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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re K.S. et al., Persons Coming Under the  
Juvenile Court Law.

MARIN COUNTY HEALTH & HUMAN  
SERVICES,

Plaintiff and Respondent,

v.

A.R. et al.,

Defendant and Appellant.

A131951

(Marin County  
Super. Ct. No. JV25192A, JV25193A)

A.R. (Mother) and J.S. (Father) appeal jurisdictional and dispositional orders of the juvenile court, contending the evidence is insufficient to support the orders with regard to their daughter Jasmine S. We shall affirm the orders.

**I. BACKGROUND**

**A. Petition and Jurisdiction**

Marin County Health and Human Services (the Department) filed petitions pursuant to Welfare and Institutions Code<sup>1</sup> section 300 on behalf of two half-sisters, 12-

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

year-old K.S. and two-year-old Jasmine (collectively Minors) on October 4, 2010.<sup>2</sup> Mother is the mother of both K.S. and Jasmine. Father is K.S.'s stepfather and Jasmine's father. Pursuant to section 300, subdivision (b), the petitions alleged that there was a substantial risk K.S. would suffer harm as a result of Mother's failure to protect her, in that she had said K.S. was lying about being sexually abused, and that both Minors were at risk of harm in that Mother regularly hit and kicked K.S. and pulled her hair, and that Father hit both Minors. Pursuant to section 300, subdivision (d), they alleged that Father had sexually abused K.S. Pursuant to section 300, subdivision (j), they alleged that Jasmine's sibling had been abused and there was a substantial risk she would also be abused. Minors had been taken into custody on October 1, 2010, and were detained and placed in foster care. The juvenile court ordered services in the form of parent education, counseling, and family and individual therapy.

*1. Jurisdiction Report*

According to the jurisdiction report prepared by the Department, K.S. had told the social worker that Father had begun touching her inappropriately three years previously, touching her on her knees and thighs, and had tried to touch her on her breast and between her legs. He had touched her on her " 'private part,' " and had " 'put his penis in [her] private.' " According to K.S., Father would also look through the curtain in her room when she was changing her clothes.<sup>3</sup> She had not told Mother about these events, because Mother had been calling her a " 'whore' for having boyfriends," and she thought Mother would call her a " 'slut' " if she reported the abuse. K.S. also told the social worker her mother had slapped her and pulled her hair, had hit her with a belt, leaving a bruise on her back, and had hit her with a stroller, causing bruises on her calves. Father

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<sup>2</sup> Mother and Father challenge the orders only as they apply to Jasmine. They raise no challenge to the orders with respect to K.S.

<sup>3</sup> It appears that Mother, Father, K.S., and Jasmine shared a bedroom, which contained a bunk bed and a separate bed, and there was a curtain between the beds. Mother had told a police officer that she slept in the separate bed, K.S. slept in the top bunk, and Father and Jasmine slept on the bottom bunk.

had slapped her on the face, arm, and hand, leaving red marks. Both Mother and Father had slapped Jasmine on the hand and leg, leaving red marks. K.S. also told the social worker that she would often care for her younger sister, and that Mother and Father preferred Jasmine to her, as they often told Jasmine they loved her.

On September 30, 2010, K.S. had told a social worker Mother had hit her and pushed a stroller into her legs when K.S. wanted to stay home and do her homework rather than go for a walk with Mother.<sup>4</sup> She also said Father had opened the curtains when he knew she was changing, touched her chest, and had tried to have sexual intercourse with her, most recently during the summer. K.S. once told Mother about the abuse, but Mother did not believe her. Mother told K.S. that if she were arrested, K.S. would “be in big trouble and have to go to foster care.” At the time, Mother told the social worker she thought K.S. was lying in order to separate Mother and Father.

The jurisdiction report noted that on the day Minors were detained, Mother told the social worker Father did not abuse K.S., and that K.S. had told lies in order to leave home. On October 11, 2010, she told the social worker K.S. was rebellious, and that she wanted to “go out with boyfriends, dress her own way, and refuse to do homework and chores.” Mother said a receptionist at school could verify that K.S. had screamed at Mother, and that K.S. had falsely accused an instructor of discrimination, then admitted she had made the accusation only because she “ ‘hate[d]’ the teacher.”

Mother could not explain how K.S. had received bruises on the back of her calves. She said that K.S. had had bruises on the front of her thighs several months ago, and that K.S. told her she had gotten them playing at school. She also said that K.S. “ ‘always has bruises,’ ” and that she thought they came from playing at school. She said K.S. had threatened to inflict bruises on herself in order get Mother in trouble. Mother denied that either she or Father used corporal punishment with the children.

Mother told the social worker that K.S. was a “ ‘liar’ ” and that she wanted to separate the family, perhaps because she wanted Mother to reunite with K.S.’s father.

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<sup>4</sup> K.S. reported this incident to a police officer on September 30, 2010, and showed him two bruises and a red mark on her leg, which appeared relatively fresh.

She believed K.S. had invented the accusation of sexual abuse because Father had restricted her television and radio use. She could not understand why K.S. had waited so long to report the abuse, and said that Father had only lived with the family for about two years. She finally said she could neither believe nor disbelieve K.S.'s accusations, saying she “ ‘just did not know.’ ”

Mother told the social worker on October 11, 2010, that Father had not moved out of the home, that she needed his help because she could not drive, and that it was unjust for the Department to take Jasmine away from Father. On October 13, 2010, however, Mother said Father would be moving out of the house the following day, and would be completely moved into his new home by October 15, 2010, two weeks after Minors were detained.

Father told the social worker K.S. made her accusations of sexual abuse two days after he restricted her television and radio privileges because she had not been doing her homework. He had pulled open the curtain around her bed only on one or two occasions, to see whether she was studying. He said K.S. changed her clothes in the bathroom, not the bedroom.

Father said K.S. and Mother often argued, that K.S. used profanity toward Mother, that he had known K.S. to push Mother, and that K.S. refused to do chores. He said Mother did not use physical discipline on K.S. He also said Jasmine was “the joy of their lives, and he could never harm either child.”

According to the jurisdiction report, the family had had several prior child welfare referrals. In March, 2010, there was a referral alleging that Mother hit K.S. frequently and left bruises; that Mother hit K.S. with a vacuum in January; that Mother had hit K.S. a couple of years previously; that K.S. had said Mother took her to a women's clinic every week for a pregnancy test and called K.S. a prostitute; that K.S. was afraid to go home after school and threatened to run away from home; and that Mother had told K.S. she would end up in Juvenile Hall if she ran away. The investigating social worker verified with local clinics that Mother was not taking K.S. for weekly pregnancy tests, and K.S. said she was no longer being hit. The case was closed as unfounded for

physical and emotional abuse, and the family was referred to therapy and parenting classes.<sup>5</sup>

A referral had also taken place in January 2010, based on a report that K.S. had marks and bruises on her leg, and that she had told the reporting party Mother had hit her with a vacuum cleaner, that she was afraid of Mother, that she was afraid of Father because he touched her on the legs, and that she was afraid to tell Mother. The Department concluded the allegations of physical and sexual abuse were unfounded, but referred the family to therapy.

In 2004, there had also been a referral based on K.S.'s report that Mother got "mad a lot" and that Mother hit her in the stomach with a water spray bottle. The investigation was closed as unfounded, but Mother was referred to parenting classes.

Two referrals had taken place in 1999. The first, for severe neglect after K.S. had an unexplained fractured arm, was closed as unfounded. The second, for general neglect, was based on concerns that K.S. was failing to thrive, that Mother was using the daycare provider where K.S.'s arm was allegedly broken, that she had not followed through with a scheduled medical appointment for K.S., and that K.S. might be inadequately fed. The case was substantiated, and Mother and K.S.'s father entered into a voluntary case plan, which continued until April 2000.

Mother applied for orders restraining Father from having contact with Minors, except for court-ordered supervised visitation, on October 14, 2010. The juvenile court issued the orders. On October 29, 2010, the trial court again issued restraining orders against Father, which were to expire on November 30, 2010.

## *2. Jurisdiction Hearing*

### *a. Social Workers' Testimony*

A jurisdiction hearing took place on various court dates between October 29 and December 8, 2010. Lorry Krone, the social worker who visited the family home on the day of the September 30, 2010 referral, testified that at that time, K.S. said Father had

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<sup>5</sup> A social worker testified that a report is considered "unfounded" when the Department concludes it is false.

touched her inappropriately on multiple occasions, most recently during the summer, but denied he had had intercourse with her. She said she had told Mother of the abuse once, and that Mother did not believe her. Mother had told her that if they were arrested because of what K.S. said, K.S. would have to go to foster care, and she would be in trouble. K.S. told Krone the sexual abuse had taken place in the bedroom when Mother was not at home. K.S. also said she had been physically abused a few hours previously.

Krone testified that Mother told her K.S. had been behaving badly and lying, and that she was doing poorly in school. Mother also told her that a day or two previously, there had been a confrontation with K.S. about her use of the television and stereo, and K.S. was very angry. Mother denied having physically abused K.S.

Another social worker, Maria Affinito, testified that she believed Jasmine was still in danger despite the restraining order because Mother did not believe K.S. had been abused. Affinito was concerned that if Father came to the home, Mother might not take necessary steps such as calling the police and not leaving Jasmine alone with Father. She believed Mother had obtained the restraining order and had Father move as a result of the dependency proceedings in anticipation of trial. Based on her experience and education, she believed that denial of abuse made it more difficult for a parent to take the steps necessary to protect a child, but she acknowledged that it was not unusual for a parent at first to disbelieve a report that the other parent had sexually abused a child.

Affinito had visited Father's new home, and had learned from neighbors that he generally came home around 9:00 in the evening and left first thing in the morning. She did not know whether he spent any time at Mother's home. Affinito acknowledged Mother had told her Father had moved out around October 14, and that she had no evidence Father was living in Mother's home.

b. K.S.'s Testimony

K.S. testified that after her sister was born, Father began touching her thighs, then her chest.<sup>6</sup> She told him to stop, but he continued the inappropriate touching. Sometime over the summer, Father tried to have intercourse with her, and after at least two unsuccessful attempts, he had intercourse with her on more than one occasion. One time when this occurred, as she told him to stop, Father said, “ ‘Oh, no, you’re gonna see how good it feels having it, having sex.’ ” Jasmine was sleeping on one such occasion, and another time K.S. thought she was elsewhere in the house. According to K.S, Jasmine was sleeping in the bedroom on a couple of occasions when Father molested her. K.S. tried to tell Mother about the abuse once, but testified that Mother was angry and did not want to hear her, and that she said, “Don’t talk to me right now.” K.S. told the director of her after school program about the abuse after a friend urged her to speak up in order to protect her little sister.

K.S. testified that Mother hit her every day, and had done so since she was little. Mother yelled at K.S. and hit her without provocation, using her hand, a broom, a belt, a barbecue fork, or “anything that was close,” and hitting her on the leg, bottom, back, face, or “anywhere she felt like.” She hit K.S. with a stroller when K.S. wanted to stay home and do her homework rather than go for a walk. The blow was hard enough to cause K.S. to “kind of, like, [fall],” and it left a bruise and a scratch.

According to K.S., before the dependency began, Mother had been calling her “a slut, a whore, prostitute” because she went out with boys. She testified that Mother and Father hit Jasmine. Mother would become angry and hit Jasmine with an open hand on the thigh or arm when Jasmine would not pick up her dolls.

A social worker had spoken to K.S. in January, 2010, and K.S. testified that she had denied that any abuse had taken place because she was afraid Mother would hit her. She told the social worker she was afraid of Father. In March, 2010, she told a social

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<sup>6</sup> Father, who is K.S.'s stepfather, is also her paternal uncle.

worker Mother hit her. Because she was afraid, she did not tell the social worker that any sexual abuse had taken place or that Father had hit her.

K.S. said Mother and Father treated Jasmine more lovingly than they treated her. She said that Mother and Father never told her they loved her as they told Jasmine, and that they gave a birthday party for Jasmine, but not for K.S.

K.S. had told a social worker Mother took her for a pregnancy test every week. She testified at the jurisdictional hearing that Mother would sometimes take her to the doctor because of other medical problems, and that sometimes Mother told her she would be checked for pregnancy, but that the doctors did not discuss a pregnancy test with her.

#### c. Mother's Testimony

Mother testified that she had told K.S. to tell her if anyone touched her inappropriately, and that K.S. had never told her Father had done so or that she was afraid of Father. She denied having called K.S. a slut or whore, denied having caused any marks or bruises, denied having pushed her with a stroller, and denied having hit her with a vacuum cleaner, barbecue fork, or water spray bottle. She said K.S. had made up stories about being hit with a water bottle after Mother had refused to let her wear revealing clothing. K.S. sometimes threatened to bruise or scratch herself, saying she would not rest until she saw Mother in jail, and K.S. had expressed anger because Mother had not reunited with K.S.'s father. K.S. once reported falsely that a teacher had made disparaging comments about her. Mother denied having taken K.S. for pregnancy tests. She also denied having hit Jasmine or having seen Father do so.

When asked whether K.S. was lying about Mother hitting her, Mother testified that she had not hit K.S. and that K.S. "caused this because she wants to get out of the house," and to be with her friends and boyfriends. When asked whether K.S. was lying about the sexual abuse, Mother testified, "I don't know because I don't believe if it happened or it didn't happen. I don't know. I believe that she's at fault because she didn't tell me. If she had told me, I would have protected her."

Mother testified she was not afraid of Father, but that she obtained a restraining order in order to get Jasmine returned to her.<sup>7</sup> When the court asked her again whether she believed Father tried to have sex with K.S., Mother replied, “As I said, I don’t know, because I don’t know if anything happened or it didn’t happen. I don’t know if that happened or not.” The court continued, “Do you think it’s possible that it could have happened?” and she replied, “The time that I having living with [Father], I never saw anything like that.” The court pressed, “So I’ll ask again, do you think it’s even possible, even possible that he may have tried to have sex with [K.S.] when you were not around? ¶ . . . ¶ In your mind, is it even possible?” and Mother replied, “No, I don’t think so.” She repeated that she was not sure whether it had happened, but added, “In my mind, that didn’t happen.” She also said she had no concerns about Father living in the same house with Jasmine, and said, “he has been a good father, a good husband. He’s loved both of them as his daughters.”

During the current school year, the principal at K.S.’s school had told her K.S. had told her friends she was going to cut her veins and kill herself, apparently because her boyfriend had left her. Mother talked to K.S., who said the teachers and principal were liars and that she had never said she would cut herself.

### *3. Ruling on Jurisdiction*

The juvenile court found K.S.’s testimony “compelling, credible, and trustworthy,” and found that Mother was “unsympathetic” to her daughter’s circumstances, and that as a result Mother not only had failed to protect K.S. but would also fail to protect Jasmine. Accordingly, the court found it had jurisdiction over both children.

## **B. Disposition**

### *1. Disposition Report*

A report prepared for the disposition hearing noted that Minors were in a foster home. Mother seemed to love Jasmine, was affectionate with her, would hug and kiss her

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<sup>7</sup> It was Mother’s understanding that K.S. did not wish to return home.

and tell her she loved her, and she and Jasmine seemed to be “very bonded.” Mother visited with Jasmine regularly and was attentive to her, and Jasmine looked forward to visits with Mother. Mother also appeared to be affectionate with K.S. and said she loved and missed her. Father appeared to love Jasmine. He was attentive and affectionate, engaged her in age-appropriate ways, and Jasmine seemed to be bonded to him. He said he loved K.S. and saw her as his own daughter.

According to the disposition report, Mother believed K.S. was lying about Father having sexually molested her, and thought she was trying to break the family apart. Mother said she would only believe the molestation occurred if Father admitted it, and if he were to do so, she would seek advice on how to proceed because she would want to protect her children. She said that K.S. had lied a lot and that even if K.S. told her directly about the abuse, she might not believe her. She said it hurt her that K.S. had made her suffer. Father continued to deny having sexually abused K.S.

The report noted that Mother and Father had started attending family therapy, but that the therapist had said it “was not therapeutically appropriate and that it could even be harmful to have family therapy with [K.S.] and even with [Jasmine] if neither parent could accept and acknowledge the abuse suffered by [K.S].” The social worker concluded that if family therapy sessions would be harmful for Minors, placing them in Mother or Father’s care would place their safety and well-being at risk. In addition, the report concluded, if mother did not accept that K.S. had been abused, she might not guarantee the safety of either girl.

## *2. Addendum Report*

According to an addendum report filed in March 2011, Mother had recently told the social worker that she did not know whether K.S. had been sexually abused because K.S. had never told her of the abuse directly. When the social worker explained that such an accusation can be difficult to make, Mother said that “she had seen on television that there are children who lie to separate their biological parent from their current partner.”

Father had told the social worker that he was not comfortable with the sex offender program to which he had been referred because the other participants had raped

other people and that “he had ‘not gotten to the extreme of raping anybody.’ ”<sup>8</sup> Mother said this comment may have been a figure of speech, rather than an admission of guilt, and said she did not know if it could make her reconsider whether she believed K.S.’s reports of sexual abuse. She suggested that K.S.’s reports were part of a plan between her and her father, and said that if K.S. had been sexually molested, she would have become pregnant. She also said she had heard that social workers make children lie about their parents’ actions.

According to the report, “[Mother] stated that she would believe if Jasmine told her that [Father] was touching her inappropriately and she would be protective of Jasmine. However, [Mother] stated that she would need evidence to show that Jasmine had been sexually abused. [Mother] stated that if [Father] denied this allegation she did not know if she would be able to believe Jasmine and she would not know how to proceed with [Father.] She also stated that she did not know how she would be protective of Jasmine were she to make a sexual abuse disclosure and there was no evidence. [Mother] could not articulate a plan in the case that Jasmine disclosed sexual abuse.” Mother’s therapist said that he believed Mother could care for Jasmine, that she needed to be able to make a plan to protect Jasmine if she were to disclose sexual abuse, and that he would speak to her about making such a plan.

### *3. Dispositional Hearing*

#### *a. Social Worker’s Testimony*

A contested dispositional hearing took place on March 18 and 22, 2011. Janelle Torres, the social worker who had written the disposition report and addendum, testified that, for two reasons, she believed it would not be safe for Jasmine to return home. First, Mother had been unable to articulate a safety plan to use if Jasmine were to disclose abuse. In fact, Mother had said that she did not know whether she would be able to

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<sup>8</sup> Father made this statement in Spanish, his native language. At the dispositional hearing, the social worker repeated in Spanish the words Father had used, and a translator interpreted them to mean “What I have done was not that extreme,” or that he had not gone to the same “lengths.”

believe Jasmine if she made such an allegation unless Father admitted it or medical evidence corroborated it, and she did not know if she could be “protective” if Father denied such an allegation. Mother had also said she did not understand what progress the court expected of her. Second, Torres said Mother had been “unable to articulate a risk factor for the children as she continues to disbelieve [K.S.],” basing her disbelief on the lack of medical corroboration or pregnancy, the fact that K.S. had never told her directly of the abuse, and her beliefs that children often lied to break up their families and that the allegations were part of a plan between K.S. and her father or the result of a boyfriend’s influence. Torres believed these facts suggested Mother was “in denial of [K.S.’s] reports of sexual abuse,” and was concerned that if Mother could not see that there was a risk of abuse, she would not be able to protect Jasmine. She was also concerned that Mother did not view Father’s statement that he had not reached “the extreme of raping anybody” as an admission of his guilt.

Torres acknowledged that components of a safety plan would be that Mother and Father not live together, that Mother not allow unsupervised visitation with Father, and that the Department make unannounced visits to the home. However, Torres had not discussed with Mother those components of a safety plan or asked Mother if she would be willing to abide by them.

It was Torres’s understanding that Mother and Father were still in a relationship. Mother had said that Father would leave her one day “due to all of this,” which suggested to Torres that Mother was putting her relationship with Father above the safety of her children.

Mother had been consistent in attending therapy. Her therapist had reported that Mother had been making progress. Torres had told the therapist she was concerned that Mother could not articulate a safety plan for Jasmine, and the therapist said he was going to work on that issue with Mother and that such a plan was important. Mother had been referred to parenting classes, and had followed up on the referral, although the class she was to take was delayed and had not yet begun.

Torres had no evidence Father was not complying with all orders of the court or that he and Mother were living together. Mother and Father were complying with the case plan, Father's behavior during visits had always been appropriate, and Jasmine appeared to enjoy the visits. Jasmine said during visits that she wanted to go home with Mother, and was affectionate and loving with Mother and Father. K.S. had refused to visit with Mother in the first few months of the dependency, but had had several visits in the weeks leading up to the dispositional hearing.

b. Father's Testimony

Father testified that although the juvenile court had found he had sexually abused K.S., "in my heart I know that it's not true." He said he had not moved back into the family home since he left in October, and that he would be willing to stay away until the court allowed him to move back. When asked about the comment he had made to Torres about the sexual offender program, he testified that he had told her that it "wasn't an adequate program, that I didn't feel to be at the same level as the people that were there," and that he had told her, "I had not reached that extreme and that I will never reach—to become a rapist."

4. *Ruling on Disposition*

The juvenile court continued K.S. and Jasmine in foster care and ordered Mother to receive reunification services for K.S. and Jasmine, and Father to receive services for Jasmine.

### **III. DISCUSSION**

#### **A. Substantial Evidence to Support Jurisdictional Findings**

Mother and Father both argue the evidence does not support the juvenile court's jurisdictional findings as to Jasmine. We review the juvenile court's findings "to determine whether there is substantial evidence to support them. We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the finding or order. [Citation.]" (*In re Maria R.* (2010) 185

Cal.App.4th 48, 57 (*Maria R.*.) The testimony of a single witness can suffice to uphold a judgment. (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 195 (*Rubisela E.*.)

At the jurisdictional hearing, the court considers whether the minor is a person described by section 300, and applies a standard of proof by a preponderance of the evidence. (§ 355, subd. (a); *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1394 (*Savannah M.*.) “ ‘While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.’ [Citation.] Thus previous acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur. [Citations.]” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565.) In determining whether a child would be at risk of abuse or neglect, “the court considers the circumstances at the time of the jurisdictional hearing.” (*Maria R., supra*, 185 Cal.App.4th at p. 60.)

As noted in *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451, “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]”

With regard to Jasmine, the juvenile court found true the allegations under section 300, subdivisions (b) and (j). The court found K.S. fell within the terms of both subdivisions (b) and (d) of section 300 based on both the physical abuse K.S. had suffered at both parents’ hands and the sexual abuse Father had inflicted on her.

As pertinent here, section 300, subdivision (b) provides for juvenile court jurisdiction where “[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 or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from

the conduct of the custodian with whom the child has been left . . .” Section 300, subdivision (j) provides for jurisdiction where “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.”<sup>9</sup> As explained in *In re Maria R.*, *supra*, 185 Cal.App.4th at p. 64, the application of section 300, subdivision (j) is not “limited to the risk that the child will be abused or neglected *as defined in the same subdivision* that describes the abuse or neglect of the sibling. Rather, subdivision (j) directs the trial court to consider whether there is a substantial risk that the child will be harmed under subdivision (a), (b), (d), (e) *or* (i) of section 300, notwithstanding which of those subdivisions describes the child’s sibling. . . . [¶] The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.”

Mother argues that despite the evidence that Father sexually abused K.S., the evidence does not support a finding that there was a substantial risk he would likewise abuse Jasmine. (See *In re Rubisela E.*, *supra*, 85 Cal.App.4th at pp. 198-199 [no

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<sup>9</sup> Section 300, subdivision (d) provides for jurisdiction where a “child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent knew or reasonably should have known that the child was in danger of sexual abuse.”

demonstration of substantial risk to brother of molested sister].) She bases this contention on the differences between the situations of the two girls: K.S. was much older than Jasmine and had reached puberty; unlike Jasmine, she was not Father's own child; K.S. believed Father was more loving to Jasmine than he was to her; K.S. was rebellious; she and Mother had a contentious relationship and Mother believed K.S. was sexually active; and Father believed K.S. would enjoy sex with him.

In sustaining the section 300, subdivision (j) allegation, the juvenile court specifically found that Jasmine was at substantial risk of physical harm due to the allegations of sexual abuse against K.S., and we cannot fault this finding. We recognize the differences in the situations of K.S. and Jasmine, in particular that Jasmine, unlike K.S., was Father's own daughter. However, not only was Father K.S.'s stepfather, he was also her paternal uncle, and he had said he loved her and saw her as his own daughter. Moreover, there was evidence that K.S. had tried to tell Mother of the abuse but that Mother would not listen and that Mother continued to believe K.S. was not telling the truth about the abuse. We also recognize the difference in the two girls' ages. (See *Rubisela E.*, *supra*, 85 Cal.App.4th at pp. 188, 191, 197 [reasonable for juvenile court to conclude that in absence of daughter he had sexually abused at age 13, father's offenses were likely to focus on only other daughter, who was 11 years old].) It appears, however, that Father had been sexually abusing K.S. since the time Jasmine was born—an event that occurred when K.S. was nine years old—and the juvenile court could reasonably infer a younger child was at risk of similar abuse.

As the parents point out, Father had moved out of the family home and Mother had obtained a restraining order against him. In light of Mother's attitude toward K.S.'s allegations, though, there was no reason to conclude Father would *remain* out of the home in the absence of juvenile court jurisdiction and supervision. (See *In re Nicole B.* (1979) 93 Cal.App.3d 874, 879, 882.) The facts of this case are dramatically different from those in *In re Jennifer P.* (1985) 174 Cal.App.3d 322, upon which Mother relies, in which the juvenile court was held to have improperly found it had jurisdiction over a girl who had been sexually abused. There, the mother had divorced the father two years

before he molested the subject daughter, the molestations occurred on court-ordered periodic visitations with the father, and when the mother learned of the molestations, she took immediate steps to prevent the father from seeing the daughter again, including pursuing a criminal action against her ex-husband, obtaining a temporary restraining order, and seeking or modify her divorce decree to give her exclusive custody over the daughter. (*Id.* at p. 327.) Nor is this case like *Savannah M.*, in which the Court of Appeal concluded substantial evidence did not support a finding that two minors were at substantial risk of future harm where the minors' parents made an immediate report when they found a family friend molesting their daughter and the mother confirmed she would never again trust that friend or anyone else to care for the children. (*Savannah M.*, *supra*, 131 Cal.App.4th at p. 1397.)<sup>10</sup> In the very different circumstances of this case, the court could reasonably conclude Mother's actions did not stem from a genuine understanding of what was necessary to protect her children or a commitment to doing so.

Mother and Father acknowledge that a number of cases have concluded jurisdiction was properly established where a parent had abused a minor's sibling, but argue these cases are distinguishable. For instance, the court in *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1407 (*Andy G.*), properly took jurisdiction over a two-year-old boy where his father had sexually abused the boy's 12- and 14-year-old half sisters, who were not the father's biological children. Although the boy was not of the age at which the girls had been abused, the father had exposed himself to one of the girls while the boy was in the same room, facing the other way. (*Id.* at p. 1414.) The mother in *Andy G.* had been told of the abuse before it was reported to the police but did not want to believe it was true, and the children were taken into protective custody because it was not clear that she could ensure the children's safety. (*Id.* at p. 1409.) This evidence was sufficient to support a conclusion that the father's aberrant sexual behavior with the two girls placed

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<sup>10</sup> *In re Steve W.* (1990) 217 Cal.App.3d 10, 13, 16, upon which Mother also relies, considers the propriety not of a jurisdictional finding, but a dispositional order.

the boy at risk of sexual abuse. (*Id.* at p. 1415.) Here, as we have noted, K.S. tried to tell Mother about the abuse, but Mother would not listen to her.<sup>11</sup> Moreover, as in *Andy G.*, there is evidence that Father sexually abused K.S. in Jasmine's presence: K.S. testified that on a couple of occasions, he did so while Jasmine was sleeping in the room. Like the court in *Andy G.*, we are satisfied that the evidence supports a conclusion that Father's aberrant sexual behavior placed Jasmine at risk of harm.

We recognize, as Father points out, that the abuse K.S. suffered was less horrific than that inflicted on the young victim in *In re Karen R.* (2001) 95 Cal.App.4th 84, 86-87, in which the court concluded the evidence supported a finding that a sibling was at risk of sexual abuse where the father had kicked, punched, and raped his 13-year-old daughter, forcibly cut her hair, stood on her back and poured cold water on her neck, and forced her to exercise for hours, and the mother did not intervene.<sup>12</sup> Nevertheless, Father's actions here in repeatedly sexually abusing K.S., including in the presence of a sleeping Jasmine, and raping her, is sufficient to support the juvenile court's findings.

We also note that the allegation that Jasmine fell within section 300, subdivision (j) was also based on the fact that her sister, K.S., had suffered *physical* abuse at the hands of Mother and Father and that there was a substantial risk Jasmine would likewise be abused. There was evidence not only that Mother had hit K.S. regularly since she was a young child with various objects, but that Mother had struck two-year-old Jasmine, although apparently only with an open hand, hard enough to leave a red mark, and that Father had also hit Jasmine. While we recognize the difference in the ages of K.S. and Jasmine and their different relationships with Mother and Father, this evidence is sufficient to support not only the juvenile court's additional finding under subdivision (j), but its finding that Jasmine fell within the provisions of section 300, subdivision (b).

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<sup>11</sup> Indeed, K.S. told a social worker she told Mother once about the abuse, but Mother did not believe her.

<sup>12</sup> The mother was out of the house when the rape occurred, but had not believed the victim when she disclosed a prior incident in which the father raped her. (*In re Karen R.*, *supra*, 95 Cal.App.4th at pp. 86-87.)

## **B. Substantial Evidence to Support Dispositional Findings**

Father and Mother also contend the evidence does not support the juvenile court's decision to remove Jasmine from Mother's custody. " 'A dependency proceeding under section 300 is essentially a bifurcated proceeding.' [Citation.] First, the court must determine whether the minor is within any of the descriptions set out in section 300 and therefore subject to its jurisdiction. [Citation.] If jurisdiction is found, a decision must be made as to the appropriate disposition for the child. [Citation.] Removal from parental custody at disposition may be ordered where a return home would pose a substantial danger to the child's physical health and where there are no reasonable alternatives to removal. [Citation.]" (*In re Stephen W.* (1990) 221 Cal.App.3d 629, 645.) Thus, "[e]ven though children may be dependents of the juvenile court, they shall not be removed from the home in which they are residing at the time of the petition unless there is clear and convincing evidence of a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being *and* there are no 'reasonable means' by which the child can be protected without removal. [Citation.]" (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288.) The burden of proof at the jurisdictional stage is preponderance of the evidence; at the dispositional stage it is clear and convincing evidence when the court awards custody to a nonparent. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 528-529 (*Henry V.*)) On appeal, we review the juvenile court's findings for substantial evidence. (*Id.* at p. 529.)

Mother and Father argue there were reasonable means to protect Jasmine without removing her from Mother. As they point out, Father had moved out of the family home, and there was no evidence he had returned. They contend the court could have issued a long-term restraining order against Father under section 213.5, subdivision (d),<sup>13</sup> and the Department could have made frequent unscheduled visits to the home to confirm that Father had not returned.

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<sup>13</sup> Section 213.5, subdivision (d)(1) provides that during a dependency, a juvenile court may issue restraining orders that remain in effect for up to three years, and that may be extended by mutual consent of the parties or further order of the court.

In *Henry V.*, our colleagues in Division Three of the First Appellate District considered whether a juvenile court had properly removed from his mother a four-year-old boy who had suffered burn marks that appeared to have been inflicted by a curling iron. (*Henry V.*, *supra*, 119 Cal.App.4th at pp. 525-526.) The social worker testified that the boy would suffer detriment from returning home because of the mother “ ‘not believing about the injury, the child abuse,’ ” and said the mother needed therapy to create a better bond with her son. (*Id.* at p. 527.) In-home services were available to support bonding, including a counseling program, unannounced visits, and nursing services. (*Ibid.*) The Court of Appeal ruled the evidence insufficient to support the conclusion that there were no means of protecting the child other than removal from parental custody, concluding that there was ample evidence that appropriate services could have been provided in the family home, including unannounced visits to supervise the placement. (*Id.* at pp. 525, 529.)<sup>14</sup>

On different facts, the court in *Maria R.* reached a different conclusion. The father there had sexually abused two of his daughters. The mother denied that any abuse had occurred, despite overwhelming evidence, maintained the girls were lying, and refused to cooperate with the agency. Instead, she tried to persuade the girls to retract their statements and violated a restraining order that prohibited the father from having contact with them. (*Maria R.*, *supra*, 185 Cal.App.4th at pp. 60, 71.) She continued to live with the father, and withheld the location of their residence from the social worker. (*Id.* at p. 71.) Under those circumstances, the appellate court ruled, the trial court could reasonably conclude that keeping the children in their mother’s care, “even with intensive services, would expose them to further sexual abuse or to a substantial risk of sexual abuse.” (*Ibid.*) Similarly, in *In re Levi H.* (2011) 197 Cal.App.4th 1279, 1291-1292 (*Levi H.*), the court upheld a dispositional order removing two children from a mother’s custody where

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<sup>14</sup> The court also noted it was not clear the juvenile court applied the clear and convincing standard to its dispositional findings. (*Henry V.*, *supra*, 119 Cal.App.4th at pp. 525, 530.)

it appeared she was still living with the offending parent, and she did not believe he could have caused the injuries suffered by one of the children.

The circumstances in this case are different from those in *Henry V.* The physical abuse there was only a single incident, which neither the agency nor the juvenile court considered an obstacle to reunification in the near future. (*Henry V.*, *supra*, 119 Cal.App.4th at p. 529.) Here, on the other hand, Father had sexually abused K.S. repeatedly over a period of years, and the juvenile court could reasonably conclude from Mother's recent statements that she did not understand how to protect Jasmine were she to report similar behavior.

This case is also distinguishable from *Maria R.* and *Levi H.* in that Father had left the family home and expressed a willingness to comply with any court orders. That fact, however, does not change our conclusion that on this record, substantial evidence supports the dispositional order. There was evidence that Mother was continuing her relationship with Father, and she had told the social worker that if Jasmine told her Father had sexually abused her, she was not sure she could believe the allegation if Father denied it and there was no corroborating medical evidence. Mother offered no evidence of how she would act to protect Jasmine if she were to report sexual abuse. Torres testified that Mother continued to disbelieve K.S.'s accusations, and expressed her concern that Mother would not be able to see a risk that Father would also abuse Jasmine or act to protect her. The evidence is sufficient to uphold the juvenile court's order.

In reaching this conclusion, we reject the contention that the juvenile court improperly used the removal order as a means of securing parental cooperation. As Mother and Father point out, the juvenile court stated while making the dispositional order that it would not return either child to Mother until she could accept the possibility that Father had abused K.S. and was willing to believe her daughter. Mother and Father suggest this statement was improper under *Henry V.*, *supra*, 119 Cal.App.4th at p. 525, in which the appellate court said that "out-of-home placement is not a proper means . . . of securing parental cooperation with [reunification] efforts." We see no impropriety. The court's statement simply reflected its unwillingness to return Minors to Mother until it

could do so without endangering their well-being. For the same reasons, we reject the contention that in considering whether Mother could accept the risk Father could pose and whether Mother would believe Jasmine were she to disclose sexual abuse, the juvenile court employed the wrong legal standard in making the dispositional order.

Mother also suggests that in making its dispositional order, the juvenile court improperly considered only the circumstances at the time of the jurisdictional hearing. Mother testified at the jurisdictional hearing, but not the dispositional hearing. At the dispositional hearing, the court referred to her testimony at the jurisdictional hearing and said, “it’s the circumstances at jurisdiction upon which the Court makes its findings at disposition.” Despite this statement, though, it is clear the court considered the evidence submitted at the dispositional hearing, and did not limit its consideration to circumstances at an earlier date.

Accordingly, there is no basis to disturb the dispositional order.<sup>15</sup>

### **III. DISPOSITION**

The orders appealed from are affirmed.

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<sup>15</sup> We deny the Department’s request to take judicial notice of an August 29, 2011, order of the juvenile court, which was made after the orders at issue in this appeal.

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RIVERA, J.

We concur:

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REARDON, ACTING P. J.

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SEPULVEDA, J. \*

\* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.