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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re E.R., a Person Coming
Under Juvenile Court Law.

B316878

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 21CCJP03819)

Plaintiff and Respondent,

v.

EVA R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Kristen Byrdsong, Judge Pro Tempore. As to the jurisdictional order, reversed in part with instructions. As to the dispositional order, the appeal therefrom is dismissed as moot.

Jane B. Winer, under appointment by the Court of Appeal, for Defendant and Appellant.

Dawyn R. Harrison, Interim County Counsel, Kim Nemoy, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Eva R. (Mother) appeals from the jurisdictional and dispositional orders of the juvenile court in dependency proceedings regarding her now-adult daughter, E.R. E.R. struggled with depression, self-harming behaviors, and general behavioral issues for several years before these dependency proceedings began. Mother's extensive efforts to help E.R., and to prevent E.R. from joining a gang, were largely unsuccessful. The juvenile court sustained an amended Welfare and Institutions Code section 300¹ petition based on allegations of physical abuse and medical neglect by Mother, as well as Mother's inability to adequately supervise and protect E.R. and the inability of E.R.'s father, Benjamin R., Sr. (Father), who is not a party to this appeal, to provide E.R. with ongoing care and supervision.

On appeal, Mother argues that, at the time of the jurisdictional hearing, substantial evidence did not support juvenile court jurisdiction on any of these bases. We conclude that substantial evidence supports the court's jurisdictional findings based on Mother's inability to curtail behaviors by E.R. that placed E.R. at substantial risk of serious harm, and on Father's failure to provide care and supervision. We reverse the court's jurisdictional order to the extent it finds jurisdiction on the remaining bases in the petition.

¹ Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Family and Household Composition*

E.R. was born in 2004. She lives with her younger half sister A.G. (born 2013), her older brother B.R. (born 2000), Mother, and Omar G., Mother's live-in boyfriend of 10 years.² Father is the father of E.R. and B.R. Mother and Father divorced several years ago, and Father does not live with the family.

B. *Background Relevant to E.R.'s Mental Health*

E.R. has been diagnosed with depression. Her behavioral problems began as she entered her teenage years. Around May 2017, when E.R. was 13 years old, Mother took her to the hospital because of E.R.'s self-cutting. The record does not indicate that the cutting continued after that time. E.R. received some mental health services between 2017 and 2018, the details of which are not contained in the record.

In September 2020, when E.R. was 16 years old, E.R. called the police and "disclosed that her brother, [B.R.], sexually abused her [when she was] between ages 5–7 years old. Per [E.R.], her brother asked her to kiss him, took his shirt off then took her clothes off and they were touching. [E.R.] did not specify . . . where she was touched because she was crying as she was telling the [reporting party.]" This reportedly occurred twice, the second time "under the sheets." E.R. "reported she told . . . [M]other about the incident a couple months" earlier. B.R. remembered he

² E.R. is the only child over whom the juvenile court took jurisdiction in the dependency proceedings below. A.G. was not the subject of any sustained allegations, and B.R. was an adult at the time the petition was filed.

kissed E.R. a long time ago, when he did not know what he was doing.

E.R.'s call to the police generated a child welfare referral, which the Los Angeles County Department of Children and Family Services (DCFS) "deemed inconclusive" as to E.R. and "unfounded" as to A.G. being an at-risk sibling. (Boldface omitted.) Both E.R. and B.R. continued to live with Mother after this disclosure, because Father did not have stable housing for either to live with him, and B.R. had no other place to live. Mother required B.R. to have no contact with E.R., including requiring him to knock on his bedroom door when he wanted to use the bathroom and wait until Mother told him E.R. was not present.

In December 2020, E.R. attempted to take her own life by trying to take 12 Tylenol tablets. She indicated she did so because she kept thinking about what B.R. had done when she was younger. Mother took E.R. to the hospital upon learning E.R. had taken the pills and later enrolled her in therapy, which E.R. began around February 2021.

C. E.R.'s Behavioral Issues and Involvement with a Gang

In early to mid-2021, E.R. started spending time with gang members and drinking alcohol and using marijuana (including in the home) to the point of becoming highly intoxicated. She also started leaving the home without permission and staying out until late at night or the next morning. Mother's efforts to reduce these behaviors by taking away privileges or speaking with E.R. were unsuccessful. Mother got E.R. involved with a gang reduction community program, GRYD (Gang Reduction and Youth Development), in connection with which E.R. met regularly with multiple support workers. Mother worked with

E.R.'s GRYD case worker and therapist to try and improve E.R.'s unsafe and inappropriate behaviors and keep her away from gangs. These efforts were unsuccessful.

Mother tried to take E.R. to an inpatient alcohol abuse program and Alcoholics Anonymous, but was informed she could not force E.R. to participate. In April 2021, Mother sought help from DCFS, explaining that she was at a loss as to how to help E.R., and that E.R. could go to a foster home or a shelter if she was not happy at home. DCFS decided to offer family services. Mother also took E.R. to the hospital to be assessed for further treatment. E.R.'s therapist described this as Mother attempting to have E.R. committed, something E.R. and Mother deny.

E.R.'s behaviors continued, and in May 2021, E.R. joined a street gang. Soon after Mother learned E.R. had joined the gang, Mother indicated she would no longer participate in E.R.'s treatment. According to Mother, there was no point in doing so, as Mother had participated in the past, yet E.R.'s behaviors had only worsened and she still had joined a gang.

D. Incidents Leading to Instant Dependency Petition

Mother and E.R. fought frequently over E.R.'s behavior and gang involvement. On a few occasions, Mother was frustrated and upset by E.R.'s behavior and she slapped or hit E.R., although never to such an extent that it left bruises or marks.

Specifically, on one occasion after Mother learned E.R. had joined the gang, Mother tried to prevent E.R. from going out with her gang friends by cutting E.R.'s clothes. E.R. told DCFS that when E.R. retaliated by cutting Mother's clothes, Mother hit E.R. on the back with an open hand. During one argument, Mother hit E.R. on the back with a purse.

On June 23, 2021, when Mother found E.R. drunk and consuming alcohol outdoors, Mother called her names, slapped her across the face more than once, and grabbed her hair, but did not injure her. According to Mother, she intended to slap E.R.'s body, not her face.

On June 28, 2021, upon seeing a 50-year-old male gang member leave the family home and then finding E.R. there heavily intoxicated, Mother slapped E.R. about 12 times on her back. Mother disclosed these incidents to E.R.'s therapist after they occurred.

E.R.'s therapist reported these incidents to DCFS. The therapist further reported being concerned that Mother called E.R. derogatory names during arguments, such as “ ‘stupid bitch’ ” and a “ ‘prostitute.’ ” According to the therapist, E.R. had been reporting Mother calling her derogatory names for two to three months, but the reported incidents of slapping and hitting were the first of their kind.

In interviews with DCFS, Mother confirmed the three incidents and did not specifically remember any other similar incidents, although she stated she may have hit E.R. on other occasions when E.R. was drinking or after she stayed out all night, but never caused bruises or marks.

E.R. likewise indicated “[M]other ‘almost never’ hits her” and there was never bruising. E.R. was free of marks or bruises when the social worker saw her on July 6 and 14, 2021. She also underwent a suspected child physical abuse examination, the results of which were normal. During that exam, E.R. reported that Mother had stopped calling her derogatory names when “all this started” and that there was no physical abuse. E.R. reported she was not afraid of Mother.

E.R. continued to have psychotherapy via Zoom twice a week. E.R.'s therapist believed E.R. needed a higher level of care and that Mother needed to participate in E.R.'s treatment plan. Mother did not participate and " 'd[id] not want anything to do with it.' " Mother believed E.R. should switch to in-person services, because the online services were not working.

As of August 12, 2021, E.R. indicated she was not willing to participate in the "wraparound services"³ recommended and offered by DCFS. Mother indicated she would be willing to participate in such services, but still was not participating in E.R.'s therapy sessions. Neither Mother nor E.R. was willing to participate in the family therapy sessions E.R.'s therapist had recommended.

Mother, however, did remain in contact with E.R.'s therapist. During these communications, E.R.'s therapist had instructed Mother to "do her part" by getting E.R. enrolled in summer school, changing the manner in which Mother communicated with E.R. by more frequently pointing out positive things E.R. did, and getting E.R. a new phone so that E.R. could communicate with her service providers. According to Mother, she tried to implement the recommended communication style, but was not able to do so because E.R. did not give her many opportunities to point out positive behavior. According to E.R.'s therapist, Mother made no changes. E.R. did not participate

³ " "[W]raparound services" " are " 'community-based intervention services that emphasize the strengths of the child and family and includes the delivery of coordinated, highly individualized unconditional services to address needs and achieve positive outcomes in [the] lives [of the targeted children and families].' " (*In re Andrew J.* (2013) 213 Cal.App.4th 678, 684, fn. 1, citing § 18251, subd. (d).)

in summer school, although according to Mother, Mother helped E.R. sign up and encouraged her to participate. Finally, the record reflects that E.R. obtained a new phone from a friend. Mother acknowledged to DCFS that she had “not been as supportive with [E.R.] because [E.R.] did not want the help,” but that “[Mother was] willing to do her part if [E.R. was] willing as well.”

In August 2021, DCFS filed a section 300 petition based on allegations: (1) regarding the incidents of slapping and hitting; (2) that Mother “medically neglected [E.R.] in that . . . [M]other was aware of [E.R.’s] mental and emotional problems, and . . . refus[ed] to regularly participate in the child’s current treatment, or in the treatment recommendations provided by the child’s therapist”; (3) that Father was unable to provide E.R. with ongoing parental care and supervision; and (4) that Mother had “a limited ability to provide . . . [E.R.] with appropriate parental care and supervision due to the child’s special and unique mental, emotional and behavioral problems, including suicidal ideation, . . . a suicide attempt in December of 2020” and “frequently leav[ing] the home without permission and abus[ing] alcohol.”

E. *Jurisdictional Hearing*

Reports DCFS put into evidence at the November 2021 combined jurisdictional/dispositional hearing reflect that, since the filing of the petition, E.R. had not been regularly attending school and continued to leave the home without permission, but was now coming home at night. She continued to “do whatever she wants” regardless of the limits Mother attempted to set, and to spend time with gang members and drink alcohol. She continued to participate in GRYD and again

declined “wraparound services,” stating GRYD provided the same support. Both Mother and E.R. also continued to refuse to participate in the family therapy recommended by E.R.’s therapist. According to DCFS, “[E.R. did] not appear to be willing to participate in any services[.] . . . Mother appear[ed] to be trying to mitigate the case concerns but [was] overwhelmed due to [E.R.’s] lack of efforts.” The record does not include any reports of Mother hitting E.R. since the incidents described in the petition.

With respect to Father, the DCFS reports in evidence indicated that Father lived in a rented room in a house with several other men. Father told DCFS that he therefore could not have E.R. in his care. He reported that E.R. had repeatedly told him she wanted to live with him, but he would not agree. He indicated he did not believe E.R.’s claims that B.R. had inappropriately touched E.R. Father believes E.R. resents him “because he went a year without seeing her.” According to Father, E.R. “no longer spoke with . . . [F]ather.” Mother reported E.R. was “upset that . . . [F]ather wasn’t available when she needed him most.” “Mother reported . . . [F]ather ha[d] not been consistent with visitation as [set forth] in the family law order [resulting from Mother and Father’s divorce]” and “ha[d] not participated in visitation with [E.R.] since 2020.” According to Mother, E.R. “does not want to see . . . [F]ather,” although “in the past[,] [E.R.] has tried to have a relationship with . . . [F]ather . . . [and] he would always be unavailable to meet with [E.R.]”

At the hearing, Mother’s counsel asked the court to dismiss the physical abuse and the medical neglect allegations from the petition, “submit[ted] on the . . . count regarding [F]ather”

and “ask[ed] the court to sustain only the . . . count [regarding Mother’s inability to care for E.R.]”

The court sustained the petition, including all jurisdictional bases, but with interlineations removing allegations that A.G. was an at-risk sibling.

At the dispositional portion of the hearing, the court removed E.R. from Father’s custody and “order[ed] [E.R.] to remain [in] home-of-parent/Mother.” The court-ordered case plan required Mother to participate in conjoint counseling with E.R., a parenting program, and individual counseling.

Mother timely appealed the jurisdictional and dispositional orders.

F. *Postappeal Termination of Juvenile Court Jurisdiction*

At a subsequent section 364 review hearing held the day after E.R.’s 18th birthday, the court terminated jurisdiction over E.R. and released E.R. to Mother. In its exit order, the court did not impose any services requirements on any member of the family, nor did it restrict Mother’s custody of or legal rights with respect to E.R. in any way.

Based on this development, DCFS moved to dismiss the appeal as moot. We denied the motion, concluding that, although the court’s exit order did render her appeal moot, we would exercise our discretion to decide the appeal on the merits. (See *In re D.P.* (2023) 14 Cal.5th 266, 282.) Based on the factors outlined in *In re D.P.*, we exercise our discretion to hear only the portion of Mother’s appeal challenging the court’s jurisdictional order.

DISCUSSION

On appeal, Mother contends the juvenile court erred in assuming jurisdiction over E.R., because the evidence was insufficient to support any of the bases for jurisdiction alleged in the petition. We agree in part, as set forth below.

A. *Mother Did Not Forfeit Any Jurisdictional Arguments*

Citing theories of forfeiture and invited error, DCFS argues that, because Mother’s counsel told the juvenile court Mother “submit[ted] on the [jurisdictional] count regarding Father” and “ask[ed] the court to sustain . . . the . . . count [regarding Mother’s inability to care for E.R.],” Mother cannot challenge these jurisdictional findings on appeal. We disagree.

A reviewing court ordinarily will not consider a challenge to a lower court’s ruling if an objection could have been, but was not, made below. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) But “[s]ufficiency of the evidence has always been viewed as a question necessarily and inherently raised in every contested trial of any issue of fact, and requiring no further steps by the aggrieved party to be preserved for appeal.” (*In re K.F.* (2009) 173 Cal.App.4th 655, 660; see *In re Erik P.* (2002) 104 Cal.App.4th 395, 399–400.) Thus, Mother preserved her right to challenge the sufficiency of the evidence supporting the juvenile court’s jurisdictional order by requesting a contested jurisdictional/dispositional hearing. (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 136–137.) Further, we agree with Mother that “her counsel’s request did not amount to, and should not be construed as, a personal admission [by Mother] of the allegations of the petition, as required under California Rules of Court, rule 5.682(d), (e)” for waiver. (See *id.* at p. 136, citing *In re*

Monique T. (1992) 2 Cal.App.4th 1372, 1376–1377 [error to accept counsel’s waiver of right to contested jurisdictional hearing without explaining rights to the mother and accepting her personal waiver].) We therefore consider Mother’s challenges to all jurisdictional allegations.

B. *Substantial Evidence Does Not Support the Jurisdictional Finding Based on Physical Abuse*

We must affirm a jurisdictional finding of the juvenile court if the record contains “substantial evidence” to support it. (*In re S.C.* (2006) 138 Cal.App.4th 396, 415.) In reviewing the record for substantial evidence, we resolve “[c]onflicts in the evidence . . . in favor of the juvenile court’s findings” and view evidence “in the light most favorable to the judgment, accepting every reasonable inference that the court could have drawn from the evidence.” (*Ibid.*)

Mother argues that substantial evidence does not support the court’s jurisdictional finding that, at the time of the jurisdictional hearing, there was “a substantial risk that [E.R.] will suffer . . . serious physical harm inflicted nonaccidentally upon [E.R.] by [Mother].” (See § 300, subd. (a) [providing for juvenile court jurisdiction over such a child]; *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993 “[w]hen the jurisdictional allegations are based solely on risk to the child, that risk must be shown to exist at the time of the jurisdiction finding”]; *In re Roger S.* (2018) 31 Cal.App.5th 572, 582 [“ ‘the question under section 300 is whether circumstances at the time of the hearing subject the [child] to the defined risk of harm’ ”].) “ ‘[E]vidence of past conduct may be probative of current conditions’ ” and risk of future harm (*In re Roger S.*, *supra*, p. 582), but at the time of the jurisdictional hearing, “there ‘must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]’

[Citation.]” (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146.) For example, “a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).)

Viewing the record, as we must, in the light most favorable to the judgment, the only past conduct based on which the court could support its physical abuse finding are a handful of instances of slapping or hitting over the course of at most three months. Nothing in the record suggests these incidents actually physically injured E.R.—let alone inflicted “serious” physical injury.⁴ (§ 300, subd. (a).) And nothing suggests a single such incident occurred at any time after the filing of the instant petition, despite what all involved universally identify as the triggers for these incidents—Mother’s frustration with E.R.’s behavior and gang involvement—continuing unabated in the months leading up to the jurisdictional hearing. This record does not contain substantial evidence that such hitting or slapping incidents are likely to continue—let alone that this behavior is likely to escalate, such that E.R. is at substantial risk of Mother inflicting “serious physical harm” on E.R. Substantial evidence does not support the jurisdictional findings based on physical abuse.

⁴ In so concluding, we do not mean to condone slapping one’s child out of anger or frustration. Rather, we must judge the evidence against the finding section 300, subdivision (a) requires: nonaccidental infliction of “*serious* physical harm.” (Italics added.)

**C. *Substantial Evidence Does Not Support the
Jurisdictional Finding Based on Medical
Neglect***

Mother also argues that substantial evidence does not support the section 300, subdivision (b)(1) allegations of medical neglect: Namely, that at the time of the jurisdictional hearing, there existed “a substantial risk that [E.R.] [would] suffer[] serious physical harm” as a result of Mother refusing to participate in E.R.’s mental health treatment and/or implement the recommendations of E.R.’s therapist. (See § 300, subd. (b)(1).) Mother urges us to consider her reasons for not participating in E.R.’s mental health services, and/or evidence in the record reflecting efforts on her part to comply with the requests of E.R.’s therapist. Given the applicable standard of review, we may not do so. (See *In re S.C.*, *supra*, 138 Cal.App.4th at p. 415 [“we must uphold the juvenile court’s factual findings if there is any substantial evidence, whether controverted or not, that supports the court’s conclusion”].) But we need not do so in order to conclude the record does not contain substantial evidence of a level of medical neglect that placed E.R. at risk of physical harm.

Mother announced that she would no longer be involved with E.R.’s treatment after E.R. joined a gang, but the only treatment in which Mother could have been involved were the family therapy sessions that E.R.’s therapist recommended. E.R. likewise refused to participate in such sessions, so Mother’s unwillingness to do so could not have prevented them from taking place—let alone placed E.R. at risk of serious physical harm. The record also includes some evidence that Mother did not follow all the recommendations of E.R.’s therapist—for example, that Mother did not change her communication style with E.R. or buy E.R. a phone. But nothing in the record

suggests that Mother's failure to follow through on these recommendations placed E.R. at risk of serious physical harm, either at her own hand (self-harming behaviors) or through continued gang involvement. For these reasons, we conclude substantial evidence does not support the jurisdictional finding based on medical neglect.

D. *Substantial Evidence Supports the Jurisdictional Findings Based on Mother's Inability To Adequately Supervise and Father's Failure to Provide Ongoing Parental Care and Supervision*

Mother challenges the court's finding regarding Mother under section 300, subdivision (b)(1)(A) that Mother was unable, at the time of the jurisdictional hearing, "to adequately supervise or protect [E.R.]," thereby placing E.R. at "substantial risk [of] . . . serious physical harm or illness." (See § 300, subd. (b)(1)(A).) To find juvenile court jurisdiction under this subsection, the court need not find that the parent was neglectful or that he or she is otherwise to blame for such an inability. (*In re R.T.* (2017) 3 Cal.5th 622, 624, 629.) It is thus irrelevant for the purposes of finding jurisdiction under this subsection whether Mother made efforts to supervise and protect E.R., or the quality and extent of any such efforts. (*Id.* at p. 633.)

The most recent reports in evidence at the jurisdictional hearing indicate that, despite Mother's efforts to stop her daughter's involvement in gangs and her other risky behaviors, E.R. continued to be involved in a gang, drink alcohol excessively, leave the home without Mother's permission, and "do[] whatever it is she want[ed]." Mother does not dispute this. Further, Mother's inability to curtail E.R.'s gang involvement and risky behaviors placed E.R. at substantial risk of serious harm, given

E.R.'s history of self-harm and depression, as well as the inherent risks resulting from gang membership. Thus, the record contains substantial evidence to support jurisdiction under section 300, subdivision (b)(1)(A) based on Mother's conduct.

The jurisdictional finding regarding Father under this subsection based on his failure to "provide [E.R.] with ongoing parental care and supervision" is likewise supported by substantial evidence. Father himself stated he could not care for E.R. Mother contends that this inability derives from Father's homelessness, and thus is not a basis on which to find jurisdiction over E.R. (See *In re Joaquin C.* (2017) 15 Cal.App.5th 537, 565, fn. 10 ["[a] parent's homelessness is not a valid reason to assume dependency jurisdiction over a child"].) But the evidence does not support Mother's contention. To the contrary, it reflects that Father had a room in a boarding house, and that he felt it would not be appropriate for E.R. to live with him.

Given that Father's inability to provide care and supervision for E.R. left E.R. under Mother's exclusive protection and supervision, and that, as established above, Mother was unable to curtail behaviors that placed E.R. at substantial risk of serious harm, substantial evidence supports the jurisdictional finding regarding Father under section 300, subdivision (b)(1)(A) as well.

DISPOSITION

Mother's appeal from the dispositional order is dismissed as moot.

The juvenile court's jurisdictional order is reversed to the extent it: (1) sustains the jurisdictional allegations in the petition regarding Mother's physical abuse and Mother's medical neglect (allegations a-1, b-1, and b-3), and (2) finds jurisdiction over E.R. on these three bases. In all other respects, we affirm the jurisdictional order. The court is instructed to strike from the operative petition the jurisdictional allegations hereby reversed (allegations a-1, b-1, and b-3).

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

I concur:

BENDIX, J.

WEINGART, J., Concurring and Dissenting.

I join in the court's opinion except for that portion holding substantial evidence does not support the jurisdictional finding based on substantial risk of serious physical injury. Eva R. (Mother) was facing an undoubtedly difficult situation. Her daughter, E.R., had significant mental health and behavioral issues. E.R. was not listening to Mother or responding to Mother's efforts to get E.R. needed help, and when Mother contacted others for assistance the results were largely unsuccessful. In such a situation, I understand why the majority might feel a jurisdictional finding under Welfare and Institutions Code¹ section 300, subdivision (a) appears harsh because Mother was stuck in a hard situation, had not yet seriously injured E.R. when her anger and frustration with E.R.'s disobedience boiled over, and additional services were being made available to E.R. and Mother once the juvenile court became involved; plus the majority has the safety of 20/20 hindsight unavailable to the juvenile court because as of the time we decide this matter, E.R. is no longer a juvenile.

I think the standard of review dictates a different result. "The best interest of the child is the fundamental goal of the juvenile dependency system, underlying the three primary goals of child safety, family preservation, and timely permanency and stability." (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.) Focusing on the primary goal of E.R.'s safety, under section 300, subdivision (a) "a court may find there is a substantial risk of

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

serious future injury [to a juvenile] based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm." "Although section 300 requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citations.]" (*In re Cole L.* (2021) 70 Cal.App.5th 591, 601-602.)

Applying these principles, I believe substantial evidence supports the jurisdictional finding given Mother's history of repeated inflictions of injury. E.R. told the social worker Mother "sometimes" hit E.R. with an open hand, and that Mother had previously struck E.R. on the face, body, and back. Mother broke E.R.'s phone on purpose. Mother cut up E.R.'s clothes; after E.R. retaliated in kind, Mother hit E.R. with an open hand. Mother hit E.R. with the handles of a purse. Following these numerous prior incidents, Mother slapped E.R. across the face multiple times, and grabbed E.R.'s hair on June 23, 2021. Five days later, Mother slapped E.R. approximately 12 times in a row. This June 2021 crescendo helped lead to the August 2021 section 300 petition. Mother did not further hit E.R. after the June 28, 2021 incident, but as of the November 2021 jurisdictional hearing, Mother continued to be "overwhelmed" by E.R.'s behavior.

We must draw all reasonable inferences to support the finding of the juvenile court, and must review the record in the light most favorable to the court's determinations. (*In re Cole L.*, *supra*, 70 Cal.App.5th at p. 602.) That, of course, does not include what happened after the jurisdictional hearing. While

serious injury fortunately had not yet resulted, given the number of prior incidents and the risk of Mother's physical conduct continuing and further escalating, the risk of future serious injury at the time of the hearing was in my view both substantial and fairly obvious. And that is not just my view; it was the exact concern expressed by E.R.'s therapist, who told the social worker she was worried Mother's behavior and physical abuse directed at E.R. was escalating.

Despite Mother's efforts, E.R. continued to engage in risky and dangerous behavior. Mother's increasing frustration led to increasing physical reactions directed at E.R.—from smashing a phone, to slapping, to hitting E.R. with purse straps, to pulling E.R.'s hair, to a flurry of 12 strikes in a row to E.R.'s body. It was reasonable for the juvenile court to infer this upward trajectory of violence would continue and pose a substantial risk of future serious injury. That there was a brief few months without further physical abuse once the section 300 petition was filed does not negate the reasonable inferences to be drawn from Mother's prior conduct as part of substantial evidence review. (See *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228 [when reviewing for substantial evidence, an order should be upheld "even though substantial evidence to the contrary also exists"].) Nothing at the jurisdictional hearing indicated that E.R. decided to renounce gang life or the risky behaviors in which she was engaged. Indeed, as of the jurisdictional hearing E.R. was still ditching school, drinking, and hanging out with gang members—the same kind of triggers that led to Mother's past physical abuse. Given Mother's escalating physical reactions to her frustration with E.R., and the ongoing presence of the triggers for Mother's violence, I believe a proper application of the

substantial evidence standard of review requires affirmance of the jurisdictional finding. I therefore respectfully dissent as to that issue.

WEINGART, J.