult and possibly enough to kill a child if ingested. Under a second diaper in the trash can was another baggie that contained cocaine residue. The officer described the cocaine baggies in the trash as being “hard to miss” by mother if she was in the bathroom. Officers impounded two carpet cleaning vans parked at father’s house. Following a “positive alert” by Zeus to one of the vans, the police obtained a warrant and found 100.9 grams of cocaine in one of the vans. Father was one of two registered owners of the van. Officers also searched father’s car that was parked in the driveway of the house and found a baggie of cocaine.

Police seized father’s cellular phone, as authorized by the search warrant. Father refused to provide the phone’s password but officers were able to observe incoming text messages, including one that stated: “So I’m picking up 3 oz white and 4 oz Molly right?” An officer answered two calls on father’s phone, also permitted by the search warrant. The first caller asked if he was “ready to do three,” the officer told him he was ready, and the caller said he would send a text message when he was in a parking lot next to the house. When that first caller arrived, officers approached him and he initially appeared to suggest he was there to buy cocaine but then told the officers he was merely there to “ ‘get [his] credit fixed.’ ” A second caller asked if he could “ ‘pick up some stuff’ ” and an officer told him to park in the parking lot by the house. When that second caller was confronted by the police, he admitted that he was there to buy \$200 worth of cocaine from father and that father had been his cocaine supplier for approximately six months. During a consent search of the second caller, officers found a baggie with cocaine in his wallet. The caller told the officers he had purchased that cocaine from father. Both parents were arrested that night and minor was taken into temporary protective custody.

A social worker interviewed mother the night the search warrant was executed. Mother was attending San Jose City College and also worked part time at a grocery store. She told the social worker she goes to father's house to shower and cook but only does so when father is not home. She also occasionally sleeps at the house when father is not home. Mother stated she had taken a shower in the master bathroom earlier in the night<sup>2</sup> but denied seeing any drugs or signs of drug dealing. Mother acknowledged that she knew father had been "involved with drugs in the past" but denied any knowledge that he was presently using or dealing drugs. Mother said she did not use drugs. The social worker observed that there were women's clothes in a closet at father's house and also that there was a room filled with children's toys. The social worker reported that it was "unclear if mother knew that there were drugs" in the house. Though mother denied knowing about the drugs, she told the social worker it was " '[m]y fault for being there. My fault for not addressing any issues with [father] ... .' "

A social worker also interviewed father, who admitted using cocaine recreationally but denied using drugs around minor. Father contended that he stores any cocaine in the house in a bag on the top shelf in the bathroom out of minor's reach. He stated that mother comes to father's house three or four times per week to wash and clean but that she was not living at the house due to relationship problems. According to father, mother does not use drugs and drinks alcohol only occasionally.

The Department filed a section 300, subdivision (b) petition, alleging that minor had suffered or was at substantial risk of suffering serious physical harm or illness based on the parents' failure or inability to supervise or protect minor and also based on the parents' inability to provide regular care for minor due to substance abuse. Minor was released to mother's custody after the initial hearing and father was allowed supervised visitation.

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<sup>2</sup> In a later interview mother told the social worker that she had not taken a shower that night but had merely used the restroom briefly.

Mother had no criminal history but faced felony charges arising from the search, including possession of cocaine for sale (Health & Saf. Code, § 11351) and child endangerment (Pen. Code, § 273a, subd. (a)). Father had prior misdemeanor convictions, including one for inflicting corporal injury on a spouse from 2000 (Pen. Code, § 273.5, subd. (a)) and one for driving with a suspended license from 2013 (Veh. Code, § 14601.1, subd. (a)). He also faced drug and child endangerment charges relating to the search.

The jurisdiction and disposition report discussed family strengths, including mother's support from her extended family, both parents' willingness to communicate with social workers and engage in Department services, and the absence of previous dependency referrals. Both parents passed all drug tests taken before the report's completion. Based on social workers' unannounced home visits, the report noted that the maternal grandparents' home was free of clutter and that there were "no concerns" about minor's well-being. Mother told a social worker she would continue to abstain from drugs and would complete any services necessary to maintain custody over minor. Father indicated he would engage in services and he interacted appropriately with minor during all supervised visits. Minor was healthy and appeared developmentally on target. The maternal grandparents described minor as their number one priority and promised not to allow father unsupervised contact with him.

The jurisdiction and disposition report recommended that minor remain in mother's custody but also that minor be declared a dependent of the juvenile court. The report further recommended that mother receive Family Maintenance Services and that father continue to be allowed supervised visitation. The report expressed concern that minor had been exposed to criminal activity on the night of the police search and noted that if drug sales frequently occurred at the house "it is possible that [mother] should have suspected that something was going on ... ."

The Department prepared two addenda to the jurisdiction and disposition report. With the exception of one dilute result from mother, both parents passed all random drug tests conducted between February and April 2015. Mother was attending Celebrating Families classes offered by the Department. Mother and minor continued to reside with minor's maternal grandparents. Social workers reported that after numerous unannounced home visits there were no concerns about minor's safety at the home. Mother continued to deny having any knowledge of father's involvement with drugs at the time of the search. Minor was doing well at his Head Start classes and the social worker reported that he smiled throughout a recent home visit. Minor had met with a therapist, who was still assessing minor's needs but indicated that the case plan for minor would "focus on separation anxiety" vis-à-vis mother, tantrums, and signs of aggression toward mother.

Father was attending Narcotics Anonymous/Alcoholics Anonymous meetings and met weekly with an outpatient substance abuse counselor. The counselor stated father had been responsible and was taking the initiative to verify and attend appointments. Father had also enrolled in the Celebrating Families program. Apart from three scheduled visits that father failed to attend, father's supervised visits with minor went well, with father and minor appearing bonded and happy. Father requested additional visitation.

Despite mother's and father's progress, the Department continued to recommend that the court declare minor a dependent, order mother and minor to participate in Family Maintenance Services, and order that father "receive services to enhance visitation." That recommendation was based on minor having been placed at great risk by being allowed in a house where drugs were present and accessible, as well as on mother's continuing denial "that she was aware that drugs were being sold in the home."

The juvenile court conducted a contested jurisdiction hearing that was based solely on the Department's reports and attached exhibits because none of the parties chose to

introduce oral testimony. The court was particularly interested in hearing argument regarding evidence of any current risk to minor that would support a jurisdictional finding. The Department argued that mother knew about father's drug use and possibly sales, that she "has not taken responsibility or [ ] been accountable for what happened," and that mother "continues to deny that she even knew" about the drugs. Mother's counsel pointed to mother's total compliance with all Department requests throughout the proceedings. Mother's counsel argued that mother was being truthful when she denied knowing about father's drug involvement and that she was "not a contributing factor" in the illegal activity that led to the search. Mother essentially argued that she should not be penalized for telling the truth.

The juvenile court sustained the petition under section 300, subdivision (b). The court stated that the "evidence is clear that [father], as the noncustodial parent, placed the [minor] at grave risk of death or serious physical harm both in general by storing and selling drugs at the home and more particularly by keeping cocaine in the home in places where the [minor] could easily access the drugs knowing that mother and [minor] frequently visited the home."

As for mother, the court noted she admitted using the master bathroom the day of the search. Regarding the cocaine found layered under diapers in the trash can in the bathroom, the court stated that the "most reasonable and likely interpretation is that someone attempted to conceal the cocaine" because it "is unlikely that someone engaged in the sale of cocaine would simply throw away good cocaine or mistakenly place a diaper on top of an open bag of cocaine." The court continued that because "mother was the only person in the home with the child during the two hours prior to the drug raid and because mother is the child's primary caregiver, it is most likely that mother placed the diapers in the bathroom trash can."

The court disagreed with the Department's position in the jurisdiction and disposition report that it was unclear whether mother knew there were drugs in the

bathroom. The court found that “the evidence demonstrates that it is more likely than not that mother was aware or should have been aware that there was cocaine in the bathroom accessible to” minor. As to current risk, the court noted the parents’ engagement with Department services but nonetheless concluded minor remained at substantial risk of suffering serious physical harm or illness based on mother’s continued denial of knowledge about the drugs in the house. The court found that mother’s denial was not credible.

Although the juvenile court sustained the petition, its dispositional order did not adjudicate minor a dependent of the court. Instead, the court ordered that parents participate in informal services under the Department’s supervision. (Citing §§ 360, subd. (b); 301.)

## **II. DISCUSSION**

### **A. THE DISPOSITIONAL ORDER IS APPEALABLE**

The Department argues that an order for informal supervision under section 360, subdivision (b) is not appealable. Section 360 states that “[a]fter receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment” under any of the section’s subdivisions, including subdivision (b), which states: “If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child’s parent or guardian under the supervision of the social worker for a time period consistent with Section 301.” By describing subdivision (b) as a type of judgment that can be entered, that section supports mother’s argument that such an order is appealable. (See § 395, subd. (a)(1) [“A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment.”].)

In *In re Adam D.* (2010) 183 Cal.App.4th 1250, the court of appeal concluded that a section 360, subdivision (b) order “must be seen as tantamount to a disposition” that can be appealed. (*Id.* at p. 1260.) The court reasoned that “[a]ny other result would insulate the juvenile court’s jurisdictional finding from review” because if the parents successfully complete informal services, the petition will be dismissed. (*Id.* at pp. 1260–1261.) Based on that decision and the text of section 360, subdivision (b), we find the order here is appealable.

### **B. THE APPEAL IS NOT MOOT**

The Department argues that mother’s appeal is moot because she will have completed informal services by the time this court renders a decision. Though the Department argues that the duration of informal services “is six months” (citing § 16506), section 16506 states that after an initial six-month period, services “may be extended in periods of six-month increments if it can be shown that the objectives of the service plan can be achieved within the extended time periods, and provided within the county’s allocation.” (§ 16505.) On this record it is unclear when mother’s informal supervision by the Department will end and the Department therefore has not shown that the appeal is moot.

### **C. POSSIBLE PREJUDICE TO MOTHER WARRANTS REVIEW**

The Department contends that we should not decide the merits of mother’s appeal because the sustained and unchallenged allegations relating to father’s conduct are adequate to affirm the juvenile court’s decision and the juvenile court’s decision will not prejudice mother. We agree that the sustained allegations regarding father’s conduct would be an independently adequate basis to affirm the jurisdictional finding such that we would not need to reach mother’s substantive arguments. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763 (*Drake M.*)) However, when a jurisdictional finding could be prejudicial to an appellant, a court of appeal may exercise its discretion to consider the merits of an appeal. (*Id.* at p. 762.) The Department contends that the

sustained allegations against mother will not prejudice her in the future because it “does not provide a triggering event for a bypass in any subsequent dependency” and “will be irrelevant in any criminal proceedings.” While the allegations might not have immediate legal consequences, mother’s status as an “ ‘offending’ ” parent could nonetheless have adverse implications in the future. (See *Drake M.*, at p. 763 [distinction between offending and non-offending status “may have far-reaching implications with respect to future dependency proceedings”].) We will therefore exercise our discretion and consider the merits of mother’s appeal.

#### **D. SUBSTANTIAL EVIDENCE SUPPORTS THE JURISDICTIONAL FINDINGS**

Mother argues that there was insufficient evidence to support the juvenile court’s section 300, subdivision (b) jurisdictional finding. Mother’s substantive arguments on appeal can be summarized as two related contentions. First, she argues that there was insufficient evidence that she knew or should have known about the drugs found at father’s house, meaning she was not neglectful by bringing minor to the house. Second, mother asserts that because she did not know about the drugs, her denial of knowledge was genuine and should not have been used to support a finding of current risk to minor.

A finding under section 300, subdivision (b) requires 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.) The Department bears the burden in the juvenile court to support a jurisdictional finding by a preponderance of the evidence. (§ 355, subd. (a).) In order to exercise jurisdiction, a juvenile court must find a *current* risk of harm to the minor at the time of the section 300 hearing. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022–1025 (*J.N.*).) While past harmful conduct is relevant to the current risk of future physical harm to a child, past conduct is inadequate to support jurisdiction absent current risk. (*Id.* at p. 1025.) On appeal, we review the juvenile court’s decision for substantial evidence, resolving all conflicts and drawing all

reasonable inferences in support of the decision. (*Id.* at p. 1022 [“Substantial evidence is evidence that is reasonable, credible, and of solid value.”].)

The evidence before the juvenile court showed that mother visited father’s house regularly and occasionally slept there. Mother knew that father had been involved with drugs in the past. Mother admitted she used the master bathroom the day of the search. The officer who searched the bathroom testified that the cocaine in the travel bag on the counter was “basically in plain view” while the cocaine in the trash can under the sink would have been “hard to miss” if mother used the bathroom. There was an open cocaine bag in the trash can that was covered by a diaper. Mother was the only person (other than minor) that police observed entering or exiting the house in the hours leading up to the search. During the single evening during which police had possession of father’s cellular phone, they received at least three communications that appeared to be from individuals who wished to purchase drugs from father. One of the individuals who called father’s phone and came to a parking lot near father’s house admitted he was there to purchase cocaine, told the police father had been his cocaine supplier for six months, and claimed that a baggie of cocaine found in the caller’s wallet was purchased from father.

From mother’s admission that she used the bathroom that day and the officer’s statement that the cocaine was in plain view, the juvenile court could reasonably conclude that mother had actual knowledge that there was cocaine in the house and that it was in a place that would be accessible to minor. Also reasonable was the juvenile court’s inference that mother was responsible for placing the diaper on top of the open baggie of cocaine in the trash can because mother was the only adult in the house immediately before the search. Substantial evidence thus supported the juvenile court’s finding that mother knew or should have known about the drugs in father’s home and failed to adequately protect minor from exposure to illegal drugs on the night of the search. Though mother continues to deny knowing about the drugs in the house, the

juvenile court explicitly found that denial not credible, a decision to which we must defer. (*In re Ernesto H.* (2004) 125 Cal.App.4th 298, 309.)

Mother argues that there was insufficient evidence that she engaged in neglectful conduct because at the time minor was detained he was in good health and after the detention she followed all directives from the Department. But once the juvenile court found that mother allowed minor to be present in a house where she knew or should have known cocaine was present, a finding of neglect regarding that conduct was almost compelled as a matter of law. Mother cannot in good faith argue that allowing a three-year-old child in a house where the caregiver knows or should know a potentially lethal amount of cocaine is accessible to the child does not create a substantial risk that the child will suffer serious physical harm or illness. As substantial evidence supports the trial court's finding that mother knew or should have known about the presence of cocaine, its finding that she engaged in neglectful conduct on the day of the search is also supported by substantial evidence.

Mother's attacks on the strength of the evidence presented to the juvenile court are unpersuasive. She argues that "the drugs were buried and the mother would have had to go through the travel bag in order to find them." But that argument is directly contradicted by the police officer's statement that the cocaine in the travel bag was "basically in plain view." Mother also contends that "there was insufficient evidence that mother knew of the drug sales prior to the police raid ... ." But the juvenile court's jurisdictional finding was not dependent on mother's knowledge of past drug sales. Even assuming that finding was necessary, the number and nature of communications father's phone received that night and the associated contacts supported an inference that a reasonable person who interacted with father would suspect he was involved in drug sales.

Regarding minor's current risk, the court acknowledged that mother "has done everything that the social worker has asked her to do" but nonetheless determined that

“there is a current substantial risk of serious physical harm or illness to the child based both on the underlying incident as well as on mother’s ongoing denial that drugs were present and accessible to the child.” Mother argues that this case is similar to *J.N.*, where a different panel of this court reversed a juvenile court’s jurisdictional finding under section 300, subdivision (b) that was based solely on the parents’ arrest for driving under the influence while the children were in the car. (*J.N.*, *supra*, 181 Cal.App.4th at pp. 1014–1015, 1026–1027.)

Unlike the parents in *J.N.* who took responsibility for their behavior (*J.N.*, at pp. 1019–1020), in this case mother continued to deny that she knew about the drugs in the house. The juvenile court expressly found that mother’s denial of “any knowledge that there were drugs in the father’s home accessible to the child” was not credible. Based on that adverse credibility determination, the juvenile court impliedly found that mother had actual knowledge there were drugs in the house. That finding was supported by substantial evidence in the form of mother’s admission that she used the master bathroom and the police officer’s report that the drugs in that bathroom were in plain view. (*In re I.J.* (2013) 56 Cal.4th 766, 773 [“ ‘ ‘We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.’ ’ ”].) Having imputed to mother knowledge that there were drugs in the house, the juvenile court could reasonably conclude that minor was still at substantial risk of serious physical harm or illness until mother took responsibility for that knowledge.

### **III. DISPOSITION**

The judgment ordering mother to complete informal services is affirmed. (§ 360, subd. (b).)

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Grover, J.

**WE CONCUR:**

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Rushing, P.J.

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Elia, J.

*In re J.C./Santa Clara County Department of Family & Children's Services v. L.C.*  
**H042380**