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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re T.G. et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.P.,

Defendant and Appellant.

E079425

(Super.Ct.No. SWJ220088)

OPINION

APPEAL from the Superior Court of Riverside County. Michael J. Rushton,
Judge. Reversed.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant and
Appellant.

Minh C. Tran, County Counsel, Teresa K.B. Beecham and Julie K. Jarvi, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

L.P (mother) contends there was insufficient evidence to support the juvenile court’s jurisdictional findings under Welfare and Institutions Code¹ section 300, subdivisions (b) and (g), regarding her children, T.G., J.G., and E.L. (the children). Mother argues those findings should be reversed, and the dispositional order should accordingly be reversed, as well. She further contends that if we affirm the jurisdictional findings, we should conclude the court erred in failing to terminate dependency jurisdiction at the disposition hearing. Respondent concedes the evidence was insufficient to support the jurisdiction finding under section 300, subdivision (g), but otherwise argues that we should affirm the judgment. We reverse the jurisdiction order.

FACTUAL AND PROCEDURAL BACKGROUND

On February 23, 2022, the Riverside County Department of Public Social Services (DPSS) filed a section 300 petition on behalf of the children, alleging that they came within subdivisions (b) (failure to protect) and (g) (no provision for support). T.G. was 16 years old at the time, J.G. was 14 years old, and E.L. was eight years old. The petition also included K.P., who was 17 at the time, but is now 18.² The petition alleged that mother neglected the health and well-being of K.P. when she engaged in a physical altercation with him, and then refused to pick him up from Emergency Treatment Services when he was ready to be discharged. The petition also alleged that mother had a

¹ All further statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

² K.P. is not a subject of this appeal.

criminal arrest history due to engaging in domestic violence, and had a child welfare referral history, which included allegations of general neglect, domestic violence, inappropriate discipline and physical abuse, and failed to benefit from services previously offered. The petition additionally included allegations that the whereabouts of the children's fathers³ were unknown and they were unable to provide the children with support, and that E.L.'s father, Em.L., "neglects" the safety of the children, in that he "sends" mother threatening messages that resulted in an active restraining order.

In a detention report, a social worker reported that on February 17, 2022, K.P. got into an argument with mother and injured her. K.P. was transported by law enforcement on a section 5150 hold as a danger to others. The following day, mother refused to pick him up when he was ready to be discharged because she was afraid of him. DPSS received a referral alleging caretaker absence/incapacity.

The social worker contacted mother, who said she did not plan on letting K.P. return home. Mother explained that she recently discovered marijuana in his room and told him she would take him to Operation Safe House or call the police. An argument ensued, and she threw her cell phone at him. Mother said K.P. hit her 15 to 20 times on the back of the head, causing her head to bleed. He also hit her in the stomach area, where she had recently healed from surgery. J.G. was present during the incident and was screaming and trying to push K.P. off of mother. T.G. came in the room and pulled K.P. off of her. Thus, mother did not want to assume care and custody of K.P. due to his

³ Ty.G. was the alleged father of T.G. and J.G.; L.P. was the alleged father of K.P.; and Em.L. was the alleged father of E.L. They are not parties to this appeal.

behavior and actions that placed his siblings at risk of harm. Mother said K.P. was turning 18 in April 2022.

The social worker interviewed K.P. on February 18, 2022, and he admitted he smoked marijuana several weeks ago. He said he and mother began arguing about his marijuana use, and she threw her cell phone at him. He reacted by hitting her, but said he had a “blackout,” although he did remember hitting his mother and his brother, T.G., pulling him off of her.

The social worker spoke to mother about making arrangements for K.P. to stay with relatives, and mother declined to provide information regarding relatives, except she said the social worker could contact the maternal grandfather. The social worker contacted him, and he said he was not willing to take K.P. because he wanted K.P. to remain in Riverside County so he could graduate from high school there.

The social worker gave mother notice of the upcoming hearing, but mother said she had another appointment to attend and that she was not feeling well. However, she said she would arrange for the children to be present at the hearing.

On February 19, 2022, the social worker asked mother if she could see the children since she was concerned about their emotional well-being. Mother declined in-person contact but said she would arrange for the children to be seen closer to the court date. Mother continued to refuse to pick up K.P. On February 20, 2022, mother still refused to allow the social worker to see the children or to do a home evaluation; however, she suggested making an appointment for February 22, 2022. They arranged for the children to meet the social worker at the DPSS office on February 23, 2022.

The social worker reported that mother had a lengthy child welfare history dating back to 2006, with numerous referrals. The referrals involved allegations of general neglect, physical abuse, sexual abuse, and emotional abuse. However, all of the referrals were determined to be either inconclusive, unfounded, or they were evaluated out.⁴

The court held a detention hearing on February 24, 2022. Mother was not present but was represented by counsel. The court found a prima facie showing had been made that K.P. and the other children came within section 300, subdivisions (b) and (g). The court detained K.P. from mother, but left the other children in her care. As terms and conditions of them remaining in her care, the court ordered mother to drug test, make her home available for inspection within 48 hours, and present the children for in-person interview and inspection.

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report on March 14, 2022, and attached an amended petition striking the allegations concerning father, Ty.G., since he was reportedly deceased, and adding an allegation concerning a man mother identified as K.P.'s father. The social worker recommended that the court find K.P. and the children came within section 300, subdivisions (b) and (g), declare them dependents of the court, and offer mother reunification services for K.P. and family maintenance services for the

⁴ The term “ ‘evaluated out’ ” means “the child protective services screener did not find sufficient evidence of physical abuse or child abuse and neglect to assign the referral to an investigation.” (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1149, fn. 4.)

children.⁵ The social worker reported that K.P was placed in a foster home, and the children remained with mother.

The social worker further reported that on November 16, 2018, a delinquency petition was filed against K.P. for a violation of Penal Code sections 289, subdivision (a)(1)(C) and 264.1, subdivision (b)(2), due to him assisting in sexually and physically assaulting another student at school. He was ordered to participate in services and was on probation. The case was closed on April 2, 2021. The social worker also reported that on May 21, 2020, mother filed a Request for Domestic Violence Restraining Order protecting herself and the children from E.L.'s father, Em.L., as he had sent emails threatening to beat her up or kill her. A permanent restraining order was granted until July 15, 2022, and mother was granted sole physical and legal custody of E.L.

The social worker interviewed K.P. on March 10, 2022, and he verified that he and mother engaged in an altercation, and mother had a screwdriver in her hand at that time. He said he was afraid mother was going to stab him, as she had stabbed him once during his freshman year of high school. He also reported that when he was in the eighth grade, mother hit him in the head with a scooter.

The court held a jurisdiction hearing on March 17, 2022, and mother set the matter for contest. County counsel informed the court that the amended petition was filed that day. The children's counsel also requested the matter be set for contest and noted that mother wanted to enroll the children in therapeutic services through her own provider.

⁵ The social worker recommended that the alleged fathers of the children not be provided with services.

The court asked if a home inspection had been done as ordered, and the children's counsel said she believed they did one by video chat. The court expressed its frustration that mother had not made her home available for an in-person inspection. Mother's counsel said DPSS did not come to the home within 48 hours, as ordered, and when the social worker did come, mother was concerned because she had only done a rapid Covid test, not a PCR test. Mother was a licensed vocational nurse and she did not want someone who could potentially have Covid to have access to her home. Mother expressed her concerns to the social worker, and the social worker suggested they do the inspection by video. Mother then showed the social worker every room she requested and showed her the children. The social worker spoke to the children on the video, and she subsequently went to mother's home to talk to them in person. At that time, the social worker spoke with the children outside, since mother was more comfortable that way. The court said that if DPSS was content with the home inspection done by video, then it was content with it as well.

The social worker filed an addendum report on March 30, 2022, recommending that the court sustain the amended petition, declare K.P. and the children dependents of the court, and set a non-minor dependent hearing for K.P. on or before April 22, 2022, since he wanted to be declared a non-minor dependent and continue to receive services after he turned 18. The social worker also reported that she completed an in-home inspection, and mother's home exceeded minimal standards. The social worker did not observe any safety hazards, there was plenty of food, and all the utilities were in working order. All three children reported feeling safe in the home and had no visible marks or

bruises. They all had their own bedrooms, clean clothing, and access to hygiene products.

Mother reported that she had enrolled in anger management, even though she did not feel she needed it. She said she was not going to enroll in a parenting program unless the court ordered her to do so. Mother reportedly made appointments for the children to be assessed by Kaiser for therapy and said she would provide letters from the therapists regarding the outcomes.

On March 28, 2022, the social worker spoke with K.P. on the phone, and he said he was still interested in becoming a non-minor dependent. He was on track to graduate from high school and planned to start college after that. K.P. was not interested in any visitation with mother. He denied that mother was abusive toward his siblings.

Given the family's history of referrals and K.P.'s disclosure of physical abuse directed toward him, the social worker was concerned about the safety of the other three children in mother's care without oversight, and recommended that mother receive family maintenance services.

The court held a contested jurisdiction/disposition hearing on April 7, 2022. Counsel for K.P. requested the court to bifurcate K.P.'s case and allow him to proceed on a separate petition. As to K.P.'s case, mother's counsel offered mother's stipulated testimony and she did not wish for K.P. to return home due to safety risks to her and the children. The court continued K.P.'s case to the following day, stating that at that time it would find the allegations that pertained to K.P. true, make him a dependent of the court,

and set a hearing on or about his 18th birthday; then he would be transitioned to a non-minor dependency.⁶ The court continued the other children's case to May 11, 2022.

On April 7, 2022, the social worker filed a second amended petition as to the children. The second amended petition deleted most of the allegations from the prior petition. The only remaining allegations concerning mother were the allegations that she had a criminal arrest history due to engaging in domestic violence, and that she had a child welfare referral history, which included allegations of general neglect, domestic violence, inappropriate discipline and physical abuse, and she had failed to benefit from services previously offered. The second amended petition still alleged that Em.L. neglected the safety of the children in that he "sends" mother threatening messages that resulted in an active restraining order, that his whereabouts were unknown, and he was unable to provide his child with support.

On May 6, 2022, the social worker filed another addendum report stating that a third amended petition would be filed on May 11, 2022. She recommended that the court sustain the amended petition, declare the children dependents pursuant to section 300, subdivisions (b) and (g), and provide mother with family maintenance services, with the stipulation that she comply with mental health assessments for the children, ensure they attend school regularly, and have her provide DPSS with location information if she planned to have the children spend the night outside the home. Mother reported that the children were assessed by a doctor at Kaiser and deemed to not need therapy. On April

⁶ The record on appeal does not contain the reporter's transcript of the hearing from the following day.

25, 2022, mother called the social worker on video chat and showed her J.G. and E.L. and allowed her to speak with them. The social worker stated they appeared clean and dressed in appropriate clothing, and they both reported feeling safe and well cared for.

In assessing mother, the social worker stated that when the incident between mother and K.P. initially occurred, mother refused to make the children available for DPSS to assess them. Additionally, mother had not made the children available for the ACT Clinician to complete a mental health assessment, as she claimed they received mental health assessments through Kaiser, but had not provided documentation. Recently, mother refused to allow DPSS in-person access to the children. The social worker further noted mother's long history of referrals with DPSS, including referrals for domestic violence where she was the aggressor. The social worker opined that the family's child welfare history made mother's resistance to cooperating with DPSS highly concerning. Given the family's history and K.P.'s disclosure of physical abuse directed at him, the social worker was concerned about the safety of the children being left in mother's care without oversight. The social worker stated that the family needed oversight to ensure the children attended school regularly and for the family to receive the necessary services to protect the children from potential physical abuse.

On May 11, 2022, the social worker filed a third amended petition, which did not change any of its allegations with regard to mother, but amended the section 300, subdivision (g) allegation regarding Em.L. to delete the part stating that his whereabouts were unknown, and to specify that he was unable to support his child, E.L. At the continued hearing on May 11, 2022, the court acknowledged receipt of the third amended

petition. It also stated it had issues with DPSS not requiring mother to do anything and with mother giving DPSS “the runaround.” The children’s counsel was also concerned, noting that mother had recently taken the two younger children on a trip to an unknown location and left T.G. with someone and refused to give DPSS information on his whereabouts; the social worker noted he did not attend school during that time.

Moreover, when the social worker wanted to interview the children, mother only allowed her to do so via Facetime.

The court asked county counsel what orders DPSS wanted it to make, and counsel said DPSS was asking for mother to comply with the mental health assessments of the children, for the children to not miss any more school, and for mother to notify DPSS when she planned to leave them elsewhere. The court asked if there was a plan if mother continued to refuse to allow access to her home or tell DPSS where the children were, and county counsel said no. Mother’s counsel informed the court that mother did allow a home assessment after the court ordered it, noting there was a video assessment and then an in-home inspection. Furthermore, she explained that mother did not know there would be an issue with her taking the children on a trip or with allowing T.G. to stay with a relative. As to the mental health assessments, mother wanted to use her own provider, and the assessments had been completed. Ultimately, mother’s position was that this case originated with the incident with K.P., and the other three children were safe in her care. Mother’s counsel asked for a continuance to allow mother time to provide the mental health assessment reports. The court advised mother that the order was for in-

person contact with the children when requested by DPSS and ordered her to ensure the children were attending school regularly. It then continued the matter.

On June 15, 2022, the social worker filed an addendum report, recommending that the court find true the allegations made in the third amended petition, that the court declare the children dependents, and that mother be provided with family maintenance services. The social worker reported that mother called her on May 9, 2022, stating that she was back in town, and asked if the social worker wanted to see the children that evening. The social worker was not available, so they scheduled a visit for later that week. The social worker went to the home on May 12, 2022, and spoke with each child individually. E.L. said he had fun visiting his mother's friend, and he was back at school now. He said he felt safe and well cared for by mother. The social worker checked for marks, bruises, or signs of neglect and did not find any. The social worker then met with J.G., who also reported she felt safe and cared for by mother. J.G. said she did not understand why she still had to meet with a social worker. The social worker did not observe any marks, bruises, or signs of neglect on her either. The social worker spoke with T.G., who said he had missed school while mother was away due to him not feeling well, but he was better now. He denied feeling unsafe, denied that anyone was harming him, and said he always had enough to eat. The social worker also checked T.G. for signs of abuse or neglect and did not find any.

Mother reported that she had missed two of her anger management classes, and she felt like nothing in the program pertained to her since she did not have an anger problem. Nonetheless, she was willing to complete the program.

The social worker reported that mother emailed her J.G.'s mental health records from Kaiser. The social worker subsequently received the Kaiser records of T.G. and E.L.

The court held the continued jurisdiction/disposition hearing on June 15, 2022. Mother was represented by counsel and appeared telephonically. Her counsel offered stipulated testimony that mother loved her children, and they were safe in her care. Mother's counsel asserted that the dependency was started because of the altercation with K.P.; however, he was no longer in the home and he was now a non-minor dependent so there was no longer an issue of any verbal or physical altercations between him and mother or any of the other children. As to the allegation in the petition that mother had a criminal arrest history due to engaging in domestic violence, counsel stated that such incident occurred in 2009, the other party was now deceased, and mother had not had any convictions for domestic violence or other incidents of domestic violence since then. As to the allegation in the petition that mother had a child welfare referral history and that she failed to benefit from services that were previously offered, counsel asserted that mother had never been given services from DPSS and that all the prior investigations were either inconclusive, unfounded, or evaluated out. Thus, mother's counsel asked the court to find both allegations under section 300, subdivision (b), regarding mother not true and to not sustain the petition.

Counsel for the children agreed that the allegation regarding mother's domestic violence arrest history was not a part of this case, and this case started with the incident between her and K.P. She stated that her only concern was mother's significant amount

of past referrals. Counsel stated, “Although mother has never had an open case, there [were] quite a few referrals previously.” Counsel for the children and mother’s counsel both asked the court for authorization to terminate the case ex parte. County counsel asked the court to find the allegations in the petition true, asserting that mother had left the children unsupervised during this dependency, which was consistent with prior referrals alleging that she had not secured appropriate supervision.

The court decided to amend the section 300, subdivision (b) allegation to conform to the proof, as follows: “The mother has a child welfare referral history to include allegations of general neglect, domestic violence, inappropriate discipline, and physical abuse, and has refused to engage in previously offered services.”

The court acknowledged there were previous allegations in mother’s referral history that were deemed inconclusive; however, it stated, “A lot of it just stems from mom’s failure to interact with the Department, and she’s basically done the same here” As to the incident with K.P., the court stated, “I understand that he behaved inappropriately, but it started with mother’s inappropriate behavior.” The court then found the allegation concerning mother’s domestic violence arrest history not true; however, it found the allegation regarding her welfare referral history, as interlineated, as well as allegations under section 300, subdivisions (b) and (g), regarding Em.L., true. The court sustained the petition, declared the children dependents, and ordered that they remain in mother’s custody, with mother being provided with family maintenance services. The court further ordered mother to make the children available to DPSS for inspection and interview and to ensure they attended school regularly. The court also

ordered the children to not spend the night at anyone's home without DPSS approval. It set the next hearing for December 14, 2022, but authorized the case to be closed ex parte, without coming back to court, depending on mother's completion of her case plan.

DISCUSSION

The Evidence Was Insufficient to Support the Court's Jurisdiction of the Children

Mother argues that the juvenile court's jurisdictional findings under section 300, subdivisions (b) and (g), should be reversed since they were not supported by substantial evidence.⁷ Respondent concedes that the evidence was insufficient to support the section 300, subdivision (g) finding, but contends there was sufficient evidence to support the court's true findings under subdivision (b). We agree with mother and reverse the court's jurisdiction order.

A. Standard of Review

“We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible. [Citation.] ‘However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not

⁷ Respondent points out that mother erroneously asserts in her opening brief that DPSS must establish “serious emotional damage,” and cites to a case involving section 300, subdivision (c). However, in her reply brief, mother concedes that she mistakenly cited to that case since there was no allegation under section 300, subdivision (c) (emotional damage) here.

be affirmed on appeal. [Citation.] Furthermore, “[w]hile substantial evidence may consist of inferences, such inferences must be ‘a product of logic and reason’ and ‘must rest on the evidence’ [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].” [Citation.] “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” [Citation.]’ ” (*In re David M.* (2005) 134 Cal.App.4th 822, 828 (*David M.*))

B. *Waiver*

We initially address respondent’s claim that mother waived her right to challenge the jurisdictional findings because she failed to raise the issue that the allegations did not state a basis for dependency jurisdiction at the jurisdictional hearing. However, at the hearing, mother’s counsel argued extensively, asked that the petition not be found true, and specifically asked the court to find the allegations under section 300, subdivision (b), not true. Thus, we find no waiver.

C. *The Evidence Was Insufficient to Support the Section 300, Subdivision (b) Allegations*

Section 300, subdivision (b), provides that the juvenile court may adjudge a child a dependent of the juvenile court when the 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 the child’s parent or guardian to adequately supervise or protect the child, or . . . by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or

guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b)(1).)

“ ‘The statutory definition consists 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.’ [Citation.] The third element ‘effectively requires a showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]’ ” (*David M., supra*, 134 Cal.App.4th at p. 829.) “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. [Citations.] Thus, the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’ ” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, fn. omitted (*Rocco M.*).

1. *B-3 Allegation*

The b-3 allegation the court found true stated: “The mother has a child welfare referral history to include allegations of general neglect, domestic violence, inappropriate discipline, and physical abuse, and has refused to engage in previously offered services.” In sustaining this jurisdictional finding, the juvenile court effectively determined that the children were subject to its jurisdiction because there was a substantial risk they would suffer “serious physical harm or illness” as a result of mother's failure or inability to

adequately supervise or protect them, or by her willful or negligent failure to provide them with adequate food, clothing, shelter, or medical treatment. (§ 300, subd. (b).) However, there was no evidence to sustain this finding. This dependency case began with a referral alleging caretaker absence/capacity, when mother refused to pick K.P. up from the hospital after he was taken there following an altercation between him and mother. The children were not parties to the altercation, and, although J.G. and T.G. were present, they were not harmed in any way. Moreover, K.P. turned 18 and transitioned to being a non-minor dependent, and he no longer lived with the family. Thus, there was no chance of any verbal or physical altercations between him and mother in the home. We further note that during this incident, K.P. hit mother 15 to 20 times on the back of the head, causing her to bleed, and hit her in the stomach area, where she had recently healed from surgery. Under these circumstances, it was reasonable for mother to be afraid of K.P. and to not permit him to return home, for her own safety as well as the children's safety.

Furthermore, there was no evidence that at the time of the jurisdiction hearing the children were at substantial risk of serious physical harm or neglect. The petition alleged that mother had a child welfare referral history and refused to engage in previously offered services. However, as mother avers, her child welfare *referral* history was insufficient to sustain jurisdiction. Although the past referrals involved allegations of general neglect, physical abuse, sexual abuse, and emotional abuse, they were all determined to be either inconclusive, unfounded, or they were evaluated out. As such, any services previously offered to her would have been voluntary. Moreover, “[w]hile

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.) There was no evidence, or even an allegation, that mother’s referral history was tied to any *current* risk of *substantial* harm to the children. (See *David M.*, *supra*, 134 Cal.App.4th at pp. 829-830; see also *In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565 [“previous acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur”].)

In fact, the evidence showed that mother was protective of the children and provided for their needs. After the altercation with K.P., she would not allow him to return home in the interests of the children’s safety, as well as her own. Further, the evidence showed that the social worker completed an inspection of mother’s home, and it exceeded minimal standards. The social worker reported that there was plenty of food, all the utilities were in working order, and there were no safety hazards. The children all had their own bedrooms, clean clothing, and access to hygiene products. Moreover, the social worker interviewed the children, and she did not observe any marks, bruises, or signs of abuse or neglect on them. She noted that they all said they felt safe with mother and well cared for.

Thus, there was no evidence that the children were at any current risk of harm or neglect in mother’s care due to her child welfare referral history and substantial evidence does not support the true finding.

2. *B-5 Allegation*

The b-5 allegation the court found true alleged, “The father, [Em.L.], neglects the health and safety of the children in that he sends the mother threatening messages resulting in an active restraining order.” The evidence showed that mother filed a Request for Domestic Restraining Order on May 21, 2020, as she indicated that Em.L. was constantly harassing her via email and had threatened to beat her up and kill her. However, a permanent restraining order was granted until July 15, 2022. There was no evidence Em.L. continued to send mother threatening emails after the active restraining order was issued. We also note that the alleged threats only concerned mother, and the emails were sent years before this dependency case started.

Furthermore, the social worker contacted Em.L. in April 2022 and reported that he was in flight school in Texas. Em.L. confirmed that he was E.L.’s father, and he was aware of the open dependency case. However, he said he was not sure if he would attend the upcoming hearing, and that he believed mother took great care of E.L.

Thus, there was a restraining order in place, Em.L. lived in another state, and there was no evidence that his emails were tied to any current risk of substantial harm to the children. (See *David M.*, *supra*, 134 Cal.App.4th at pp. 829-830.) Substantial evidence does not support the true finding as to the B-5 allegation.

D. *Respondent Concedes the Evidence Was Insufficient to Support the Section 300, Subdivision (g) Allegation*

The petition alleged under section 300, subdivision (g), that “the child has been left without any provision for support; or the child’s parent has been incarcerated or

institutionalized and cannot arrange for the care of the child; or a relative . . . with whom the child resides or has been left is unwilling or unable to provide care or support for the child.” The court found true that father Em.L. was unable and/or unwilling to provide his child, E.M., with care and support. However, as respondent concedes, there was no proof of the circumstances supporting jurisdiction under this subdivision. Mother was granted sole physical and legal custody of E.L., she was providing for him, and Em.L. was fully supportive of her care of him.

E. Conclusion

Ultimately, the evidence was insufficient to support the juvenile court’s finding that there was a substantial risk at the time of the jurisdiction hearing that the children would be harmed or neglected. K.P. was out of the home, the referrals relied upon by DPSS were previously found to be inconclusive, unfounded, or evaluated out, and the evidence showed that mother was taking proper care of the children. Thus, we will reverse the jurisdiction order declaring the children dependents of the court.⁸ (See *David M., supra*, 134 Cal.App.4th at pp. 832-833.)

⁸ In light of our conclusion, there is no need to address mother’s second claim that the court abused its discretion by failing to terminate dependency jurisdiction at the disposition hearing.

DISPOSITION

The jurisdiction order declaring the children dependents of the juvenile court is reversed. All subsequent orders are vacated as moot.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS
J.

We concur:

MILLER
Acting P. J.

CODRINGTON
J.