Filed 7/7/23 In re J.D. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.D. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.F. et al., Defendants and Appellants.	E079776 (Super.Ct.Nos. J292119 & J929120) OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed.

Richard Lynn Knight, by appointment of the Court of Appeal, for Defendant and Appellant, E.F.

Tracy M. De Soto, by appointment of the Court of Appeal, for Defendant and Appellant, R.D.

Tom Bunton, County Counsel, and Svetlana Kauper, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Defendants and appellants, E.F. (Mother) and R.D. (Father), are the parents of two children born in 2018 and 2020. The parents appeal from the September 7, 2022 dispositional order, join each other's contentions, and together claim that (1) insufficient evidence supports the March 24, 2022 jurisdictional findings for the children (Welf. & Inst. Code, § 300, subd. (b)),[1] and (2) the juvenile court abused its discretion in refusing to terminate its jurisdiction and dismiss the children's cases at the September 7 dispositional hearing. We affirm the judgment.

II. BACKGROUND

A. *Events Leading to the Children's Dependency*

On January 3, 2022, Father, Mother, the children, and their maternal grandmother (MGM) lived at a common address. That day, law enforcement was called after Father was reported to be outside the family home, holding one child in each arm, bare foot, sweating profusely, and talking about " 'getting the demons out.' " When officers arrived, Father would not hand the children to the officers. The officers detained Father after he put his left hand on the back of the neck of the older, three-year-old child, and

[1] Undesignated statutory references are to the Welfare and Institutions Code.

turned the child's head toward Father to have her look at Father. The officers were unsure whether Father intended to harm the older child. The children did not cry and were calm throughout the incident. Paramedics took Father's vital signs, and his heart rate was 200, indicating drug use. Father was transported to a hospital for evaluation. The MGM was asleep inside the home. Officers were unable to contact Mother, who was away from the home and at work during the incident.

On January 7, 2022, a social worker made an unannounced visit to the family home. Father opened the door but did not allow the social worker inside, saying it was not a good time to meet; but Father agreed to meet with the social worker at the home, with Mother, the children, and the MGM, on January 11. The social worker was able to see the children sitting inside the home; they were dressed appropriately with no visible marks or bruises. As the social worker was leaving, Father stepped outside and said there were "cars following him," which were " 'going up and down my neighborhood driving slowly by my house.' " The social worker encouraged Father to write down a description of the cars and their license plate numbers and report the incidents to the police. Father said he would do so.

On January 9, 2022, a law enforcement officer went to the family home and asked Father to sign a form allowing the officer to obtain copies of Father's medical records from his January 3 hospital visit. Father refused to sign the form. The deputy then obtained the medical records from the hospital pursuant to a warrant. The records showed that, on January 3, Father tested positive for cocaine, was experiencing cocaine delirium, and admitted to hospital staff that he used cocaine.

On January 11, 2022, the social worker called Father and asked him to reschedule the home visit to January 13, and Father agreed. On January 13, Father called the social worker, saying he was unable to meet that day, but he agreed to have the home visit on January 18. On January 15, a deputy sheriff conducted a welfare check at the family home, at the social worker's request, because the social worker had been unable to contact Mother or the MGM and believed Father had been "controlling" the social worker's access to the family. The parents were "minimally cooperative and defensive" during the welfare check, but the children appeared relaxed with no visible marks or bruises. The MGM also appeared well.

During the January 18, 2022 home visit, the home was appropriate with no safety concerns, and the children again appeared well. The social worker interviewed the parents and the MGM. Father said he did not remember what happened on January 3 when the police were outside his home. He said he was sweating profusely because it was a hot day; he was outside holding his children, but he denied saying he wanted to " 'ge[t] the demons out.' " He continued to say he did not remember what had happened on January 3, he denied using any drugs, and he said he was given fluids at the hospital for dehydration. Father appeared to minimize the January 3 incident and could not explain why he behaved as he did. After the social worker told Father that his January 3 hospital records showed he tested positive for cocaine, and that he admitted to hospital staff that he used cocaine on January 3, Father became defensive and asked why his medical privacy rights had been violated. The social worker explained that CFS obtained

the medical records as part of its investigation. Father still denied he had ever used cocaine.

During her January 18, 2022 interview, Mother had " a flat affect" and answered the social worker's questions "to a minimum." Mother said she did not know what happened on January 3 because she was away from home at work. She picked up Father from the hospital but claimed no hospital staff spoke to her or gave her any of Father's discharge paperwork. When told Father tested positive for cocaine on January 3, Mother said, " 'Okay.' " When asked whether she had any worries or concerns about Father's positive cocaine test, Mother said, " 'No.' " Mother said she did not ask Father what happened on January 3 because " 'everything turned out to be okay.' " Mother also said she usually did not answer her phone, and that may have been why she could not be contacted during or after the January 3 incident. Mother also denied abusing any drugs or alcohol, any domestic violence with Father, and any criminal or mental health history.

The MGM was cooperative and engaged during her January 18, 2022 interview. The MGM was asleep during the January 3 incident because she took hypertension medication which made her sleepy. She did not know, and no one told her, what had happened with Father. When the police woke her, she was worried for her grandchildren, but she had no worries or concerns about the parents because they were good parents and took good care of the children. The parents agreed to be drug tested and tested negative for all controlled substances. Neither parent had any criminal history, drug use history, or history with child protective services.

On February 3, 2022, CFS invited the parents to participate in a "children family team meeting." When the social worker explained the reasons for the meeting, Father "became upset, highly defensive, and uncooperative." He did not believe a further investigation or CFS intervention was warranted because he had tested negative for all substances after the January 18 home visit, and the children were fine. He also did not believe it was necessary to involve Mother in the investigation.

On February 7, 2022, CFS obtained a detention warrant for the children (§ 340, subd. (b)(2)), and the social worker and a deputy sheriff executed the warrant in an unannounced visit to the family home. CFS's concerns included Father's being the children's primary caregiver, Father's denial of ever using any substances, his possible untreated mental health issues, the children's lack of community access due to their young ages, and Mother's unavailability during emergencies.

When the detention warrant was executed, Father was argumentative, defensive, and "at times uncooperative." When the deputy sheriff asked Father what had caused his behavior on January 3, Father could not give a clear answer or provide details of the incident. Mother was at home during the detention but did not come out of the home until 90 minutes after the social worker and deputy arrived to execute the warrant. Mother then asked the deputy, " 'What's wrong?' " and had no reaction to the children being detained. Again, Mother had a "flat affect." Mother gave "a quick kiss good-bye" to each child then returned inside the home.

On February 9, 2022, CFS filed petitions for each child, alleging jurisdiction under section 300, subdivision (b). The petitions included two allegations (b-1, b-2) against

Father, and three allegations (b-3, b-4, & b-5) against Mother. The petitions alleged that: Father had "a substance abuse issue" (b-1) and "unresolved mental health problem[s]" (b-2), which impeded his ability to adequately care for and supervise the children; Mother "knew or should have known" that Father had "a substance abuse issue" that impeded his ability to adequately care for and supervise the children (b-3); Mother failed to protect the children by knowingly leaving them in Father's care after Mother became aware that Father tested positive for cocaine while the children were in Father's care (b-4); and Mother failed to protect the children by knowingly leaving them in Father's care after Mother became aware of Father's unresolved mental health problems (b-5).

B. *The Detention Hearing*

At the detention hearing on February 10, 2022, both parents denied the allegations and objected to detaining the children. Father said he was willing to leave the family home if the juvenile court would return the children to Mother; alternatively, he asked the court to place the children with the MGM. Mother asked the court to return the children to Mother on the condition Father moved out of the family home. Both parents requested predisposition services.

Minors' counsel objected to returning the children to Mother because, she argued, Mother was not protective, which was evident by Mother's lack of concern for Father's continued caregiving after Father tested positive for cocaine. County counsel joined minors' counsel's argument, and added that Mother had not been cooperative in returning the social worker's calls or in discussing the case. County counsel further argued that the MGM's ability to care for the children was limited, given that the MGM took medication

that "knock[ed] her out for portions of the day." Thus, Mother, who worked during the day, did not have a clear safety plan for the children. County counsel noted that Father had also been "very argumentative" and uncooperative with CFS.

The juvenile court found that CFS made a prima facie showing that the children were described in section 300, subdivision(b)(1), ordered the children temporarily detained in CFS's custody, and ordered both parents to submit to on-demand drug testing. The court also ordered predispositional services for the parents and supervised visitation.

C. *The Jurisdiction and Disposition Report*

In a report filed March 1, 2022, CFS recommended that the juvenile court find only two of the jurisdictional allegations true: the b-2 allegation that Father had unresolved mental problems which placed the children at the risk of abuse or neglect, and the b-4 allegation that Mother failed to protect the children by leaving them with Father after he had tested positive for cocaine. CFS asked the court to find the b-1, b-3, and b-5 allegations "not true as written," order the children removed from parental custody, and grant reunification services to both parents.

The parents were born in 1980 and 1985 and had been married since 2015. For the previous three to four years, Father had been employed " 'on and off' " as a delivery driver. Mother had worked for her employer since 2001. Before the children were detained on February 7, the paternal grandparents had been supervising the children twice weekly. The parents had most recently tested negative for all controlled substances on February 15.

In a February 19, 2022 interview, Mother claimed she did not know of Father's cocaine use and claimed Father had refused to tell her what had happened on January 3. Mother claimed that Father had not used drugs before January 3, and rarely used alcohol. Mother also claimed Father had no known mental health diagnosis, psychiatric symptoms, or situational depression. Mother said that, after she discovered Father's hospital " 'discharge documents' " and positive cocaine test, she confronted Father, who denied using cocaine and claimed the positive cocaine test result was false. Mother "threatened" to kick Father out of the home if he used drugs again. After the children were detained on February 7, Father admitted to Mother that he used cocaine, but he claimed it was "a one-time thing," and he promised to never use drugs again. Father's behavior on January 3 " 'scared' " Mother, and Mother believed she was being protective in threatening to kick father out of the home if he used drugs again, but Mother admitted she should have done more earlier to address Father's cocaine use and the safety risks it presented to the children.

In a February 21, 2022 interview, Father admitted using cocaine on January 3 but denied he had a substance abuse problem. Father said: " 'I had a lapse of judgment and I screwed up. I really had no use prior to any of this. I call it curiosity. I've never tried cocaine. I lived a very sheltered life, always going to church and it was very strict. I really can't explain.' " Father said he purchased the cocaine on the morning of January 3 from " 'a friend of a friend' " and used it before returning home where the children were. When he got home, " 'it was a really bad experience' " and not what he expected. He remembered looking at the children as they were watching television, and he " 'just took

them outside,' " but he did not recall why he took them outside. He did not recall sweating but he recalled feeling like " '[s]omething was off and [he] felt different.' " He recalled telling people to stay away from him and saying, " 'away from me demons' " because he saw neighbors and police around him and coming toward him. He said he understood how his behavior made it appear he had a mental health problem, but he denied having any unresolved mental health issues. He had never been diagnosed with or hospitalized for a psychiatric condition or placed on psychotropic medication.

The social worker opined that the parents' prognoses for reunification were good, and that the January 3 incident "[a]lthough concerning, . . . appear[ed] . . . to be an isolated incident and not [a] regular occurrence." Father accepted responsibility for the incident and "want[ed] to process the incident in a therapeutic environment." Father had also "verbalized the need" to be more cooperative with CFS. For her part, Mother accepted responsibility for not enacting protective measures for the children after she first learned about Father's cocaine use. Mother was willing to participate in services and had been making herself available to CFS.

On March 3, 2022, the court continued the jurisdictional and dispositional hearing to March 24 and ordered the parents to participate in a mediation with CFS on the jurisdictional allegations of the petitions and on CFS's dispositional recommendations.

D. *The Mediation*

On March 17, 2022, CFS and the parents participated in the court-ordered mediation. A "mediation report" shows the parties agreed to amend the language of the b-1 and b-3 allegations, and CFS agreed to dismiss the b-2, b-4, and b-5 allegations.

Father agreed to complete CFS's recommended case plan, and Mother agreed to attend individual counseling "to address protection issues and reason for CFS intervention and to attend parenting classes." The parties also agreed to increase the duration of Mother's unsupervised visits, and to place the children with the paternal grandmother. The parties continued to dispute whether the court should order reunification services for the parents, as CFS was recommending, or family maintenance services, as the parents were requesting.

E. *The Jurisdictional Hearing (March 24, 2022)*

At the continued jurisdictional hearing on March 24, 2022, the following colloquy occurred between the court and counsel:

"THE COURT: Did you all work out the allegations but not dispo?

[FATHER'S COUNSEL]: That's correct. Father is asking to set as to dispo.

[¶. . .¶]

[MOTHER'S COUNSEL]: The mother was going to make argument for FM [(family maintenance services)].

THE COURT: [Addressing Father's counsel] Did your client have evidence, or can we go forward today?

[FATHER'S COUNSEL]: He would like to testify.

THE COURT: We don't have time today. We will do juris today. [¶] So Mr. Bass [County Counsel] go ahead."

Next, county counsel offered the detention report, jurisdiction and disposition report, and mediation report into evidence. The juvenile court said: "Admitted. [¶] Parents' counsel and Minors' counsel agree that the change in language in the allegations

state causes of action; waive further arraignment, defects?" After accepting the parents' and children's waivers, the court asked the parents' and minors' counsel whether they had "anything on the juris?" Father's counsel and minor's counsel said they were "submitting" the matter to the court's determination based on the reports, while Mother's counsel said she was "submitting for the mother on the mediation report."

The court proceeded to find the amended b-1 and b-3 allegations true and dismiss the b-2, b-4, and b-5 allegations. As amended, the b-1 allegation and finding stated: "Father engaged in cocaine use, placing the children at risk." The amended b-3 allegation and finding stated: "The mother reasonably should have known the father was engaging in cocaine use, placing the children at risk."

The juvenile court declared the children dependents (§ 300, subd. (b)), continued its previous orders in effect, and continued the matter for a contested dispositional hearing. The court asked county counsel to "make sure [the parents] get their services going, so, hopefully, by the time we get back, we can have [a] more clear answer before trial [on disposition] one way or another."

F. *The Dispositional Orders*

On March 17, 2022, Father was denied admission to an outpatient treatment program based on his consistent negative drug test results and his report of one-time cocaine use. His admission was deemed medically unnecessary. By May 24, Father had four additional negative drug tests, and he had completed his individual therapy and 9 of 12 parenting classes. The parents' visits were going well, and there were no concerns.

Mother was participating in individual counseling and had completed 8 of 12 sessions. Mother was "an open and honest participant."

At the initial contested dispositional hearing on May 25, 2022, the court declared that "[t]here has been an agreement. Mom's going to get a 29-day visit, and then, we're going to continue the hearing. Dad will move out forthwith. The visit won't start until he is out." The children's caregivers, the paternal grandparents, were to help Mother with the children's daytime care. At the request of minors' counsel, the children were not to be left alone with the MGM. CFS was to continue to supervise Father's visits at the paternal grandparents' home, not at Mother's home, where the children were visiting.

Father moved out of the family home on June 15, 2022, and the 29-day visit began on June 17. On June 30, Father asked the court to allow him to have unsupervised visits. Father was still testing negative for all controlled substances and participating in his services. Minors' counsel did not object to granting Father unsupervised visits as of June 30. Minor's counsel said that, "based on the limited information" available, Father had "made progress," but there was no therapy report for Father, although counsel said she "would be open to unsupervised visits by standing orders," if she received the therapy report before the next court date.

By August 10, 2022, Father was continuing to test negative for all controlled substances. In a further filing, CFS advised the court that it had investigated a July 11, 2022 referral, alleging "inappropriate physical discipline" of the children by both parents. "It was reported that the child disclosed inappropriate physical discipline and [Father] may be in the home against Court orders." CFS determined that the referral appeared to

be unfounded. An earlier referral received on June 17, 2022 for similar allegations was also deemed unfounded. It appears that the children's 29-day visit with Mother, which began on June 17, was extended through August 10.

At a further contested dispositional hearing on August 10, 2022, the court ordered family maintenance services for Mother and a 29-day visit for Father. The parents asked the court to immediately return the children to their care and to dismiss the children's cases. Father had completed his services. Minor's counsel objected to dismissing the cases and renewed her request for "a detailed progress report regarding the father's therapy." Previously, Father had only provided a certificate of completion for his therapy. The court denied the parents' requests and continued the matter to September 7 for a further contested dispositional hearing. County counsel agreed to obtain the therapy report for Father that minor's counsel was requesting.

As of September 7, 2022, the children were doing well in the parents' custody, and CFS recommended joint family maintenance services for the parents. Father was still testing negative for controlled substances. Mother was continuing to attend counseling. The record does not indicate whether the therapy report was ever obtained, but the report was not mentioned again.

At the further contested dispositional hearing on September 7, 2022, the court received several reports into evidence. The parents disputed CFS's recommendation for family maintenance services and asked the court to dismiss the cases. The parents argued that CFS's concerns had been addressed and "settled" and that CFS's continued supervision was unnecessary. Minors' objected to dismissing the cases and sought

continued family maintenance services for the parents. Minor's counsel questioned whether Father's January 3 cocaine use was a one-time incident and argued that continued court supervision was necessary to ensure the safety of children. Minor's counsel noted that Father had missed one drug test in May.

At the conclusion of the September 7, 2022 dispositional hearing, the court ordered family maintenance for the parents and authorized CFS to dismiss the cases, by approval packet, prior to the next court date on March 7, 2023. The parents filed timely notices of appeal from the September 7 orders.

III. DISCUSSION

The parents join each other's contentions and together claim that (1) insufficient evidence supports the amended b-1 and b-3 jurisdictional findings, and (2) the juvenile court abused its discretion in declining to terminate its jurisdiction at the September 7, 2022 dispositional hearing. CFS claims the parents each forfeited their right to challenge the jurisdictional findings by *admitting the truth of the findings* at the March 17, 2022 mediation and at the March 24 jurisdiction hearing.

We conclude that the parents did not forfeit their substantial evidence claims. The entire record shows that the parents did not admit the truth of the amended allegations at the March 17, 2022 mediation or at the March 24, 2022 jurisdictional hearing. Rather, the parents only agreed to submit the amended b-1 and b-3 allegations to the court, for the court to determine based on the evidence. Further, substantial evidence supports the amended b-1 and b-3 jurisdictional findings. Lastly, the court did not abuse its discretion

in declining to terminate its jurisdiction at the September 7, 2022 dispositional hearing and continuing the parents on family maintenance services.

A. *The Parents Did Not Forfeit Their Substantial Evidence Claims*

We first address CFS's claim that the parents forfeited their right to challenge the sufficiency of the evidence supporting the b-1 and b-3 jurisdictional findings, by agreeing to the findings and admitting their truth, at the March 17, 2022 mediation and the March 24, 2022 jurisdictional hearing. The record shows that the parents did not admit the truth of the allegations, expressly or impliedly. Thus, the parents did not forfeit their substantial evidence claims.

1. Legal Principles

"An admission that the allegations of a section 300 petition are true, as well as a plea of no contest to a section 300 petition, bars the parent from bringing an appeal to challenge the sufficiency of the evidence supporting the jurisdictional allegations." (*In re N.M.* (2011) 197 Cal.App.4th 159, 167 (*N.M.*).) If, however, the parent submits the jurisdictional allegations to the juvenile court for its determination, based on a social worker's report or other evidence, the parent does not forfeit the right to challenge the sufficiency of the evidence supporting the jurisdictional findings on appeal. (*Ibid.)*

"In a dependency case, when a parent submits or acquiesces on a particular record, 'the court must nevertheless weigh evidence, make appropriate evidentiary findings and apply relevant law to determine whether the case has been proved.' [Citation.] Even if the parent does not contest the state of the evidence, he or she preserves the right to

challenge it as insufficient to support a particular legal conclusion." (*In re Javier G.* (2006) 137 Cal.App.4th 453, 464; *N.M.*, *supra*, 197 Cal.App.4th at p. 167.)

2. Analysis

In arguing that the parents admitted the truth of the amended b-1 and b-3 allegations, CFS misconstrues the March 17, 2022 mediation report and the proceedings that occurred at the March 24, 2022 jurisdictional hearing. The mediation report, jurisdictional proceedings, and entire record show that the parents did not admit the truth of the amended allegations. Rather, the mediation report shows that the parties agreed to limit the jurisdictional allegations to the amended b-1 and b-3 allegations, that "Father engaged in cocaine use, placing the children at risk," and "[t]he mother reasonably should have known the father was engaging in cocaine use, placing the children at risk." The b-2, b-4, and b-5 allegations were to be dismissed, but the parents did not admit the truth of the amended b-1 and b-3 allegations.

The record of the March 24, 2022 jurisdictional hearing also shows that the parents did not admit the truth of the amended b-1 and b-3 allegations. At the hearing, the court admitted the detention, jurisdiction and disposition, and mediation reports into evidence. The parents' and minors' counsel acknowledged that the amended b-1 and b-3 allegations stated a "caus[e] of action" (i.e., stated facts sufficient to establish jurisdiction) under section 300, subdivision (b), and waived any *pleading* defects in the amended b-1 and b-3 allegations. (See *In re Kaylee H.* (2012) 205 Cal.App.4th 92, 108-109 [A parent may bring a "motion akin to a demurrer" to challenge the facial sufficiency of the allegations of a section 300 petition.]; *N.M.*, *supra*, 197 Cal.App.4th at p. 166 [A

parent cannot challenge the facial sufficiency of the allegations of a section 300 petition unless the parent first raises the issue in the juvenile court.].) Through their counsel, parents and children "submitted" the amended b-1 and b-3 allegations to the court to determine based on the reports admitted into evidence. The court found the amended b-1 and b-3 allegations true, and dismissed the b-2, b-4, and b-5 allegations. Thus, the entire record is contrary to, and does not support, CFS's claim that the parents admitted the truth of the amended b-1 and b-3 allegations and forfeited their substantial evidence claims.

CFS relies on *N.M.* to support the proposition that the mediation report reflects a "settlement agreement" between CFS and the parents, whereby the parents impliedly waived or forfeited their right to challenge the truth of the amended b-1 and b-3 allegations on appeal. (*N.M.*, *supra*, 197 Cal.App.4th at p. 167.) *N.M.* is distinguishable because, unlike the agency and parent in *N.M.*, the parents and CFS here did not reach a full settlement agreement on jurisdiction or on disposition.

In *N.M,* the agency and a parent entered into a settlement agreement, before the jurisdiction and disposition hearing, to amend the petition to strike particular allegations that the parent had kicked and hit the child, and to limit the petition to other physical abuse allegations (§ 300, subd. (a)), *in exchange* for the parent's agreement to " 'deal with any physical abuse issues in therapy.' " (*N.M.*, *supra*, 197 Cal.App.4th at p. 164.) *N.M.* reasoned that the parent's "agreement to deal with the physical abuse issue in therapy [was] akin to an admission [of the truth of the remaining allegations] because

otherwise there would be no need for therapy if the juvenile court was not going to take jurisdiction of the case." (*N.M.*, at p . 167.)

N.M. explained that the "negotiated settlement was essentially a contract" that the agency and parent were entitled to enforce, and the parent, having received the benefits of the settlement contract in the form of the stricken physical abuse allegations, was "precluded from attempting to better the settlement on appeal" by challenging the sufficiency of the evidence supporting the true findings on the *remaining* physical abuse allegations under section 300, subdivision (a). (*N.M.*, *supra*, 197 Cal.App.4th at pp. 164, 167.) The court reasoned that the parent, by agreeing to participate in therapy, "implicitly waived his right to challenge" the true findings on the remaining section 300, subdivision (a), allegations. (*Ibid.*) Allowing the parent to challenge the true findings, given the parent's implied concession on therapy and disposition, and therefore jurisdiction, would have been "counterintuitive to legal principles of forfeiture and waiver." (*Id.* at p. 168.)

Here, however, the parents contested the court's jurisdiction and CFS's dispositional recommendations throughout the proceedings. The parents did not reach an express or implied settlement with CFS on jurisdiction or disposition. (Cf. *N.M.*, *supra*, 197 Cal.App.4th at p. 167; *In re Isabella F.* (2014) 226 Cal.App.4th 128, 137 [distinguishing *N.M.* as involving a settlement agreement].) Rather, at the mediation, the parents agreed to participate in *predisposition* services (individual counseling, parenting classes, and drug testing for Father), as the parents had been doing since the children were detained, pending the court's determination of the amended b-1 and b-3

jurisdictional allegations. The parents were also seeking family maintenance services, rather than family reunification services, in the event the court asserted jurisdiction. Thus, on this record, neither parent forfeited their right to challenge the jurisdictional findings and dispositional orders.

B. *Substantial Evidence Supports the Amended b-1 and b-3 Jurisdictional Findings*

The parents claim insufficient evidence supports the jurisdictional findings, the b-1 finding against Father and the b-3 finding against Mother. (§ 300, subd. (b)(1).) As noted, the juvenile court found: "Father engaged in cocaine use, placing the children at risk" (the b-1 finding), and "[t]he mother reasonably should have known the father was engaging in cocaine use, placing the children at risk" (the b-3 finding). We conclude that substantial evidence supports both findings.[2]

1. Legal Principles

A child is within the jurisdiction of the juvenile court, and may be adjudged a dependent of the court under section 300, subdivision (b)(1), if "[t]he child has suffered,

---

[2] Mother argues this court should exercise its discretion to review the b-3 finding, even if her evidentiary challenge to the finding is moot, in the event substantial evidence supports the b-1 finding against Father. For at least one reason, neither parent's evidentiary challenge to the jurisdictional finding against that parent is moot in light of the substantial evidence supporting the jurisdictional finding against the other parent. (*In re D.P.* (2023) 14 Cal.5th 266, 283-284.) An evidentiary challenge to a jurisdictional finding is not moot; thus, review of the finding is required, not discretionary, when the finding " 'serves as the basis for dispositional orders that are also challenged on appeal.' " (*Id.* at p. 283; *In re S.F.* (2023)___Cal.App.5th___(May 17, 2023, A166150) [2023 Cal.App.Lexis 387, * 20].) Together, the b-1 and b-3 findings serve as the basis for the court's September 7, 2022 dispositional order, declining to terminate jurisdiction and continuing the parents on family maintenance services, which the parents challenge as an abuse of the court's discretion.

or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of . . . [t]he failure or inability of the child's parent . . . to adequately supervise or protect the child," or "[t]he willful or negligent failure of the child's parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left." A jurisdictional finding under section 300, subdivision (b)(1), requires the social services agency to show three elements by a preponderance of the evidence: "(1) neglectful conduct, failure, or inability by the parent [to adequately supervise or protect the child]; (2) causation; and (3) serious physical harm or illness or a substantial risk of serious physical harm or illness [resulting from the parent's failure to adequately supervise or protect the child]." (*In re G.Z.* (2022) 85 Cal.App.5th 857, 877; *In re Joaquin C.* (2017) 15 Cal.App.5th 537, 561; § 355.1, subd. (a).)

"The third element . . . effectively requires a showing that at the time of the jurisdictional 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)." (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.) Thus, "the trial court cannot make a jurisdictional finding based on a one-time situation that is unlikely to reoccur." (*In re G.C.* (2020) 48 Cal.App.5th 257, 268-269, citing *In re J.N.* (2010) 181 Cal. App.4th 1010, 1023, in turn citing *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; but see *In re J.K.* (2009) 174 Cal.App.4th 1426, 1434-1437.) On the other hand, " '[t]he court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.' " (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

On appeal, we review the juvenile court's jurisdictional findings for substantial evidence. (*In re J.N., supra,* 181 Cal.App.4th at p. 1022.) We uphold the findings unless, after reviewing the entire record and drawing all reasonable inferences in support of the findings, we determine there is no substantial evidence to support the findings. (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378.) Substantial evidence is evidence that is reasonable, credible, and of solid value. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) But "substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [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.' " (*In re Savannah M.*, *supra*, 131 Cal.App.4th at pp. 1393-1394.)

2. Substantial Evidence Supports the b-1 Finding Against Father

Father, joined by Mother, claims there is no substantial evidence to support the b-1 finding that "Father engaged in cocaine use, placing the children at risk." Father argues that the January 3, 2022 incident, in which he used cocaine and was suffering cocaine delirium with the children in his care, was a "single, isolated event" that was not likely to recur at the time of the jurisdictional hearing on March 24, 2022. Father claims there was "no current or future risk of harm" to the children on March 24 and "no nexus" between his one-time cocaine use and any substantial risk of harm to the children.

To be sure, Father assumed responsibility for the January 3, 2022 incident at the February 10 detention hearing. Through his counsel, he acknowledged that his cocaine use and his failure to communicate with CFS had caused the children to be detained, and

he asked for predispositional services. Through March 24, Father tested negative for all controlled substances and participated in services.

But notwithstanding Father's contrition and participation in services, the juvenile court, at the time of the March 24, 2022 jurisdictional hearing, had ample reason to conclude that Father's cocaine use posed a continuing and future substantial risk of serious harm to the children. The reports that the court admitted into evidence indicated that the January 3 incident was *not* a "one-time" event, as Father claimed. Father appeared to be suffering from cocaine delirium on January 7, four days after the January 3 incident, when the social worker made an unannounced visit to the family home. Father partially opened the door, told the social worker it was not a good time to meet, and agreed to rescheduled the visit to January 11. As the social worker was leaving, Father stepped outside the home and told the social worker that "cars" had been "following him" and " 'driving slowly' " by his house. The court could reasonably infer from this behavior that Father's January 3 cocaine use was not a "one-time" event but was ongoing and was continuing to cause Father to suffer cocaine delirium and paranoid thoughts.

Further, during his January 18, 2022 interview, Father denied using cocaine on January 3 or at any other time in his life, even after the social worker told him that his January 3 hospital records showed he tested positive for cocaine and that he admitted using cocaine. After January 18, and until the children were ordered detained on February 10, Father was argumentative and uncooperative with CFS, and he did not

appear to understand how his cocaine use and behavior on January 3 had placed the children at risk of harm.

On February 7, Father refused to participate in a team meeting with CFS, saying he did not believe a further investigation of the January 3 incident or CFS's involvement with the family was warranted. Although Father was remorseful and began participating in predispositional services after the children were taken into protective custody on February 7, by the time of the jurisdictional hearing on March 24, Father had not had time to complete his counseling or his parenting classes, or benefit from those services. The foregoing evidence constitutes substantial evidence that, when the court found the amended b-1 allegation true on March 24, 2022, that "Father engaged in cocaine use, placing the children at risk," the court had ample reason to believe that Father's cocaine use was not a one-time event but was likely to recur and was continuing to place the children at a substantial risk of harm. (§ 300, subd. (b)(1).)

Father relies on *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*) for the proposition that the court could not find the amended b-1 allegation true unless Father had a medical diagnosis of a "substance abuse" problem. Regardless of whether a medical diagnosis is a necessary element of a substance abuse finding under section 300, subdivision (b)(1)—an issue we need not decide (Cf. *Drake M.*, at pp. 762-766 with *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 725-726)—the amended b-1 allegation did not allege that Father had a "substance abuse issue" or problem.

The b-1 allegation was amended to delete the language and accusation that Father had "a substance abuse issue" that impeded his ability to properly care for the children, in

favor of stating that, "Father engaged in cocaine use, placing the children at risk." Thus, the juvenile court did not determine that Father had "a substance abuse issue" or problem when the court found amended b-1 allegation true.

Father further argues there was no "nexus" or causal connection between his claimed one-time cocaine use on January 3, 2022, and any substantial risk of harm to the children. The cases Father relies are inapposite because each of them involved no evidence that the children involved had ever been harmed *or were ever at any risk of harm* as a result of the parents' one-time, occasional, or medicinal drug *use*, as opposed to drug *abuse*. (See e.g., *Drake M.*, *supra,* 211 Cal.App.4th at pp. 767-769; *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003-1004; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1344-1346; see also *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453.) Here, in contrast, Father's cocaine use and erratic behavior on January 3, directly placed his one- and three-year-old children at a substantial risk of serious harm, and the record supports a reasonable inference that Father's cocaine use was ongoing and likely to recur at the time of the March 24 hearing. Thus, here, in contrast to *Drake M.* and the other cases Father relies on, there was a sufficient nexus or causal connection between Father's cocaine "use" and a substantial risk of serious harm to the children.

3. Substantial Evidence Supports the b-3 Finding Against Mother

Mother, joined by Father, claims insufficient evidence supports the b-3 finding that, "The mother reasonably should have known the father was engaging in cocaine use, placing the children at risk." Again, we disagree.

Mother's arguments concerning the b-3 finding are similar to Father's arguments concerning the b-1 finding. Mother first argues there is no evidence she should have known that Father had a "substance abuse issue" that impeded his ability to care for the children because there is no evidence that Father "abused substances." Mother refers to the original b-3 allegation, not the amended b-3 allegation and jurisdictional finding. Similar to the b-1 allegation, the b-3 allegation was amended to replace the language that Father had a "substance abuse issue" with the language that Father "was engaging in cocaine use, placing the children at risk." In finding the amended b-3 allegation true, the juvenile court found that Mother should have known Father was "engaging in cocaine use, placing the children at risk," but the court did not find that Mother should have known that Father had "a substance abuse issue." Whether Father's cocaine use amounted to a "substance abuse issue" or problem was immaterial to the b-3 finding.

Mother also argues the evidence showed only that Father used cocaine one time, on January 3, 2022, and a one-time incident of drug use cannot support juvenile court jurisdiction. Mother further argues Father's cocaine use did not place the children at risk, echoing Father's argument that there was no nexus or causal connection between Father's one-time cocaine use and a substantial risk of any serious harm to the children at the time of the March 24 jurisdictional hearing.

As discussed, the record supports a reasonable inference that Father's January 3, 2022 cocaine use was not a one-time event. Father appeared to be using cocaine again on January 7, when he told the social worker that cars had been following him and driving slowly by his house. Moreover, Father's erratic behavior and paranoid

statements on January 3 and January 7 indicated he could seriously harm the children if he continued to use cocaine and suffer cocaine delirium while the children were in his care. Thus, there was a causal connection between Father's cocaine "use" and a substantial risk of serious harm to the children at the time of the March 24 hearing. The parents' reliance on cases involving a parent's one-time, occasional, or medicinal drug use, which posed no risk of harm to the child, is misplaced. (E.g., *Drake M.*, *supra*, 211 Cal.App.4th at pp. 767-769; *In re L.C.* (2019) 38 Cal.App.5th 646, 648-650.)

Mother argues there was no evidence that any failure on her part to protect the children from Father's cocaine use and cocaine delirium, after January 3, 2022, placed the children at a substantial risk of serious harm. Mother argues she had no reason to know about Father's "one-time" cocaine use before January 3, and there is no "causal link showing that [Mother's] action or inaction caused any actual or substantial risk of harm" to the children. We disagree.

Although Mother acted to protect the children when she confronted Father and threatened to kick Father out of the home if he used cocaine again, substantial evidence shows that Mother should have known about Father's cocaine use and cocaine delirium on January 3, when Mother picked up Father at the hospital. But Mother failed to implement any measures to protect the children at that time. Mother actually knew about Father's January 3 cocaine use and cocaine delirium on January 18, when the social worker told Mother about the January 3 incident. But even at that time, Mother did not take steps to protect the children from Father's cocaine use and cocaine delirium by arranging for another person to care for the children while Mother was working.

Lastly, Mother argues there was "no current evidence of future substantial risk" to the children at the time of the March 24, 2022 jurisdictional hearing based on Father's one-time cocaine use on January 3. Again, however, substantial evidence demonstrates that Father's cocaine use and cocaine delirium on January 3 was not a one-time event but was likely ongoing and continued to place the children at a substantial risk of serious harm on March 24. By that time, Father had not had sufficient time to benefit from his services and to alleviate CFS's well-supported concerns for the children's safety. Likewise, Mother's failure to protect the children from Father's cocaine use posed a continuing risk to the children on March 24. Until the children were detained on February 7, Mother did not appear to take the January 3 incident seriously, and by March 24, Mother had not had sufficient time to benefit from her predispositional services.

C. *The Court Did Not Abuse Its Discretion in Refusing To Terminate Its Jurisdiction*

Father, joined by Mother, claims the juvenile court abused its discretion in refusing to terminate its jurisdiction at the September 7, 2022 dispositional hearing and continuing the parents on family maintenance services. We review the juvenile court's refusal to terminate its jurisdiction for an abuse of discretion. (*In re Shannon M.* (2013) 221 Cal.App.4th 282, 289.) "The question is whether juvenile court services and ongoing supervision were necessary to protect the child from harm." (*In re D.B.* (2020) 48 Cal.App.5th 613, 624.) A juvenile court has broad authority to enter orders to protect a dependent child, and "to terminate dependency jurisdiction when the child is in parental custody and no protective issue remains." (*Ibid.*)

At the time the September 7, 2022, dispositional hearing, the juvenile court reasonably concluded that there were still concerns for the children's safety, based on the March 24 b-1 and b-3 jurisdictional findings against the parents. Although Father had tested negative for controlled substances since January 2022 and had completed his counseling and parenting classes, Father had only recently resumed living with the children, on August 10, when the court authorized an extended 29-day home visit for Father. Thus, as of September 7, Father had not had sufficient time to show that he had benefited from his services. In addition, Mother was still attending counseling. Thus, on September 7, the court reasonably determined that it was too early to terminate the court's jurisdiction. The children were still at a substantial risk of serious harm due to Father's cocaine use and Mother's failure to protect the children from Father's cocaine use. The court did not abuse its discretion in refusing to terminate its jurisdiction and instead placing the parents on a joint family maintenance plan.

IV. DISPOSITION

The September 7, 2022 judgement is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS
J.

We concur:

McKINSTER
Acting P.J.

MILLER
J.