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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re EVA P., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

PHILIP P.,

Defendant and Appellant.

A132400

(Alameda County Super. Ct.
No. OJ11016406)

In re OLIVIA P. et al., Persons Coming
Under the Juvenile Court Law.

ALAMEDA COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

PHILIP P.,

Defendant and Appellant.

A133030

(Alameda County Super. Ct.
Nos. OJ11016407, OJ11016408)

Alameda County Social Services Agency (the agency) filed a petition pursuant to section 300, subdivisions (b) and (c) of the Welfare and Institutions Code¹ on behalf of Eva P., Olivia P., and Grant P., the children of Philip P. (father) and Michele P. (mother).

¹ All further unspecified code sections refer to the Welfare and Institutions Code.

At the time the agency filed the petition, the children were living with mother, father's former wife. Following a jurisdictional and dispositional hearing, the juvenile court found the allegations in the amended petition to be true and placed the children in the home of the children's maternal grandparents. Father appeals and contends that the evidence did not support the jurisdictional findings as to him. He also maintains that insufficient evidence supported the court's refusal to place the children with him. Finally, he challenges the visitation order and asserts that the trial court unlawfully delegated to the agency its authority to determine whether visits should occur. We conclude that his objection to the visitation order is moot and dismiss that part of the appeal. We are not persuaded by father's other challenges on appeal and affirm the jurisdictional and dispositional orders.

BACKGROUND

The Children and Their Parents

Father was born and raised in England. Father and mother met in Portugal and had a long distance relationship for seven months while she was in San Francisco and he was in London. Mother moved to London and married father in 2001. Father had been married previously and has three adult children with his first wife; the children and his first wife live in England.

Mother and father moved back to the United States in 2004, and they separated in 2007. Their divorce was finalized in February 2011. They have three children, Eva, Olivia, and Grant. All three children were under the age of eight years at the time the agency filed the petition pursuant to section 300, subdivisions (b) and (c). After mother and father separated, they had joint legal custody with mother having physical custody of the children; father had supervised visitation at Safe Exchange.

The Petition and Detention

On January 27, 2011, the police found mother wandering in the street half-naked and under the influence of alcohol and/or methamphetamines. Mother was about 1.5 miles from her home and was in a psychotic state. The police entered mother's duplex in Alameda and discovered Eva, Olivia, and Grant; they were asleep and alone in the home.

The police took the children to the police station and called the maternal grandparents. The maternal grandparents took the children to their home.

Ihsana Salmon, a child welfare worker, spoke with mother on January 31, 2011; she spoke with the three children on February 4, 2011. Mother appeared overwhelmed and erratic. Mother indicated that she did not need treatment and that she was “not a druggie.” Eva, the oldest of the three children, reported that she was tired of worrying about her mother and siblings. She denied suffering any physical punishment from mother and her boyfriend but admitted that her mother and her boyfriend hit her two younger siblings. Olivia indicated that she was tired of living with her mother because her mother “ ‘drinks a lot and talks crazy.’ ” She said that she ran away and reported that her mother hit her and that her father “touched” her. Grant also stated that he did not want to be in the home and said that both mother and her boyfriend spanked him.

The three children were taken into protective custody on February 4, 2011.² They were placed with their maternal grandparents.

On February 7, 2011, a “team decision making meeting” was held; mother, father, and the maternal grandmother attended the meeting. Mother admitted being an alcoholic but claimed that she was a good parent when not drinking. Mother stated that there had been a four-year divorce and custody battle between father and her. Father reported that he drank alcohol in the past but had not been drinking for approximately one year. Everyone agreed to the placement of the children in the home of the maternal grandparents.

On February 8, 2011, the agency filed a petition pursuant to section 300 subdivisions (b) and (c) on behalf of Eva, Olivia, and Grant. At the time the petition was filed, all three children were under the age of 8 and Eva and Olivia were attending elementary school. The petition alleged that the parents were unable to provide regular care for the children due to the parents’ mental illness, developmental disability, or substance abuse. The petition noted there was an allegation that father had sexually

² The original petition stated February 5, 2011, and this date was corrected to February 4, 2011, when the petition was amended on March 28, 2011.

molested Olivia and the family court had ordered his visits with the children to be supervised. It further alleged that the children were suffering or were at substantial risk of suffering serious emotional damage as a result of the parents' conduct.

The agency filed its detention report on February 9, 2011. It recommended that the children be detained.

On February 9, 2011, the juvenile court ordered the children to be detained in the home of their maternal grandparents and granted the agency discretion to continue their placement in the home of a relative. The court declared that father had presumed father status.

The Jurisdictional and/or Dispositional Report

Martha Suarez, a child welfare worker, prepared the agency's jurisdictional/dispositional report, which was filed on February 23, 2011. The agency recommended that the children be declared dependents and be placed in out-of-home care and that the parents receive family reunification services.

The report indicated that the family had a child welfare history. On January 6, 2008, the agency received a cross-report referral alleging sexual abuse of Olivia by her father. Olivia, who was under the age of four then, had stated that her "father licked her bum and fanny." The referral was closed as "unfounded."

Included in the welfare history was a cross-referral from the police department that was dated May 1, 2009. This cross-referral indicated that the police had responded to a claim that there had been an assault and there was a missing child. Mother told the police that she had been assaulted and thrown down the stairs. She also asserted that Grant had left the house. The police found Grant sleeping on the couch. The police believed that mother was drunk and had fallen into furniture and down the stairs, which caused bruises and a broken tooth. The referral was investigated and mother admitted her alcoholism and enrolled in Alcohol Anonymous (AA) meetings. The referral was closed as unfounded.

On November 4, 2010, the agency received a referral alleging that mother had severely neglected Eva. Eva had fallen and broken her right forearm and it was alleged

that mother might not be following the recommendation that Eva needed surgery. The referral was investigated, and it was confirmed that mother had sought treatment for her daughter. During the investigation, it was also confirmed that mother was “5150’d from the home of her parents” on November 8, 2010, because she had threatened her father. Mother admitted that she was drinking. Mother was advised to attend AA meetings three times a week and to continue with her therapist. The referral was closed as unfounded.

On January 2, 2011, the agency received a referral alleging that that mother had failed to show up with the children at Safe Exchange for father’s visit. Father was concerned because mother “is an alcoholic and a drug user.” It was further alleged that the maternal grandparents were trying to obtain custody of the children.

The agency received a referral alleging ongoing general neglect on January 11, 2011. A few days earlier, crying and banging were emanating from mother’s home and it was reported that mother smelled of alcohol when she answered the door. A small child was seen in the kitchen curled up in a ball and covered with urine. A health and safety check was requested and it was determined that the children were fine. The referral was still under investigation.

A couple of days later, on January 13, 2011, the agency received a referral alleging general neglect of the children. It was reported that mother had arrived to the children’s school intoxicated for the past three days. The referral was still under investigation.

In addition to setting forth the child welfare history, Suarez spoke with Donna L. Guillory, the children’s therapist. Guillory observed that the children were doing much better since placed with the maternal grandparents. She indicated that she had not spoken with father in a couple of years, but had encouraged him to seek increased visitation with the children. Father, however, had requested fewer visits. Guillory expressed no safety concerns related to contact between father and the children.

The maternal grandmother spoke with Suarez on February 15, 2011. She described her daughter as an alcoholic with a drug problem. She said that Olivia told her that her father “licked her on her vagina.” She indicated that Olivia used to be afraid of

men. She mentioned that father, mother, and the children had lived in the maternal grandparents' home when they first arrived from England in 2004. She permitted father to drive her Porsche and he disclosed that he was going to kill himself in her car. Father, according to the maternal grandmother, threatened suicide in e-mail sent to mother and his adult children. She also expressed concern that father had bought a shotgun. She added that father had not visited the children for over a month. She maintained that she and her daughter would go to Safe Exchange and father would not be there and would not call the office to cancel the visit. She asserted that father stated during the evaluation for family court that he wanted to have Eva, but not the two younger children.

The report indicated that Salmon had interviewed the parents. Mother claimed that her parents wanted her to be "drugged up and doped up." Salmon smelled alcohol emanating from mother as she spoke. Mother claimed that she did not have a drug problem and that she was not an alcoholic. She asserted that it was her parents' fault because they sent her "to some poor people's treatment facility." She alleged that father had molested Olivia.

Suarez also met with mother on February 17, 2011. Mother admitted that she had been in a fight with her father and a criminal matter was pending. She denied ever going to her daughters' school intoxicated. Mother told Suarez that Olivia " 'very clearly said her father molested her. . . . He orally copulated.' " Mother claimed to have seen Eva fondling her father's penis with her foot when he had an erection. She declared that father "played it off as a joke. Then he blamed her for having the child in the adult bed." Mother also stated that father had other prior incidents with touching children when he was with his first wife and living in England. Mother alleged that father had been suicidal and had sent e-mail threatening suicide to his adult children and that he told mother and maternal grandmother that he was going to kill himself using grandmother's car. Mother reported that father used to drink in England to the point that he was carried out of the pub and throwing up. She noted that father did not like wine but preferred vodka, gin, or beer. Mother conceded that the children had been exposed to a four-year divorce and custody battle.

On February 16, 2011, Suarez interviewed father at his home in Vacaville. Father insisted that he had not planned on having children. Father stated that he has supervised visitation with the children to protect his children from having to be examined physically and to protect himself from future false allegations. He stated that he had been visiting at Safe Exchange for three years and had two-hour visits every other Sunday. He said that he initially visited with his children once a week but could not afford weekly visitation since each two-hour visit cost \$125. He claimed that mother might have married him for his money.

Safe Exchange visit logs for August, October, and November 2008 were attached to the report. These documents showed that father and mother had signed up for the service in March 2008, and father's visits began May 2008. At the first visit between father and the children, the children "seemed a little nervous to see him," but "warmed up after a while." The visit went well and the children hugged him at the end of the visit.

Suarez noted that father claimed he could not afford the fee of \$125 for the visits with his children at Safe Exchange, but he had received a settlement of over \$600,000 from his divorce proceedings for the sale of the home and was to receive another lump sum from a sale of another property. The report stated that father had been granted increased supervised visitation at the detention hearing but maternal grandmother reported that father failed to show up for his scheduled visit on February 13, 2011, and had not contacted anyone at Safe Exchange. Father had previously cancelled his visit for January 30, 2011. Suarez scheduled a supervised visit between father and the children for February 18, 2011, at the agency and the visit went well.

Father denied any alcohol abuse and claimed that he could no longer afford to drink. He alleged that he had been drunk only twice in his life and that he had only a glass of wine or a beer socially. Father claimed that there had been no custody dispute but that the divorce had been nasty and mother had tried to steal \$900,000 from him.

Father was currently living with another woman and her two adult sons in a four-bedroom home. His current girlfriend had not met Eva, Olivia, or Grant. Father stated that if the children came to live with them, the two girls could share one bedroom and

Grant could share with one of the boys while he was away but would have to “sleep with the girls” when his girlfriend’s son returned from school.

Suarez concluded that there were safety concerns if the children were returned to mother’s care as mother had been erratic and sometimes delusional from her drinking and use of drugs. Father, according to Suarez, “has a history of inappropriate sexual behaviors that he presents as a joke, this too is a safety concern, although the children are now older and verbal and can seek help.” She cautioned, “[T]he children have not lived with their father for the past four years and a slow transition would need to occur should the children return to their father’s care.” She also pointed to his “inconsistencies” as they related to having children. Father was “adamant” that the children were not planned but failed to mention that he had a vasectomy reversal. She recommended “out-of-home placement” “at this time to ensure the children have continuity in their care.” Suarez observed that the children were thriving in the home of their maternal grandparents.

The Jurisdictional and Dispositional Hearings in February

On February 23, 2011, both mother and father appeared at the hearing with counsel. Mother signed and filed her waiver of rights and submitted the matter on amendment of two of the allegations pertaining to her. The court ordered visits supervised by the agency of Safe Exchange between father and the children. Father was permitted daily telephone contact with the children. The court denied the agency discretion to allow unsupervised visits for father but granted the agency discretion to terminate telephone contact. A contested hearing was set at father’s request.

The court held the contested hearing on March 30, 2011. Mother had not objected to jurisdiction but was opposed to the children being placed with father.

Suarez testified. Since she filed the agency’s report, she noted that the children’s weekly visits with father had gone well. She reported that mother had relapsed and therefore her visits had not occurred as of the last week.

Suarez emphasized that at this time the agency was not recommending placing the children with father. She noted that father would need to do a psychological evaluation and start having unsupervised and longer visits with the children. She stated that family

court had ordered supervised visitation between father and the children because of allegations of sexual molestation. She testified, “So to be careful and to make sure the kids were not at risk for any kind of sexual abuse, I needed to know what is the father’s ability to care for the children, are there any inappropriate boundaries that may need to be addressed, and I would need to evaluate that.” At this point, she did not know whether father was able to parent three young children.

Mother had told Suarez about three incidents of inappropriate sexual behavior that she allegedly had observed. The first incident was when Eva was a baby and mother asserted that father wiggled his penis in front of Eva’s face and laughed about it. The second incident involved father’s urinating in front of the children and his describing his penis to them. The third incident involved father’s using Olivia’s foot to massage his penis and his laughing about it. Suarez admitted that father had never been arrested for sexual molestation charges.

Suarez testified that a parent accusing another parent of sexually abusing a child in the context of a custody dispute is always “red flagged to make sure that” she looks “at any history of referrals regarding molestation.” She stated that the agency received a cross-report on January 6, 2008. A cross report is “[a] report that is received from somebody else who initially has a report made, like a police department.” In the present case, a person had made a report of sexual abuse to the police department regarding father’s alleged sexual contact with Olivia, and the police department contacted the agency. The referral was closed as “unfounded” and she explained that “unfounded” means that “it did not happen or there is no—nothing that—we couldn’t discern that anything occurred at that point.” Suarez elaborated: “When I read the actual referral from this date, based on the information it was—it should have been discerned inconclusive. There was nothing that could be used to substantiate it completely. It wasn’t like it did not happen; but because of the amount of interviews, nothing was available that could say for certain that it did happen.”

Suarez believed that father had a history of mental health issues. The family court documents evidenced a history of depression and threats of suicide. Maternal

grandmother confirmed these reports. Suarez had not received the client custody evaluation study that had been completed. She had, however, received an e-mail dated in 2005 that was addressed to mother and to father's adult children, which said: "I am sorry. I love you, but I have issues and I need to end it in a cowardly way. There is only one solution."

Suarez testified that father was having supervised visits weekly at the agency. She maintained that he did not avail himself of the opportunity to have additional visits with the children on the weekends at Safe Exchange. Father had called the children at the home of the maternal grandparents only once since the last court hearing. She expressed concern about placing the children with father when there had been little contact between the children and him. She stated that the children had not expressed any desire to live with their father although she had never specifically asked them whether they would like to live with him.

Suarez spoke to Guillory, the children's therapist. Guillory disclosed that Olivia had told her "that her father licked her fanny and her bum." A letter from Guillory dated November 29, 2008, disclosed that Olivia was wearing diapers because she suffered from encopresis.³ When Olivia first saw Guillory, she was withdrawn and almost non-verbal. Suarez, however, observed that Olivia was very verbal when interacting with her mother. Olivia consistently related to the therapist that " 'her father licked her bum' " and would point to her vagina area. Olivia stated that she did not like it and, according to Guillory, Olivia seemed "kind of fearful." When Olivia first visited with father at Safe Exchange, she was afraid and was crying and "had many accidents, wetting on the floor or on herself during the visits." Suarez observed that Olivia was now less fearful but was still ambivalent about her visits with her father.

³ Encopresis is involuntary defecation in a child who has been toilet trained and is frequently associated with emotional disturbance or psychiatric disorder. (PubMed Health, <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0002537>.)

Suarez also expressed concern that father had indicated that he would not allow contact between the children and maternal grandparents if he had custody of the children. She explained that the children were “very bonded to their grandparents.”

Suarez also had concerns about domestic violence involving father. There was a temporary restraining order against him that was later lifted by the family court. The November 2008 letter from Guillory also raised concerns that Eva was initially scared of father, and that he screamed at her and pulled her arm. Family members provided a picture of a bruise on Eva’s arm.

Maternal grandmother testified that Eva, Olivia, and Grant resided with her from August 8, 2010, until December 3, 2010, and from January 2011 until the present. She reported that on the day of the last hearing, February 23, 2011, father came up to her in the hallway of the courthouse and leaned down next to her face and said, “ ‘I read what you wrote in the court report and when I get full custody of the children you can fuck off.’ ” Later, when she was sitting on a bench, he put his hand on her left shoulder and started to push down a bit. She jumped up and told him to take his hands off of her. The sheriff came over and asked if she were okay.

Maternal grandmother stated that since the children had been placed with her after January 2011, father had visited the children about five times at the agency. She declared that prior to January 2011, father was visiting with the children every other weekend at Safe Exchange. The last two times that she took the children for their visit father did not attend. She confirmed that father had called the children at their home only on one occasion.

Maternal grandmother testified that mother told her about the sexual touching between father and Olivia. Olivia also told her on various occasions that her “father licked her fanny and her bum.” Mother was not present the first time Olivia disclosed the incident involving her father licking her. When she would change Olivia’s diapers, Olivia would say “ ‘daddy licked me there.’ ” When she asked Olivia why she did not want to be “potty trained,” she responded, “ ‘[B]ecause that’s where daddy did it and I

don't want to sit on the toilet.' ” She confirmed that Olivia suffered from encopresis; Olivia was still having about one stool accident a day.

Maternal grandmother did not believe that father had ever contacted any of the children's teachers. Father had never called her to discuss Eva or Olivia's progress in school. He also never called her to discuss Grant's progress in his daycare program. He also never attempted to attend doctor's appointments for any of the children.

Maternal grandmother testified that she witnessed father physically abusing Olivia. When Olivia was about 14 months old, father was throwing Olivia up in the air. She told him not to throw a baby up in the air like that and he responded that she loved it and was laughing. He then proceeded to throw her on to the couch from about six feet away. Maternal grandmother told him to stop it and he threw her again and she hit the back of her head on the edge of the armrest. Olivia started screaming and crying and she received a welt on the back of her head. Maternal grandmother also observed bruises on Olivia and mother told her that they were from father's hitting her. On one occasion, Eva told her that father pulled her arm and hurt her.

In September 2004, father told maternal grandmother that he was going to kill himself. Maternal grandmother testified that he said that he was going to use her Porsche and drive through a red light and kill himself and then people would know that it was a suicide. He told her that he was a thief and a bad person because he had stolen \$40 from her and that he took items from the hardware stores. Father, according to maternal grandmother, repeated this information to her husband when she called him into the room. She told him that he needed therapy.

Maternal grandmother stated that she saw the children almost daily when they were living with their mother and after mother had separated from father. She confirmed that the children never lived with father after the separation. When asked whether she would be willing to have father visit the children in her home, she said that she would and that she would do whatever the court determined was best for the children.

Father testified. He admitted sending an e-mail dated October 14, 2005, to all three of his adult children in England. He claimed that he was not threatening to kill

himself but that he was explaining that he was on the way to the airport and was planning to leave the United States. He clarified that leaving was cowardly because he had children in the United States. He stated that he did not board the plane but returned home. He denied telling maternal grandmother that he planned to kill himself. He also denied ever stealing money from her or shoplifting.

Father said that he threw Olivia in the air and that he did that with all of his children. He did not recall maternal grandmother telling him to stop doing that. He admitted throwing Olivia on the coach but said that she did not hit her head and that he was only about two feet away from the coach when he threw her. He also denied ever hitting his children hard enough to leave a mark. He claimed that he was the primary caretaker when he was living with mother. He admitted that he had never contacted any of his children's teachers or doctors and had not provided them with his contact information. He did not know the names of the children's pediatricians.

Father testified that he did not call his children because he did not think they would want to speak to him. When he had called before, mother had told him that the children did not want to speak to him.

Father said that he talked to maternal grandmother when they were in court on February 23, 2011. According to father, he told her the following: " 'I read what you wrote and that's not our agreement.' Excuse me. 'You can fuck our agreement.' " He claimed that the agreement was that the grandparents could see the children any time they liked if he had the children. He told her that "the agreement was out of the window." Later, he claimed that he walked up to her to apologize and she told him to get away. He testified that he would not prevent the children from seeing their maternal grandparents.

Father stated that he had been drunk only two times in his life and that he had not had a drink in the last year. He reported that he had never been arrested or convicted of any alcohol-related offense. He denied ever sexually molesting any of his children. He said that he had never been arrested or convicted of any sexual molestation charge.

At the end of the day, the court set another date for the continued hearing.

The Addendum Report

On June 13, 2011, the agency filed an addendum report to the jurisdictional/dispositional report dated February 23, 2011. The agency's recommendations remained unchanged. Mother had relapsed into drinking and had not resumed drug testing. Mother had not been consistently visiting her children and issues with her behavior had caused the maternal grandparents to discontinue supervision of her visits.

As of April 15, 2011, father had visited the children and the visits were going well. The children, including Olivia, were affectionate with him. Maternal grandmother reported that father called the children only once, on Eva's birthday.

The report attached a custody evaluation prepared by Shary Nunan, Ph.D. completed on August 3, 2007, when mother and father were divorcing. Nunan stated that father acknowledged threatening to kill himself on two occasions after mother said she was going to file for divorce. His doctor prescribed medicine on a short-term basis for anxiety and referred him to a psychiatrist for depression. Father did not follow through with seeing a psychiatrist.

Mother told Nunan that father had been physically violent in 2006. He threw a wine glass and a chair at her during an argument and when Grant was present. She said that father would shake Eva when she was a baby in an attempt to stop her crying. According to mother, he called the children "stupid" or a "nitwit" if one of them spilled something on the couch. Mother also reported the same sexual incidents involving father and the children that she had detailed to Souza. Mother stated that father told her that he had recently bought a gun. Father acknowledged buying the gun and explained that it was for his hobby of shooting clay pigeons. Father's adult daughter, who was visiting, told Nunan that in England father had the hobby of clay pigeon shooting.

Nunan observed the children with their parents and concluded that the children were relaxed and affectionate with both of their parents. Eva told Nunan that father once pulled her arm.

Nunan concluded that both parents had been positively involved with their children and both showed ability to attend to their children's needs, set appropriate limits, and provide a safe environment for them. Nunan expressed concerns about mother's drinking and noted that she could benefit from counseling. She pointed out that father also had a pattern of daily drinking. He told her that he would have two beers or one-half a bottle of wine each day. Father had acknowledged in mediation that he had been drunk on one occasion.

Nunan wrote that father at times had displayed inappropriate judgment in his parenting, "usually when replicating parenting that he witnessed as a child." She elaborated: "For example, he was spanked as a child, and so believed in spanking as a useful intervention with his children. He was also exposed as a child to an incident where his sister's touching his father's penis was considered a family joke, so he treated a similar incident with Olivia in the same manner, rather than establishing appropriate boundaries when the incident occurred." She noted that father had not spanked the children since the mediation in April 2007, which suggested that he did not have impulse-control problems in this area. She observed that he would benefit from counseling to learn how to cope with strong, negative emotions.

Nunan recommended a series of parenting classes and a minimum of 10 sessions of therapy for both mother and father. She also recommended that father refrain from buying a gun until further evaluation determined that he had maintained emotional stability for a minimum of two years. She also recommended that neither parent drink while the children were in their care.

The Continued Jurisdictional and Dispositional Hearing in June

Father continued his testimony at the contested jurisdictional and dispositional hearing on June 21, 2011. Father stated that he did not request unsupervised visitation until December 2010, partly because he wanted his children to be old enough to speak for themselves. He reported that Suarez never contacted his adult children in England even though he gave her their contact information.

Father wanted Eva, Olivia, and Grant to live with him but subsequently agreed that they should have a short transition period before moving into his home. He believed that the best time to place the children in his home would be after the current school year but before the next school year started. He stated that he was willing to have the maternal grandparents and mother visit the children if they were placed with him. He admitted that he did not want to have anything to do with the maternal grandparents, but would participate in some type of exchange to permit the children to visit the grandparents. He acknowledged that the children had never met his female partner.

Father stated that he had taken a parenting class of six sessions and 10 individual therapy sessions as recommended by the custody evaluation in 2007. The parenting class, which was Kids Turn, was, according to father, not helpful. He claimed that he did not call his children at the home of the maternal grandparents because he could hear “the grandmother barking orders” when he was talking to Eva on her birthday and they were “cut off four times.”

Father admitted that he thought about suicide twice, but claimed that he never threatened suicide. He acknowledged being depressed at that time but claimed that he did not seriously think about suicide.

Father conceded that he had not had any contact with the teachers of Eva and Olivia. He had not attended any of the school events and, since the children had been removed from mother’s care, had made no effort to find out about school events. The last contact he had with the children’s therapist was September 2008. He said that he was waiting for the therapist to contact him. He also admitted that he had not attended any of the doctor’s appointments or contacted the doctors since the children had been placed with the maternal grandparents.

Father acknowledged that mother was drinking half a bottle of wine or two beers each day when they were together with the children. When asked whether he thought that amount was an excessive use of alcohol, he responded, “No.” During this period, father stated that he would drink a couple of beers at night.

Maternal grandmother testified in rebuttal and stated that all three children were on father's medical insurance. On the day of the hearing, June 21, she received a phone call from the office of the children's pediatrician and was told that Olivia's bill from 2009 or 2010 had not been paid and that the pediatrician would not see the children until the bill was paid. The office contacted father regarding payment of the bill, but he refused to pay the bill. Maternal grandmother stated that she planned to pay the bill.

Maternal grandmother detailed another incident when father had refused to pay a bill for medical care for Eva. Maternal grandmother gave the bill to child protection services to give to him but he refused to take the bill from child protection services.

Father responded to the issue of the doctor's bill by denying that he ever received Olivia's medical bill. He claimed that he heard from the pediatrician for the first time that morning. He reported that he told the doctor's office that he had paid his part and would not pay the remaining bill. He claimed that he paid mother 50 percent of all the bills when they were presented to him.

Counsel for the children told the juvenile court that the children were experiencing for the first time "a marked degree of stability and that is because of the care that they are receiving in their grandparents' home." She pointed out that the maternal grandmother was an emergency room nurse and the maternal grandfather was a retired fire chief and were providing the children with "excellent care" in the home. Counsel argued that the evidence supported the allegations in the petition as they related to father but, even if the court found the allegations were not supported by the evidence, counsel asserted that it would be detrimental to place the children in father's care. Counsel stressed that father's actions had shown "a marked indifference to the well-being of his children."

The Jurisdictional and Dispositional Order

The petition was amended to conform to proof. The court declared the children dependents of the juvenile court pursuant to subdivisions (b) and (c) of section 300. The court denied father's request that the children be placed with him. Care, custody, and control of the children were committed to the agency and placement of the children in the home of the maternal grandparents was approved.

When discussing visitation, the court noted that father wanted increased visitation and father had to introduce the children to his new family. The agency stated that it was requesting visitation for father “as frequently as possible consistent with the children’s well-being.” The agency proposed such an order to give it “discretion to increase visitation.” The agency’s intent was for “transition visits to happen in the father’s home when that is possible and appropriate so that they can meet the intended family and visit in a more appropriate setting.” Counsel for father expressed concern with the words “if it is possible or whether it can happen” and requested the court to order increased visitation and to set some type of schedule such as “couple of all-day visits with the children” each week. Counsel then explained that father first should have unsupervised visits in the community. The court responded that counsel’s inability to set forth an exact schedule was “why” it was “giving discretion” to the agency to take into account counsel’s concern “about these nebulous terms.” Counsel then argued that father wanted increased visits to move toward week-long visits, and then have the children placed with him, possibly in September.

After further discussion about visitation, the court commented: “I frequently grant the agency discretion. I completely trust that the agency will do the right thing, which is why I’m granting discretion. In general, when you use those terms, it is not an insult. It always leaves questions. I don’t mean it as such. . . .”

The court considered the extent of progress that had been made toward alleviating or mitigating the causes necessitating placement and concluded that mother’s progress had been minimal and father had made no progress. The court ordered family reunification services for both mother and father. The court ordered the agency “to arrange for visitation between the children and the mother and the father as frequently as possible consistent with the children’s well-being.” The court granted the agency discretion to increase visitation between the father and the children. It ordered a psychological evaluation for father. A progress report was set for August 12, 2011.

Notices of Appeal and Consolidation of Appeals

On June 22, 2011, father filed a timely notice of appeal from the jurisdictional and dispositional orders in Eva's case. On August 19, 2011, he filed a timely notice of appeal from the jurisdictional and dispositional orders in the matter of Grant and Olivia. Father filed a motion to consolidate these two appeals, which we granted on October 20, 2011.

The Progress Report Hearing

The court held a progress report hearing on August 12, 2011. At the hearing, counsel for the agency represented that the social worker had indicated that weekly visitation between the children and their father was to begin the next day and that father had agreed to this. Counsel added that the attorney for father had requested that the social worker "be given discretion to increase or go to unsupervised visits." Counsel for the agency declared that the agency had no objection "to taking the discretion with the understanding that that won't necessarily happen right away."

Counsel for father reported that the social worker told her that "she would absolutely consider unsupervised visitation once she gets the results of the psychological evaluation" for father and that was the reason counsel was "just requesting discretion." At the conclusion of the hearing, the court gave "discretion to the worker to increase visitation."

DISCUSSION

I. The Jurisdictional Findings

A. Father Does Not Challenge the Jurisdictional Findings as to Mother

The juvenile court found jurisdiction over Eva, Olivia, and Grant as to both mother and father under section 300, subdivisions (b) and (c). Father does not challenge the findings of jurisdiction based on mother's conduct, but argues that the evidence did not find jurisdiction under subdivisions (b) and (c) related to his conduct.

"[A] minor is a dependent if the actions of *either parent* bring [him] within one of the statutory definitions of a dependent." (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397, italics added, disapproved on another issue in *In re Shelley J.* (1998) 68 Cal.App.4th 322, 328.) The agency "is not required to prove two petitions, one against the mother and

one against the father, in order for the court to properly sustain a petition [pursuant to § 300] or adjudicate a dependency.” (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599.) Accordingly, because father does not challenge the sufficiency of the evidence to support the jurisdictional allegations as to mother, the juvenile court properly exercised jurisdiction over the children even if father’s conduct was not an independent basis for jurisdiction. (See, e.g., *In re Maria R.* (2010) 185 Cal.App.4th 48, 60; *In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554; *In re John S.* (2001) 88 Cal.App.4th 1140, 1143.)

Father acknowledges the foregoing case law, but contends that his challenge is not moot because the jurisdictional findings against him may impact subsequent family court proceedings, may influence subsequent orders in the dependency court, may stigmatize him, and are against public policy. He concedes that this issue has been recently addressed in *In re I.A.* (2011) 201 Cal.App.4th 1484, and this court rejected most of the arguments raised here by father. In *In re I.A.*, the jurisdictional allegations included the mother’s drug abuse, domestic violence between the parents, and the parents’ criminal histories. (*Id.* at p. 1488.) The father challenged the jurisdictional findings based on his conduct, but not the findings based on the mother’s conduct. The court dismissed the appeal as moot because the father’s “contentions, even if accepted, would not justify a reversal of the court’s jurisdictional ruling” (*Id.* at pp. 1487–1488.)

Regarding the claim of collateral consequences from the jurisdictional finding, the court in *In re I.A.*, *supra*, 201 Cal.App.4th 1484 noted that the father had not identified “any specific potential impact, and we can find none on our own.” (*Id.* at pp. 1493-1494, fn. omitted.) The court emphasized that jurisdictional findings are supported by a preponderance of the evidence and therefore could not support the denial of reunification services. (*Id.* at p. 1494.) The court also considered whether the finding precluded the child’s placement with the father as the nonoffending parent under section 361, subdivision (c)(1) or section 361.2, subdivision (a). (*In re I.A.*, at p. 1494.) The court found no possible collateral consequence because the father was ineligible for placement under those statutes as he was not living with the child at the time the petition was filed

(see § 361, subd. (c)(1)) and was not a presumed father (see § 361.2, subd. (a)). (*In re I.A.*, at p. 1494.)

Here, father argues that it is not rank speculation that wrongful jurisdictional findings may have a serious negative impact on subsequent family court proceedings. (See *In re Michael W.* (1997) 54 Cal.App.4th 190, 195-196 [juvenile court orders must be honored in later superior court proceedings].) He also contends that the court in *In re I.A.* did not consider that the public has an interest in being certain that jurisdiction is proper because jurisdiction interferes with fundamental rights. He also complains that jurisdiction over a child stigmatizes the parent. In terms of specific consequences to him, father asserts that a juvenile court is entitled to “consider any jurisdictional findings that may relate to the noncustodial parent under section 300” in determining detriment to children in cases such as the present when the noncustodial parent is seeking placement of the child in that parent’s home. (See *In re V.F.* (2007) 157 Cal.App.4th 962, 970, superseded by statute on other grounds.) He also asserts that reunification services are designed to eliminate those conditions that led to the court’s findings and therefore an erroneous jurisdictional order will impact the services ordered. Finally, he argues that if he fails to complete the required services, his parental rights might be terminated.

Father’s argument that the jurisdictional findings may impact future dependency proceedings was addressed in *In re I.A.*, *supra*, 201 Cal.App.4th 1484. When rejecting this argument by the father in the dependency case before it, the court in *In re I.A.* explained that the father had “fail[ed] to suggest any way in which this finding actually could affect a future dependency or family law proceeding, and we fail to find one on our own. In any future dependency proceeding, a finding of jurisdiction must be based on current conditions. [Citation.] . . . Other relevant dependency findings similarly would require evidence of present detriment, based on the then prevailing circumstances of parent and child. The prospect of an impact on a family law proceeding is even more speculative.” (*Id.* at pp. 1494-1495)

Father’s argument that this case may impact future family proceedings is also not persuasive. Father does not dispute that the findings of jurisdiction as they relate to

mother were correct; thus the jurisdictional findings do not place mother in a superior position to father in a custody dispute between the parents. (See *In re Michael W.*, *supra*, 54 Cal.App.4th at p. 195 [family court looks at the child’s best interests as between two parents while the juvenile court looks at the best interests of the child in a proceeding where there is a possibility that both parents could lose custody or visitation rights].)

We also reject father’s policy argument for asserting that he should be able to challenge the jurisdictional findings as to him. The focus of the statutory scheme governing dependency is the protection of children and therefore “it is necessary only for the court to find that one parent’s conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child.” (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1491.) “A petition is brought on behalf of the child, not to punish the parents. [Citation.] The interests of both parent and child are protected by the two-step process of a dependency proceeding, with its separate adjudication and disposition hearings. That is, when [the agency] makes a prima facie case under section 300 by proving the jurisdictional facts at the adjudication hearing, it is not improper for the court to sustain the petition; not until the disposition hearing does the court determine whether the minor should be adjudged a dependent.” (*In re La Shonda B.*, *supra*, 95 Cal.App.3d at p. 599.)

Although we are not persuaded by father’s argument that the jurisdictional findings against him will impact subsequent proceedings in either the dependency or family court, we will address the merits of his argument that the evidence did not support jurisdiction as to him.

B. Substantial Evidence Supported the Jurisdictional Findings as to Father

1. The Allegations, Ruling, and Standard of Review

The juvenile court found jurisdiction as to father under section 300 subdivisions (b) and (c). Subdivision (b) of section 300 provides that a child comes within the jurisdiction of the court if “(b) [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 by the inability of the parent or guardian to provide regular care for the child due to the parent’s

or guardian’s mental illness, developmental disability, or substance abuse. . . .” “[T]hree elements must exist for a jurisdictional finding under section 300, subdivision (b): ‘(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness.’ [Citation.] ‘The third element “effectively requires a showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]” ’ [Citations.]” (*In re J.O.* (2009) 178 Cal.App.4th 139, 152.)

Jurisdiction under section 300, subdivision (c) is proper when “[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage . . . as a result of the conduct of the parent” The petition alleged that the child is suffering, or is at substantial risk of suffering, serious emotional damage as a result of the conduct of the parent or guardian. It specified that the children had been exposed to a four-year divorce and child custody dispute between their parents.

The standard of proof required in a dependency hearing under section 300 is the preponderance of the evidence. (§ 355.) We review the jurisdictional findings under the substantial evidence test. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820, superseded by statute on another issue.) Under this standard of review, we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734, superseded by statute on another issue.) Just one incident and one witness’s testimony can support jurisdiction under section 300. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200.) We must resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court’s order. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547, superseded by statute on another issue.) “ ‘The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.’ ” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1394.)

2. Evidence in Support of the Allegations Under Section 300, Subdivision (b)

As already discussed, if any of the jurisdictional findings as to father are supported by substantial evidence, jurisdiction as to father was proper. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127.) With regard to the allegations under section 300 subdivision (b) as specific to father, the petition alleged that the children had suffered or there was a substantial risk that they would suffer serious physical harm or illness “as a result of the failure or inability of his or her parent or legal guardian to supervise or protect the child[ren] adequately” and “by the inability of the parent or legal guardian to provide regular care for the child[ren] due to the parent’s or legal guardian’s mental illness, developmental disability, or substance abuse.” The petition alleged that father had sexually molested Olivia and was allowed supervised visitation with all the children. The petition also contained an allegation that father admitted past alcohol abuse and had been sober for one year. The petition also alleged that father had a pattern of threatening suicide and had admitted to having thoughts of suicide on two occasions when he was depressed.⁴

Father asserts that even if the agency presented evidence to support the foregoing allegations, such evidence did not show that he was unable to protect them or failed to provide them with regular care. We disagree and conclude that the allegations were supported by substantial evidence.

With regard to the allegations of improper sexual conduct between father and his children, Olivia consistently reported to her therapist, mother, maternal grandmother, and the agency social worker that father had licked her “bum and fanny” and then pointed to her vaginal area. She repeated this statement and never recanted. This allegation was reported to the agency by the police department and, after an investigation, was closed in 2008 as “unfounded.” Although “unfounded” generally means that the abuse did not happen, Suarez testified that after reading the information in the report, she concluded

⁴ Agency argues that the petition was sufficiently pled. Father did not mount a challenge on this basis and therefore any objection to the jurisdictional findings on the grounds of insufficient allegations in the pleading has been waived.

that the investigation should have been closed as “inconclusive.” She elaborated, “It wasn’t like it did not happen; but because of the amount of interviews, nothing was available that could say for certain that it did happen.” Thus, this testimony supported a finding that Olivia’s rendition of what happened was true. Moreover, the court considered evidence that Olivia suffered from encopresis and was afraid, crying, and wet herself when she first visited with her father. Suarez observed that Olivia was currently less fearful but still ambivalent about her visits with her father.

Additionally, mother reported seeing three other incidents involving sexually inappropriate behavior between the children and father. Mother said she saw Olivia fondling her father’s penis with her foot when he had an erection and father treated the incident as if it were a joke. On another occasion, according to mother, father wiggled his penis in front of Eva’s face and laughed about it. The third incident disclosed by mother occurred when father urinated in front of the children and described his penis to them.

Finally, Nunan reported in her custody evaluation dated August 3, 2007, that father had shown “inappropriate judgment in his parenting at times, usually when replicating parenting that he witnessed as a child.” She explained: “He was also exposed as a child to an incident where his sister’s touching his father’s penis was considered a family joke, so he treated a similar incident with Olivia in the same manner, rather than establishing appropriate boundaries when the incident occurred. . . .” Thus, it appears that father admitted to Nunan that Olivia had touched his penis and that he thought it was humorous.

The record also contained evidence in substantiation of the allegation that father’s alcohol abuse put the children at risk. Mother reported that father used to drink when they were living in England to the point that he was carried out of the pub and throwing up. Father told Suarez that he had only been drunk twice in his life and denied any alcohol abuse. However, in addition to mother’s statements, Nunan wrote in her custody report that father told her that both he and mother each had one-half bottle of wine or two beers a day and that he did not think this behavior presented a problem. He admitted that

both he and mother had agreed in 2006 to stop drinking in front of the children, but kept their agreement for only a few weeks until *he suggested*, “Let’s stop drinking until the kids go to bed.” Mother and father, according to father, then did not drink until after the children went to bed. Nunan concluded that father had a pattern of daily drinking and acknowledged in mediation that he had been drunk on one occasion.

The evidence regarding father’s depression also supported the court’s finding of jurisdiction. Father initially denied ever thinking about committing suicide or any serious emotional issues. Maternal grandmother reported that father told her that he was going to kill himself and he wrote an e-mail in 2005 to mother and his adult children that indicated he was contemplating suicide. Father denied that the e-mail threatened suicide and claimed that he meant that he was going to return to England, but the language of the e-mail supported an inference that he was contemplating suicide. The e-mail read as follows: “I am sorry. I love you, but I have issues and I need to end it in a cowardly way. There is only one solution.”

Mother also indicated that father had been suicidal. After mother and father separated, father told mother that he put his head in the oven when they first separated. The family court documents confirmed that father had a history of depression and had threatened suicide. Nunan stated that father acknowledged threatening to kill himself on two occasions after mother said she was going to file for divorce.

The foregoing evidence substantially supported the finding of jurisdiction. This evidence showed that the children were at substantial risk of serious physical and emotional harm as a result of father’s inappropriate sexual conduct with the children, his alcohol abuse, and his depression. Olivia was particularly at risk as evidenced by her fear of father and her inability to be toilet trained. Father’s denial of his problems, exacerbated the risk. (See *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1657-1658 [not acknowledging responsibility is a factor that may be considered as putting a child at risk].) Father’s earlier threats of suicide might not directly endanger the children currently but “are illustrative” of father’s “mental health history” and “inability to cope with stressful situations.” (See *id.* a p. 1653.)

Father contends that none of the evidence shows that there was any danger at the time of the jurisdictional hearing.⁵ Father argues that his prior use of alcohol and his prior mental health issues and thoughts of suicide did not establish that there was any current problem that would interfere with his ability to provide regular care of his children or that would place them at risk of any sort of harm. He points out that the allegations of inappropriate sexual acts with his children were made over two and one-half years earlier and had been investigated and closed as “unfounded.” Moreover, no criminal charges had been filed, and permitting him unsupervised visits with the children indicated that he did not pose any threat to his children. The therapist also stated that she did not believe that increasing father’s contact with the children would create any safety concerns. The visits, father points out, had been going well. Father argues that in *In re Kristin H.*, *supra*, 46 Cal.App.4th 1635, there was expert evidence establishing that the mother currently suffered from emotional health and substance abuse, and no such evidence exists here. He argues that there is no evidence that he currently suffers from any sort of mental health issue since his last bout of depression was in 2006.

⁵ Agency argues that it does not have to show a current risk of harm under *In re J.K.* (2009) 174 Cal.App.4th 1426. (See also *In re David H.* (2008) 165 Cal.App.4th 1626; *In re Adam D.* (2010) 183 Cal.App.4th 1250.) Father maintains that the decision in *In re J.K.* is inconsistent with the principles of statutory construction. (See *In re J.N.* (2010) 181 Cal.App.4th 1010.) He asserts that the holding in *In re Adam D.* should be ignored because it is based on *In re J.K.*

In *In re J.K.*, *supra*, 174 Cal.App.4th 1426, the appellate court held that jurisdiction could be supported solely on “a showing that the minor *has suffered prior* serious physical harm or abuse.” (*Id.* at pp. 1434-1435.) The appellate court in *In re J.N.*, *supra*, 181 Cal.App.4th 1010, disagreed with this to “to the extent it concludes section 300, subdivision (b), authorizes dependency jurisdiction based upon a single incident resulting in physical harm absent current risk.” (*In re J.N.*, at p. 1023.) The court added, “The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances.” (*Id.* at p. 1026.)

We need not discuss the foregoing holdings because we conclude there was a current and future risk in the present case. Furthermore, there was more than a single incident of past harm.

The question before us is whether evidence in the record supported jurisdiction as to father. The record shows that Suarez still had concerns about the children's safety, especially since father treated much of his past behavior as a joke. Suarez explained that the prior report regarding the alleged sexual abuse of Olivia should have been closed as inconclusive. The fact that father was not prosecuted for this alleged incident is not dispositive. The evidence necessary to prove sexual abuse in a criminal trial is beyond a reasonable doubt, which is not the standard for finding jurisdiction. More significantly, there is no evidence in this record that father has addressed the concerns expressed by Nunan in the custody report that he treated his inappropriate sexual and physical behavior with his children as a joke.

We agree that the facts in the present may not be as compelling as those in *In re Kristin H.*, *supra*, 46 Cal.App.4th 1635, but we disagree that the evidence did not support a finding that father had a current problem based on his mental health and inappropriate sexual contact with the children. When evaluating whether risk based upon a single episode of endangering conduct was sufficient for jurisdiction, the court in *In re J.N.*, *supra*, 181 Cal.App.4th 1010, explained that the court should consider "evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parents to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident." (*Id.* at pp. 1025-1026.) Here, there was not a single incident, but multiple incidents indicating that father had inappropriate contact with the children, had mental health issues that involved thinking about suicide, and had minimized the significance of his drinking. Yet father had done little, if anything, to address or understand this behavior. Following his threats to commit suicide on two occasions after mother said she was going to file for divorce, father went to his regular physician. His doctor prescribed medicine on a short-term basis for anxiety and referred him to a psychiatrist for depression, but father did not follow through with seeing a psychiatrist.

Father's current understanding of and attitude toward his past conduct that endangered his children, supported an inference that there is a substantial risk that inappropriate sexual conduct with the children, alcohol abuse, or suicidal thoughts and depression will recur. Since we conclude that substantial evidence supported the allegations under section 300, subdivision (b), jurisdiction related to father was proper and we need not consider whether the evidence also supported the allegations under section 300, subdivision (c).

II. Dispositional Findings

In the present case, father requested to have the children placed with him after a short transition period. The juvenile court denied this request and on appeal father argues that the evidence did not support the dispositional order. When ordering the children placed with the maternal grandparents, the court found that the progress made by father in mitigating the causes necessitating removal of the children was "none." The court stated that there was "clear and convincing evidence that placement with [father], the non-custodial parent of the children, would be detrimental to the children's safety, protection, or physical or emotional well-being"

Section 361.2 states, "[w]hen a court orders removal of a child" from the custodial parent, the court "shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).)

The juvenile court must make the section 361.2, subdivision (a) detriment finding by clear and convincing evidence. (*In re John M.* (2006) 141 Cal.App.4th 1564, 1569-1570.) "We review the record in the light most favorable to the trial court's order to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings *based on the clear and convincing evidence standard.*

[Citation.]”⁶ (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694.) The focus of the statute is on averting harm to the child. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6, superseded by statute on another issue; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 536, citing *In re B.G.* (1974) 11 Cal.3d 679, 699.) In this regard, the court may consider the parent’s past conduct as well as present circumstances. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.)

The court “shall make a finding either in writing or on the record of the basis for its determination under” section 361.2, subdivision (a). (§ 361.2, subd. (c).) Where there is a failure to make findings under section 361.2, subdivision (c), the rule of harmless error applies. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1078-1079.)

Father contends that the juvenile court failed to make findings as required under section 361.2, subdivision (c). Even if the court’s findings did not satisfy the requirements under section 361.2, subdivision (c), we conclude that any alleged error was harmless as it is not reasonably probable that the trial court would have placed the children with father under subdivision (b) of section 361.2, had it complied with the statutory requirement.⁷

⁶ We note that there is a split of authority on whether the reviewing court should take the standard of proof into account when reviewing a finding under the substantial evidence standard. (See, e.g., *Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078 [lower court makes findings by the elevated standard of clear and convincing evidence but the substantial evidence test remains the standard of review on appeal].) We conclude that the evidence even under the heightened approach supports the dispositional order and therefore we need not decide which standard of review applies in this case.

⁷ Under section 361.2, subdivision (b), if the court places the child with the parent, it may do any of the following: “(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. . . . [¶] (2) Order that the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months. . . . After the social worker conducts the home visit and files his or her report with the court, the court may then take the action described in paragraph (1), (3), or this paragraph. . . . [¶] (3) Order

As already discussed, evidence of father's improper sexual contact with the children, his denial of his alcohol and mental health problems, and his prior threats of suicide provided clear and convincing evidence that there would be a substantial danger to the children's physical health, safety, protection, or physical or emotional well-being if placed with father. The court reasonably could have concluded that father's refusal to take these issues seriously and failure to seek treatment for these problems placed the children at risk of harm.

There was also some evidence of domestic violence involving father. Suarez testified that there had been a temporary restraining order against father that was later lifted by the family court. Guillory reported that Eva indicated that she was afraid of her father and that he had screamed at her and pulled her arm. There was a photograph of a bruise on Eva's arm. Maternal grandmother testified that she saw father throwing Olivia in the air onto the couch from about six feet away when Olivia was about 14 months old. Even after she asked him to stop, he continued to throw her and she hit the back of her head on the edge of the armrest. She reported that Olivia started screaming and crying and received a welt on the back of her head. When Olivia was older, she observed bruises on Olivia and mother indicated that father had hit her.

Mother reported that father threw a wine glass and chair during an argument in November 2006 and Grant was present. Father admitted to throwing a wine glass and kicking a chair. Mother also stated that father would shake Eva when she was an infant to get her to stop crying. When Olivia had a tantrum, father, according to mother, grabbed her by the arm and dragged her up the stairs, then slapped her leg, leaving a bruise. She estimated that father used physical discipline with the children about twice a

that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.”

month. When she tried to talk to him about it, he would become defensive and tell her his older children turned out well.

The evidence also showed that it would be detrimental to the children's well being to be removed from their maternal grandparents' home and placed with father. The children had formed strong bonds with their maternal grandparents and were thriving in their care. There was evidence that father would limit or eliminate the children's contact with their maternal grandparents. Father claimed that he would permit ongoing contact between the children and their maternal grandparents, but maternal grandmother testified that father told her that he would stop contact between the children and their maternal grandparents if the children were placed with him.

In contrast to their strong bond to their maternal grandparents, the children's bond with their father was not especially strong. At the time of the jurisdictional/dispositional hearing, the children had not lived with father for four years. Additionally, the children had not met the woman with whom he was living. Although the visits with father had gone well, both Olivia and Eva had at different times expressed anxiety about seeing father. Furthermore, father had not had significant contact with the children and had not indicated a commitment to meeting their needs. In the jurisdictional/dispositional reports, Suarez stated Guillory indicated that she had not spoken with father in a couple of years, but had encouraged him to seek increased visitation with the children. Father, however, requested reduced visitation. Father claimed that he could not afford the fee of \$125 for the visits through Safe Exchange, but he had received a settlement of over \$600,000 from his divorce proceedings for the sale of the home and was to receive another sum from a sale of another property. Father did not consistently show up for his visitation and had rarely called the children on the telephone at their grandparents' home. Father had not had any contact with the children's teachers and had never called to find out about the children's progress in school. He also had not contacted the children's pediatricians.

Father argues that the children had an ongoing relationship with him and there was no reason to believe that their placement with him would interfere with any of the

services they were receiving. He claims that Suarez's sole concern was that she wanted father to undergo a psychological examination to determine whether he could care for the children and to be certain that the children would not be at risk. He claims that these concerns pale in comparison to those recited by the juvenile court in *In re John M.*, *supra*, 141 Cal.App.4th 1564 and the appellate court in *In re John M.* reversed the disposition order denying the father's request to have the children placed with him.

Father ignores the evidence that he has consistently denied any of the acts he has allegedly committed or, when acknowledging the behavior, denied the seriousness of his conduct. He also ignores that Suarez expressed concerns for the children's safety and emotional well being, especially since father has demonstrated little commitment to the children and had threatened to cut-off contact between the children and their maternal grandparents.

Father's reliance on *In re John M.*, *supra*, 141 Cal.App.4th 1564 is unavailing. In *In re John M.*, the minor was living in California with the mother and the father was living in Tennessee; the mother was physically abusing the child. (*Id.* at pp. 1567-1568, 1571.) The juvenile court found that it would be detrimental to place the minor with the father based on the minor's desire not to live with his father, the minor's need for services, the minor's relationship with his younger sister and members of his extended family living in San Diego, his lack of a relationship with his father, the paucity of information about his father, and his mother's reunification plan. (*Id.* at p. 1570.) The appellate court reversed because these factors did not establish a detriment finding. (*Ibid.*) There was little evidence supporting a finding the minor was attached to his sibling and there was no evidence that a move away from his extended family in San Diego would be detrimental to him. (*Ibid.*) The social worker admitted that she had no information that the father was unable to meet the minor's needs. The father acknowledged that he had been out of contact with the minor for four years, but the juvenile court found that father was not to blame for the lack of contact. (*Id.* at p. 1571.)

The facts in the present case are clearly distinguishable from those in *In re John M.*, *supra*, 141 Cal.App.4th 1564. Jurisdiction in *In re John M.* was based solely on the

mother's behavior; here, it is based on the conduct of both mother and father. The social worker in the present case does not have a paucity of information about father. She lacks a psychological evaluation of father partly because he denied that he had any problems. She had extensive evidence of his prior conduct that involved inappropriate sexual and physical conduct, mental health problems, and drinking problems. Additionally, here, father was to blame for his lack of contact with his children. Finally, unlike the situation in *In re John M.*, where there was no evidence that showed the minor would suffer if his bond with his sibling were disrupted, here, the evidence clearly showed that the children would suffer detriment if their contact with their maternal grandparents was severed and there was evidence that father had threatened to terminate their contact with their maternal grandparents.

We conclude that the agency met its burden of proving detriment by clear and convincing evidence, and we affirm the juvenile court's order finding the children's placement with father would be detrimental within the meaning of section 361.2.

III. *The Visitation Order*

At the dispositional hearing on June 21, 2011, the court ordered the agency "to arrange for visitation between the children and the mother and the father as frequently as possible consistent with the children's well-being." At a subsequent hearing on August 12, 2011, father and the agency agreed that weekly visitation was to begin between father and the children. Counsel for father requested that the social worker "be given discretion to increase or go to unsupervised visits." On appeal, father argues that the original order of June 21, 2011, unlawfully delegated to the agency the juvenile court's authority to determine whether visits will occur. Agency responds that this was not an improper delegation of authority and, in any event, this issue is now moot because the subsequent order, to which father agreed, permits visitation weekly.

"When no effective relief can be granted, an appeal is moot and will be dismissed. [Citation.] ' "[T]he duty of this court . . . is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the

matter in issue in the case before it.’ ” [Citation.] . . . “[W]hen, pending an appeal from the judgment of a lower court, and without any fault of the [respondent], an event occurs which renders it impossible for this court, if it should decide the case in favor of [appellant], to grant him [or her] any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. [Citations.]” ’ [Citation.]” (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.)

Here, father is challenging the ruling in June 2011 on visitation, and it is now one year later. “Effective relief” is a remedy that can have a practical, tangible impact on the parties’ conduct or legal status. (*In re I.A., supra*, 201 Cal.App.4th at p. 1490.) Here, even if father were to prevail on the merits of his appeal of the visitation order of June 2011, we could not grant him any effective relief since it has been over a year since the issuance of the visitation order. Not only has a new order been issued, but also the challenged visitation order was based on circumstances that no longer exist.

Furthermore, orders made at a subsequent hearing render previous visitation orders moot. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1210.) Here, a visitation order filed on August 12, 2011, set forth weekly visits between father and the children and father agreed to this order. Accordingly, this second order moots the prior order regarding visitation between June and August 2011.

Father urges us to consider the merits of the appeal even if it is moot. He maintains that the agency still retained the authority to schedule visits, and the issue is necessary to provide guidance to the juvenile court because the court stated that it frequently delegated authority to the agency.⁸

We may exercise our inherent discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance, could affect the rights of the parties in future proceedings, or is a question capable of repetition, yet evading review. (See, e.g., *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404, *In re*

⁸ The agency argues that the context of the juvenile court’s statement makes it clear that the court stated that it frequently granted the agency discretion to increase visitation, not discretion whether to permit visitation.

Joshua C. (1994) 24 Cal.App.4th 1544, 1548.) We decide the question of mootness in juvenile cases on a case-by-case basis. (*In re Angela R.* (1989) 212 Cal.App.3d 257, 264.)

Father cannot demonstrate that the order on June 21, 2011, will have any prejudicial effect on his children or him. It has now been a year since the original visitation order and he has presented no evidence that this order has had any detrimental effect on the proceedings. Moreover, as already stressed, this order has been superseded by the order of August 12, 2011, and he did not appeal that order.

Furthermore, the present issue on appeal has not evaded review. Other appellate decisions have directly addressed the question of the court's giving a third party the authority to determine visitation. (See, e.g., *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1237 [order granting the department the “*complete and total discretion to determine whether or not visitation occurs would be invalid*”]; *In re Julie M.* (1999) 69 Cal.App.4th 41, 46-49 [improper delegation of judicial power to children when they were given absolute discretion as to whether they wanted to visit their mother]; *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1475 [unlawful delegation of judicial authority when therapist given right to determine whether children should visit their parent]; *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374 [“court may delegate . . . the responsibility to manage the details of visitation, including time, place and manner,” but not the decision whether visitation will occur]; *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 755-757 [order stating that visitation with parents “ ‘be under the direction of the Department [of] Social Services’ ” was improper because order did not specify whether parents had visitation rights or, if so, frequency and length of visits]; *In re Kyle E.* (2010) 185 Cal.App.4th 1130, 1135-1136 [order providing “for visitation ‘as frequent as is consistent with the well-being’ of the minor was unlawful delegation of judicial authority because the visitation order failed “to set a minimum number of visits or provide that [the parent] could visit the minor ‘regularly’ ”].)

We therefore decline to address father's challenge to the visitation order, and dismiss this part of father's appeal as moot.

DISPOSITION

The part of father's appeal challenging the visitation set forth in the juvenile court's order dated June 21, 2011, is dismissed as moot. The jurisdictional and dispositional orders are affirmed.

Lambden, J.

We concur:

Kline, P.J.

Richman, J.