Filed 8/17/09 In re L.G. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re L.G. et al., Persons Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.A. et al., Defendants and Appellants; L.G. et al., Appellants.	B210872 (Los Angeles County Super. Ct. No. CK60490)

APPEAL from orders of the Superior Court of Los Angeles County. Debra Losnick, Commissioner. Reversed.

John L. Dodd & Associates and John L. Dodd, under appointment of the Court of Appeal, for Defendant and Appellant K.A.

Karin S. Collins, under appointment of the Court of Appeal, for Defendant and Appellant H.G.

Niccol Kording, under appointment of the Court of Appeal, for Appellants T.A. and L.G.

Raymond G. Fortner, County Counsel, James M. Owens, Assistant County Counsel, Melinda S.White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

Appellants Harry G. (Father) and Kristina A. (Mother) appeal the juvenile court's orders asserting jurisdiction over their infant daughter L.G. (L.). Jurisdiction was based on Father's intermittent positive tests for marijuana and on Mother's decision to leave L. and her half-brother, T.A. (T.) alone with Father on at least one occasion. Although there was no evidence that the children were anything but well cared for and happy or that Father ever used marijuana in their presence, the court concluded that Father's periodic usage of marijuana, without more, posed a risk of harm. Appellants, joined by the children's attorney, contest that decision. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Original Petition*

Appellants' daughter, L., was detained by DCFS in August 2006, shortly after her birth.[1] At the time, L.'s half-brother T. (Mother's child with another man) was in foster care, having been born in August 2005 with a positive toxicology

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[1] Mother and Father are not married. The court found Father to be L.'s presumed father.

screen for amphetamine, and Mother was in the midst of efforts to reunify with T.[2] A few weeks after L.'s birth, the caseworker visited the home where L. lived with Father and Mother. L. appeared well cared for. The caseworker initially recommended voluntary participation in Family Preservation Services. When, after two weeks, Father and Mother had not contacted the caseworker or DCFS to initiate a voluntary program, DCFS filed a petition seeking jurisdiction over L.

The petition, filed August 17, 2006, alleged jurisdiction was appropriate under Welfare and Institutions Code section 300, subdivision (b) (failure to protect) and subdivision (j) (sibling abuse).[3] It stated that Mother had "a 6[-]year history of substance abuse including methamphetamine and alcohol"; suffered from "mental and emotional problems including bi-polar disorder and suicidal ideation"; and had another child who was a dependent of the juvenile court.[4] The petition also alleged that Father "has a history of illicit drug abuse."[5] The parents' conditions allegedly rendered them incapable of providing L. with regular care and

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[2] T.'s father was never identified. This appeal does not involve T., but as there was significant overlap between the two siblings' cases, we discuss the court's rulings in both matters.

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

[4] Similar allegations had been sustained in October 2005 with respect to Mother, when the court found jurisdiction appropriate as to T. The sustained allegations, which supported jurisdiction under section 300, subdivision (b), stated that T. had been born with a positive toxicology screen for amphetamine, that Mother had a six-year history of substance abuse and was a frequent abuser of amphetamine and alcohol, and that Mother suffered from mental and emotional problems including bipolar disorder and suicidal ideation.

[5] Mother stated that Father had a drug history and Father admitted having been arrested or ticketed for possession of marijuana the preceding year. Both denied any current drug use.

supervision, endangered the child's physical and emotional health and safety and placed the child at risk of physical and emotional harm and damage. L. was detained and placed with her paternal aunt.

1. *Jurisdiction and Disposition*

In September 2006, DCFS and appellants entered into a mediated agreement under which all the allegations of the petition were stricken with the exception of the allegation pertaining to L. having a sibling who had been adjudicated abused or neglected (§ 300, subd. (j)). DCFS agreed to release L. to Father on the condition he reside with his sister, with whom L. had been placed. Mother was not to be left alone with L. until she provided five additional clean drug tests. Father was to provide "a total of six clean consecutive, random tests for controlled substances, including those already provided." If Father tested positive or missed a test without excuse, he agreed to "complete a DCFS-approved substance abuse rehabilitation program with counseling and random testing." In addition, disposition for L. was to include "[M]other's compliance with existing case plan in sibling [T.'s] case, including continuing participation in substance abuse treatment and mental health counseling."[6]

2. *Review Hearings*

In November 2006, although Mother was doing well in therapy and was otherwise progressing, the court expressed concern that she had never been

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[6] After the agreement was negotiated, the paternal aunt reported that because she was in the process of adopting another child and was receiving funds for the care of L., she could not allow Father to live in her home. This problem appears to have been resolved, as the court approved the mediated agreement and entered the recommended orders, and DCFS subsequently reported that Father was living with his sister and L.

evaluated by a psychiatrist to determine whether she needed medication.[7] The court ordered a psychiatric evaluation.

In January 2007, DCFS reported that L. was living with Father and the paternal aunt and that "during home visits, announced and unannounced, she has been observed to be well cared for." Although Father had a positive drug test for marijuana in December 2006, DCFS continued to recommend that L. be placed with Father. Mother had consistently tested negative for drugs of any type and her visitation with her children had been liberalized to unmonitored. However, the court remained concerned about the lack of a formal psychiatric evaluation and recommendation with respect to medication.

In March 2007, the caseworker reported that Father, in compliance with the mediated agreement, had begun participation in drug counseling. He had had four negative drug tests in a row. In addition, Father was regularly employed and had moved into an apartment with L. Although Mother was not permitted to live with them, she had been granted unmonitored weekend visits with both L. and T. in Father's apartment. According to the caseworker, the family appeared loving and affectionate with each other. There were no signs of neglect or abuse. Mother had completed a drug program and was nearly finished with parenting classes. Mother's therapist, whom she was seeing regularly, reported she was functioning well without medication and expressed the opinion that there was no need to refer her to a psychiatrist for medication. The therapist described Mother as a "stable, adjusted individual." The caseworker recommended that Mother have custody of both children. In the meantime, a psychologist who had been engaged in an effort

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[7] T.'s petition included the allegation that Mother "failed to take her psychotropic medication as prescribed." Mother's therapist, a clinical psychologist, reported that Mother was attending sessions regularly, approximately twice per month since May 2006, had not been prescribed any medication, and "appears fairly well adjusted."

to comply with the court's order for a psychiatric evaluation had, after a single session, diagnosed Mother as suffering from posttraumatic stress disorder due to past sexual abuse and "Bipolar I Disorder" based on "expresse[d] feelings of depression with suicidal ideation." The court-ordered psychologist recommended "a psychiatric consultation for possible medication management in order to address her feelings of anxiety, depression, and labile mood" and her "suicidal ideation and social withdrawal." After receipt of the report, the court ordered a psychiatric evaluation to answer a single question: "Does Mother need any psychotropic medication." Pending the evaluation, the court permitted Mother and T. to reside with Father and L.

In April 2007, the caseworker reported that the family home was "furnished appropriately" and "neat and clean," that the children were well cared for, and that appellants continued to participate in Family Preservation Services and court-ordered reunification services. There was another positive report in May. In July, the court received the psychiatric report, which diagnosed Mother with "Depressive Disorder" and recommended a trial of antidepressant medication and monthly monitoring by a psychiatrist. However, the caseworker reported that due to her income, Mother did not qualify for Medi-Cal, and that she had neither private medical insurance nor the funds to afford psychiatric sessions and medication.[8]

In September 2007, the caseworker reported that both parents were employed, "devoted to their children" and "continu[ing] to grow closer as a family." The children were "mentally and emotionally healthy and . . . not in need of services." T. was "very sweet and nurturing with his baby sister [L.]" and L.

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[8] In-home counseling was still being provided by Family Preservation Services.

"love[d] to follow and imitate her big brother [T.]" However, five of Father's ten random drug tests between April and August 2007 had been positive for marijuana. Father stated he had been prescribed cannabis for sleeping and anxiety disorder and denied using it in front of the children.[9] He continued to participate in substance abuse counseling. Mother continued to report the inability to afford psychiatric services or medication. In addition, a local community mental health center had refused a request for free or low cost services because Mother "does not have a significant medical diagnosis that would cause decompensation if she was not prescribed psychotropic medication." Despite these outstanding issues, DCFS recommended termination of jurisdiction. The court refused to terminate solely because of Father's marijuana usage. At the hearing, the court stated to Father: "I don't care if you have got a medical prescription for marijuana. If you keep taking it, we are going to keep jurisdiction open. . . . You can do it when the case is over with, but not now."

In October 2007, the caseworker reported that Father continued to test positive for marijuana. Mother had visited a psychiatrist who prescribed Seroquel 100 for bipolar disorder. DCFS recommended three additional months of services, primarily to monitor Mother's medication. At the October 29 hearing, the court stated that jurisdiction would be kept open "mostly" because of Mother's situation, but warned Father that if, after 30 days, any of his drug tests came back positive, "I'm going to have the [caseworker] walk on a 385, which is a change order to . . . have you taken out of the house."

In January 2008, Father's drug test was positive for marijuana, but the level of cannabis was down. Mother continued to take Seroquel. Both parents were

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[9] The caseworker checked with Father's physician who confirmed the prescription.

employed and providing "a safe and appropriate home for the children." DCFS changed its recommendation again, recommending continuing jurisdiction to monitor Father's marijuana usage. The court continued the matter to April. In March, both parents tested positive for marijuana, Mother's first positive drug test since L.'s case began.[10]

B. *Amended Petitions*

1. *April 2008 Petition*

In April 2008, DCFS filed a subsequent petition under section 342.[11] It contained a single allegation: "[Father] has a history of substance abuse and is a frequent abuser of marijuana, which renders [him] incapable of providing the child with regular care and supervision. On [nine occasions], [Father] had positive toxicology screens for marijuana. [Father] continue[d] to abuse marijuana after [he] was admonished by the Juvenile Court to cease the use of marijuana. [Father's] abuse of marijuana and failure to comply with the orders of [the] Juvenile Court endangers the child's physical and emotional health and safety, creates a detrimental home environment and places the child at risk of physical and emotional harm and damage." On April 16, in accordance with a DCFS recommendation, the court ordered the children detained from Father and placed with Mother, requiring Father's visitation with L. to be monitored.

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[10] Mother subsequently tested positive for marijuana on April 11, May 22, August 1, and August 28, 2008. She tested negative on September 4, 2008.

[11] As explained in *In re Barbara P*. (1994) 30 Cal.App.4th 926, 933: "A subsequent petition is filed [under section 342] when new, independent allegations of dependency can be made after the court has initially declared a minor to be a dependent child. [Citation.]"

On May 2008, despite the pendency of the newly-amended petition pertaining to L., the court terminated jurisdiction as to T. During the preceding month, Father had had a clean test and another test showing a very low level of cannabis. Taking this as evidence that Father had stopped using marijuana, the court permitted Father to return to the family home conditioned on continuing to test clean. The written order of May 20, 2008 stated: "[Father] may live in the family home of [Mother] and child on condition he continue to randomly drug test clean. The court admonishes [Father] that if he tests dirty and[/]or has an unexcused or missed test[,] he will immediately need to leave and move out of [Mother's] family home." At the hearing, the court stated: "I have my opinion with regard to marijuana and the use of marijuana, whether it is medical or otherwise. . . . But, at this point, Father is complying with my orders, and that's all I care about."

2. *July 2008 Petitions*

On July 2, the caseworker reported that Father had positive drug tests in May and June, but that she had never observed Father under the influence during her visits. The report stated that the positive drug tests "resulted in [Father's] removal from the home on [June 30, 2008]." The report recommended that Father remain out of the family home "until he complies with all court orders."

At the July 2 hearing, the court set a contested jurisdictional hearing on the April section 342 petition. The court did not specifically order Father out of the home or order that visits with L. be monitored, but discussed with counsel the prior order that Father be allowed to live in the home only as long as he tested negative. A few days later, DCFS learned that Mother had left the children in the care of Father on at least one occasion. On July 15, DCFS filed a supplemental petition under section 387, contending: "[Mother] violated the orders of the Juvenile Court

in that [Mother] allowed [Father] to frequent the child's home and provide care and supervision of the child despite [Mother's] knowledge of [Father's] illicit drug use. The failure to comply with the Juvenile Court orders and the failure to protect the child from [Father's] illicit drug use by [Mother] endangers the child's physical and emotional health, safety and well being and places the child at risk of physical and emotional harm and damage."[12] As jurisdiction over T. had been terminated, a new section 300 petition was filed with respect to T., restating the allegations that had appeared in the original petition (that Mother had a history of substance abuse and suffered from mental and emotional problems) and further contending that Mother "created a detrimental and endangering home environment for the child in that [Mother] allowed [Father] to frequent the child's home and provide care and supervision of the child despite . . . knowledge of [Father's] ongoing illicit drug use." L. and T. were detained and placed in foster care.[13]

3. *Jurisdictional/Dispositional Hearing*

Interviewed by the caseworker, Mother and Father explained that Mother had just started a new job and asked Father to watch the children when the

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[12] "A supplemental petition is filed [under section 387], inter alia, when a dependent child has been placed with a parent, but the department now seeks to remove the child, effectively requesting the court to modify its previous placement order. [Citation.]" (*In re Barbara P.*, *supra*, 30 Cal.App.4th at p. 933.)

[13] On July 2, Father moved to disqualify Commissioner Marpet, the judicial officer who had presided over the case since its inception. The motion was denied as untimely. When the new petition was filed with respect to T., Mother filed a Code of Civil Procedure section 170.6 challenge, which was granted. Subsequent 170.6 challenges were filed with respect to subsequent judicial officers by Father and the children's attorney. The matter was eventually transferred to Commissioner Losnick, who issued the jurisdictional and dispositional orders from which this appeal was taken.

babysitter she had hired did not show up.[14] Mother's counsel represented that Mother quit her job so the situation would not arise again. At the September 22, 2008 jurisdictional hearing, the caseworker testified that she had never observed anything to suggest that Father used marijuana around the children or that there was any marijuana in the home. She further testified that throughout the period of her observations (approximately two years), the children were well cared for and their interactions with their parents and each other were affectionate and loving. She saw nothing that caused her concern about their safety, even during the periods when Father was testing positive for marijuana. Counsel for Mother and Father, joined by counsel for the children, asked that the petitions be dismissed on the ground there was no evidence of harm or risk of harm to the children from the conduct alleged.

The court found true the allegations that Father used marijuana and tested positive for marijuana after being admonished by the court to stop. The court concluded that Father's drug use presented a risk of harm to L. and that Mother's actions in allowing Father to be around the children presented a risk of harm to both of them.[15]

Turning to disposition, the children's attorney argued that it would be more detrimental to place the young children in foster care than to return them to

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[14] In the detention report, the caseworker noted that appellants "are no longer eligible for childcare funding through DCFS."

[15] The court struck the allegations of the section 300 petition relating to Mother's history of substance abuse and mental illness. The court also made minor changes to the remaining allegations of the petitions, striking the words "and damage" and changing the references in the petitions to Father's "abuse of marijuana" and "illicit drug use" to "use of marijuana" and "ongoing use of marijuana." Finally, the court amended the section 387 petition to make the finding that Mother *and Father* violated the orders of the juvenile court. The court sustained the petitions as amended.

Mother, who had always taken good care of them.[16] The court agreed and placed the children with Mother. The court permitted Father monitored visitation only. Both parents were ordered to continue drug testing and drug counseling.

DISCUSSION

The court found that Father had a "history of substance abuse" and a positive toxicology screen for marijuana on nine separate dates, and that Mother allowed Father to frequent the home and provide care and supervision of the children. Based on these findings, the court concluded that jurisdiction over L. was appropriate under section 300, subdivision (b). A child may be adjudged a dependent of the juvenile court under subdivision (b) if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or the 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, . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse." Father contends the factual allegations found true with respect to his conduct were insufficient to support jurisdiction under this subdivision. Mother joins in that contention and adds that if Father's conduct did not support jurisdiction, neither did her actions in leaving the children alone with Father on one or more occasions. The children's attorney joins, noting that Father has been employed and providing financial support for his family throughout these proceedings and that no evidence suggests

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[16] There was some evidence -- a white mark on her arm -- to indicate that L. had been injured in foster care.

that the children have ever been harmed or neglected while in their parents' care. We agree and reverse.

The issue whether a parent's use of marijuana alone supports jurisdiction under subdivision (b) has been addressed three times in reported California decisions -- *In re Alexis E*. (2009) 171 Cal.App.4th 438, 453; *In re David M*. (2005) 134 Cal.App.4th 822, 829-830; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346.[17] In all three cases, the courts concluded that evidence of periodic marijuana usage on the part of a parent, without more, cannot support a finding of serious harm or serious risk of harm to the children. (*Ibid*.) In *Jennifer A*., the issue was whether a substantial risk of detriment to the physical or emotional well-being of the children existed where, between the 12-month and 18-month review hearings, the mother tested positive for marijuana once, submitted a diluted sample once and missed nine tests. The Court of Appeal acknowledged that the missed tests must be considered positive and that the mother's unauthorized possession of marijuana was illegal. (117 Cal.App.4th at pp. 1343, 1346.) It concluded, however, that the juvenile court's finding of detriment was not supported by the positive tests alone: "No medical professional diagnosed Mother as having a substance abuse problem, no medical professional testified at the 18-month review hearing, and there was no testimony of a clinical evaluation. . . . [¶] Further, no one offered testimony linking Mother's marijuana and alcohol

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[17] We note that *Alexis E*. had not been decided at the time of the juvenile court's rulings and that neither party directed the court's attention to *Jennifer A*. or *David M*. Instead, appellants sought to rely on *In re W.O*. (1979) 88 Cal.App.3d 906, in which the appellate court reversed a jurisdictional finding despite the fact that both parents used not only marijuana, but also cocaine, and both drugs were found in the home, the marijuana in a place arguably accessible to the children. The juvenile court essentially dismissed the holding in *W.O*. as representing an outdated view. Although we are not presented with the *W.O*. facts here, we, too, question whether a similar result would obtain today.

use to her parenting judgment or skills. . . . The social worker testified that in his many contacts with Mother, she never seemed to be under the influence of alcohol or drugs. Most critically, the social worker testified Mother did not have a drug problem that affected her parenting skills." (*Id.* at p. 1346.) On this record, there was nothing to support "that Mother's marijuana use . . . means the children's return to Mother would create a *substantial* risk of detriment to the physical or emotional well-being of the children" or that the mother was not providing the children a home "free from the negative effects of substance abuse" as required by section 300.2. (*Jennifer A. v. Superior Court, supra,* 117 Cal.App.4th at p. 1364.)

Equally pertinent is the decision in *David M.* There, the mother tested positive for marijuana at the time of her second son's birth. The allegations of the petition included the mother's marijuana usage, the father's failure to protect the children from the mother's marijuana usage and concerns about the parents' overall mental health. The appellate court "accept[ed] as true that mother continues to suffer from a substance abuse problem with marijuana in the limited respect shown on this appellate record, and that she and father both have mental health issues." (*In re David M., supra,* 134 Cal.App.4th at p. 830.) Nevertheless, the court reversed the jurisdictional finding made by the juvenile court under section 300, subdivision (b). Noting that "'there must be evidence indicating that the child is exposed to a *substantial* risk of *serious physical* harm or illness'" to support jurisdiction under that provision (*In re David M.,* at p. 829, quoting *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1137), the court stated: "This is precisely what SSA [the Orange County Social Services Agency] failed to do in this case. The record on appeal lacks any evidence of a specific, defined risk of harm to either [child] resulting from mother's or father's mental illness, or mother's substance abuse. Certainly, it is possible to identify many possible harms that *could* come to pass. But without more evidence than was presented in this

case, such harms are merely speculative." (*In re David M., supra,* 134 Cal.App.4th at pp. 829-830.)[18]

Finally, in *Alexis E.*, the court, citing *David M.* and *Jennifer A.*, stated: "[T]he mere use of marijuana by a parent will not support a finding of risk to minors." (*In re Alexis E., supra,* 171 Cal.App.4th at p. 452.) Respondent quotes *Alexis E.* in its brief, contending that the case supports the proposition that exposure of minors to recreational drug use and second-hand smoke represents a substantial risk of harm, and that the existence of a prescription for marijuana does not preclude the court from finding that parental usage of the drug creates a serious risk of harm. Respondent is correct, but neither proposition is particularly relevant here. The court in *Alexis E.* did indeed uphold a finding of jurisdiction based in part on substantial risk of harm from the father's use of marijuana. In that case, however, the father smoked marijuana twice a day, morning and night, including when the children were in his home and in their presence. The evidence established that his habit caused him to neglect his children.[19] In addition, he suffered from a mental condition -- severe panic disorder -- which appeared to be

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[18] Also relevant is the rejection by the court in *David M.* of the respondent's contention that jurisdiction was supported by a sustained allegation that the older boy, David, had been left with a babysitter, Teresa, who "used marijuana." With respect to this allegation, the court stated: "Mother knew that Teresa used marijuana, but Teresa was not under the influence of marijuana when she babysat David. . . . SSA offered no evidence that David was endangered, much less harmed, while under Teresa's care, or that David was exposed to drugs, drug paraphernalia, or even secondhand marijuana smoke." (*In re David M., supra,* 134 Cal.App.4th at p. 831.)

[19] One child reported that the father "stays in the bedroom all day with his girlfriend, and . . . smokes cigarettes that smell bad." (*In re Alexis E., supra,* 171 Cal.App.4th at pp. 441-442.) The father admitted that he locked himself in his room to smoke marijuana when his children were home. (*Id.* at p. 443.) Another child said that they were frequently left alone to make dinner for themselves, although the oldest was not yet 12. (*Ibid.*)

exacerbated by the drug. (*Id*. at pp. 444, fn. 4, 447-448.) The court emphasized that it had "no quarrel" with the father's assertion that "his use of medical marijuana, *without more*, cannot support a jurisdiction finding." (*Id*. at p. 453.) However, the record in that case "set out the 'more' that supports the [juvenile] court's finding that [the father's] use of medical marijuana presents a risk of harm to the minors." (*Ibid*.)

Here, in contrast, there was evidence of only periodic marijuana usage by Father and no evidence that Father ever smoked marijuana in the children's presence or that he was ever under the influence while caring for them. Moreover, there was no indication of abuse or neglect. Father may or may not have had a valid prescription every time he tested positive. But the legality of Father's use of marijuana at any point is not a significant factor in resolving whether L. had been harmed or was at risk of being harmed for purposes of establishing dependency jurisdiction. The juvenile court is not charged with enforcement of drug laws, and a parent does not lose the right to custody and control of his or her children merely by becoming a minor lawbreaker. (See *Jennifer A.*, *supra*, 117 Cal.App.4th at p. 1346 [acknowledging that parent's use of marijuana was illegal, but nonetheless reversing jurisdictional finding].) DCFS has the burden of establishing detriment and "[t]he standard for showing detriment is a 'fairly high one.'" (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400, quoting *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 788.) "'It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family members.' [Citation.] Rather, the risk of detriment must be *substantial*, such that

returning a child to parental custody represents some danger to the child's physical or emotional well-being." (*Ibid*.) Here, DCFS failed to meet its burden of proof.[20]

DISPOSITION

The court's jurisdictional order declaring L. a dependent of the juvenile court is reversed. All subsequent orders are vacated as moot.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.

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[20] Because we conclude L. was not at risk of harm from Father's periodic usage of marijuana, she could not have been at risk of harm from the only allegation directed at Mother -- leaving L. (and T.) alone under Father's supervision for brief periods. Respondent does not suggest otherwise, but states in its brief that Mother "exercise[d] bad judgment" by using marijuana. As there were no allegations relating to Mother's drug usage in either the subsequent or the supplemental petition, Mother's positive drug tests are not before us.