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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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

SOLANO COUNTY DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.M., et al.

Defendants and Appellants.

A133921

(Solano County
Super. Ct. No. J40896 & J40897)

I. INTRODUCTION

C.M. (Mother) and E.K. (Father) appeal from the juvenile court’s dispositional orders with regard to Mother’s daughter, B.M. and Father and Mother’s daughter, M.K. Mother argues¹ (1) that substantial evidence does not support the court’s orders and (2) there was insufficient evidence to show there were no reasonable means by which B.M. and M.K. could have been protected short of removal. We conclude that the court’s dispositional orders are supported by substantial evidence and thus affirm them.

¹ Father “incorporates by reference and joins in” Mother’s arguments. He makes no separate arguments.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petition*

On June 3, 2011, M.K. was placed in a licensed foster home after she was found to be living with father in the home of K.F., who had inflicted serious injury on two other children in her care. At the time, M.K.'s sister, B.M., lived in Mother's home.

On June 11, 2011, the Solano County Department of Health and Social Services (Department), filed a Welfare and Institutions Coder section 300 petition² as to M.K. and B.M. When the petition was filed, B.M. was three years old and M.K. was one year old.

The petition alleged that Father had a pattern of leaving M.K. with a caretaker (his mother, K.F.) Father should have known it was not safe because, among other things, Father had been abused as a child by this same caretaker, K.F. In addition, two other children who were cared for in K.F.'s home were subjected to serious, ongoing physical abuse. This abuse included striking the children with belts, pulling out the children's hair, pulling back the children's thumbs, tying them up with ropes, subjecting them to significant food restriction and bathing them in cold water as a form of punishment. While under the care of K.F. and her partner, P.P., M.K. sustained scratches on her legs. The petition alleged that Father's "failure to make safe arrangements for [M.K.]'s care and supervision places her at risk of physical and emotional harm."

With regard to Mother, the petition alleged that she failed to protect M.K. by allowing Father to live with K.F. The Department also found Mother's house to "extremely cluttered and filthy." "[P]iles of garbage, household items, dirty dishes, moldy food, and debris" made it difficult to safely move about the house. In addition Mother kept a "very large snake in a cage that could be opened and assessible [sic]" to M.K. Mother's inattention to the safety issues presented by her home, "places [M.K.] at substantial risk of physical and emotional harm."

The Department's petition also noted that both Mother and Father had, in the past, been referred to various community services to assist them in resolving their "family

² All further statutory references are to the Welfare and Institutions Code.

problems” had failed to “fully resolve” these problems, which resulted in “continued unmet developmental and emotional concerns and safe living environment for the children.” The petition alleged that as a result, M.K. was “at substantial risk of physical and emotional harm.” A petition containing the same allegations was filed as to B.M.³

B. *The Detention Report*

In a detention report filed as to both B.M. and M.K., the Department described the “serious injuries” to the two children in the home of K.F., where M.K. was living. Among other things, the children had sustained “bruises, rope burns and a variety of marks in addition to being very thin, pale, with dark circles under their eyes as though they were not sleeping, and a chunk of hair was missing” from one of the children’s heads. The children described other acts of abuse and the Department noted that the house was cluttered and dirty.

Father explained that he and M.K. had moved in with K.F., who is his mother, about a month earlier. Because he had a full time job he left M.K. in K.F.’s care. He stated he had not noticed the abuse of the two children, with the exception of some “marks” on one of them a few days earlier.

M.K. was reported to be a “chubby and a very passive baby. She presented as though she had not had a bath in days and she was wearing soiled clothing. There is dirt in the folds of her neck. She presented with several lateral scratches on both of her legs. She does not present as though she is particularly bonded with any of the adults in the home.”

Mother’s former foster mother had “concerns that [Father] abused Mother when they were a couple in an ongoing domestic violence relationship.” In addition, Mother was reported to be in a relationship with her father-in-law, who is Father’s father. The father-in-law was described by Mother’s former foster mother as having “anger management issues.”

³ B.M.’s father had failed to provide care and support for her and his whereabouts were unknown at the time the petition was filed. He is not a party in this matter.

Mother told the Department social worker that although she was in K.F.'s home regularly to care for M.K., of whom she apparently does not have custody, she had "absolutely no knowledge" of the substantial abuse that had been and was being inflicted on the other two children in the home where M.K. was staying. She referred to the other two children as "those kids"—children for whom she was not caring, and who were not her own children. When Mother was asked if she believed Father should continue to have custody of M.K., she "responded that she believes [Father] is a good father and she prefers that [M.K.] is returned to his care right now."

The Department social worker also spoke to several members of Father's extended family, who reported that Father had been abused by both of his parents as a child. The abuse included "being punched in the face by his mother, strangled to the point of him passing out and throwing him against the wall." One family member stated that Mother and Father "often laugh about their own neglectful actions of the children and feel that they are above the law."

Father was described as "evasive and not forthright." He also seemed to the social worker to be "somewhat delayed, detached and reacts as though he does not care about much." Father expressed concern for M.K., but did not seem fatherly and M.K. did not seem bonded to him. Mother too seemed to the social worker to be "delayed and aloof." After the children were removed from the homes of Father and Mother, Father moved into the home Mother shared with his father.

Mother's home was described as "filthy" with "toys, clothing, garbage and a variety of household items strewn throughout the small home." B.M. was sleeping in the bedroom shared by Mother and her father-in-law. A large snake in a cage in the living room was accessible to B.M. Mother told the social worker that she did not know how to clean the house, although the Department had intervened eight months earlier due to the same problem.

B.M. was a "bright and content little girl," "obviously bonded to her mother."

The Department noted four prior Department referrals with regard to Mother and Father. The first occurred on June 17, 2009 and involved an inconclusive allegation of

“general neglect” after B.M. was born due to the fact that Mother did not follow up on urgently needed medical attention. Mother was described as having “untreated medical issues,” specifically “Bi Polar [sic] disorder, Paranoid Schizophrenia and ADHD.” In the second referral, substantiated allegations of general neglect and emotional abuse included a filthy and unsafe home, sexual activity between Mother and her father-in-law in B.M.’s presence, domestic violence in the presence of B.M. which involved police response, and caged dogs in the back yard. Referrals were made to various agencies to assist mother and the children. The third referral involved unfounded allegations of general neglect and physical abuse by Father. The fourth referral also involved unfounded allegations of general neglect by Father.

The Department enumerated a number of “risk factors” of harm to the girls: “several prior CWS referrals involving neglect and emotional abuse by both parents of both children, the childhood abuse of both parents by their caretakers, possible mental health concerns of both parents, disclosure of the [abuse of the children in K.F.’s home], injuries on [M.K.’s] legs, dirty house and the lack of remorse and concern for the other children that are being abused in the presence of [M.K.]” In the Department’s opinion, the risk of further neglect by Mother and Father was “high,” and there was also a “moderate” risk of physical abuse.

The Department recommended that M.K. and B.M. be detained, “pending further investigation and until such time [as] the parents demonstrate they will participate in services designed to evaluate and serve the children’s needs, learn adequate parenting skills, mental health evaluations and engage in mental health services and demonstrate they can maintain safe and protective homes for their children.” At a hearing on June 8, 2011, the juvenile court followed the Department’s recommendations and ordered M.K. and B.M. detained. With regard to B.M., the court gave the Department social worker the discretion to permit Mother unsupervised and overnight visits, at a minimum of one a week. A contested jurisdictional hearing was set for June 29, 2011. B.M. and M.K. were placed together in foster care.

C. *The Jurisdictional Report*

On July 11, 2011, the Department filed its jurisdictional report as to both girls in anticipation of the jurisdictional hearing set for July 13, 2011.

The Department described a conversation with Mother in which she stated that M.K. was in Father's custody, that she (Mother) was allowed to see her whenever she wanted and that M.K. visited Mother at Mother's house about once every two weeks. Mother stated that she had "chronic kidney stones, heart problems, bladder and kidney infections and is in chronic pain." She again denied being aware of the physical abuse perpetrated by K.F. on the two children living in K.F.'s home. She reported that she had asked Father why he didn't tell her about the abuse taking place in that home, and he told her that he didn't want her to worry. Mother told the worker that she was going to get a restraining order against K.F., who had been harassing her, and that she would like to have joint visits with Father "for the sake of the children."

Mother acknowledged that her house had been in an unclean state when the dependency petition was filed. She told the Department social worker that she had been removed from her own parents for the same reason, and no one had ever taught her how to clean. She was not particularly concerned with the snake in the house: its cage had "eight locks on it" and the snake never came out of the cage. She blamed B.M. for the mess in the house, most of which, she stated, was due to B.M.'s toys, which B.M. never put away.

In a conversation with a Department social worker held on June 22, 2011, Mother said she thought she was on a waiting list for services because Father had told her they were on this list. She did not have access to any of the services to which she had been referred after previous Department interventions and stated that she did not believe that she was required to use these services. She had no concerns about either B.M. or M.K., and therefore, had no need to use any of the Department services to which she had been referred.

Father told the Department worker that he believed the petition had been filed by an aunt who had lied to the Department. He had left M.K. with his mother and sister,

who watched M.K. in the mother's home. He denied any knowledge of the physical abuse occurring at his mother's house, and stated that the scratches on M.K.'s leg were self inflicted due to a skin condition. He stated that one of the children had not, in fact, had her hair pulled out, but instead her foster parents had shaved her head. He believed any injuries sustained by the children had been inflicted by one of the other children. He also stated that the children weren't his concern. He had recently moved out of his mother's house and said he had done so because he did not want M.K. "to become a lesbian like his mother." He denied that he had moved because of the alleged abuse in his mother's home.

Father was not—and had never been—concerned with the condition of Mother's home in terms of safety and cleanliness. He said that the Department social worker was lying about the condition of Mother's house.

In a conversation with a Department social worker on June 22, 2011, Father stated he had never used the services of the Vallejo Family Resource Center to which he had been referred after earlier interventions, because "there was nothing open." He stated that there had been no free parenting classes "ever." He had called Child Haven Services to register every Monday in the past and "was on a list."⁴ However, at a certain point they had "worked things out" and he did not believe they needed this service any longer. He also did not feel he needed parenting services and, in any event, "nothing was available."

One of the two children living in Father's mother's home reported that Father had used a belt to strike him "as a form of punishment." He had done this "a lot." The other child reported that Father had also struck her. This child also stated that they had cut M.K. with a knife on one occasion.

In its evaluation of M.K. and B.M., the Department concluded that Father and Mother were unable to protect them. Its investigation after the dependency petition was

⁴ The Department social worker spoke to the intake coordinator at Child Haven who stated that she "definitely didn't get a call from [Father] every Monday."

filed revealed that Father apparently had a role in the physical abuse of the children living in his mother's house. Neither Father nor Mother had addressed their "individual parenting styles, the cleanliness of the home, and they appear to have unmet mental health needs which have resulted in unmet needs for the children."

The Department also noted that Mother and Father were consistently attending visits with M.K. and B.M. and the visits were going well. Both parents communicated to the Department "an interest in 'doing whatever it takes' to have the children returned to their care." The Department noted with approval Mother's willingness to protect herself and her children from what Mother described as harassment by Father's mother by obtaining a restraining order. Mother also told the department that she would ask her father-in-law to move out of her house.

The Department believed that the cleanliness issues could be addressed and after "additional work" by Mother, B.M. and M.K. could be returned to her.

As for Father, the court noted that he was "without a place to stay," and had not participated in any services. He had not devised a day care plan for M.K. and did not accept responsibility for his role in the abuse that had taken place in his mother's home. According to the Department, Mother and Father "appear to be in denial about their equal responsibility of ensuring the care and protection of the children."

The Department recommended continuing the out of home placement for B.M. and M.K. and the provision of services to help Mother and Father address the Department's concerns.

At a hearing on July 13, 2011, the matter was set for a jurisdictional hearing on July 29, 2011. At the time of the July 13 hearing, minor's counsel reported that B.M. "has a black eye," and Father was concerned that she "continuously gets hurt in the foster care." He also described a prior incident in which B.M. had a similar scratch to her eye.

On July 22, 2011, the Department filed an Addendum Report to its Jurisdiction Report filed on July 11, 2011, in which it reported the results of its investigation into the allegations of harm to B.M. while in the foster home placement. The Department learned

that, on July 14, 2011, the foster parents' five-year-old daughter was carrying M.K. and dropped her down several stairs.

Both M.K. and B.M. were seen by a pediatrician. The foster parent and a Department social worker were present. The pediatrician concluded that B.M. did not have a black eye. With regard to a slight scratch by B.M.'s eye, the pediatrician concluded that the swelling, watery eyes and discoloration were not uncommon because the skin next to the eye is sensitive. He "did not provide any medications, noted no concerns and did not recommend any follow up care."

The pediatrician observed "raised marks above [M.K.'s] eye near her temple and near her cheek." The pediatrician was not concerned about the injury, but also spoke to the foster parents' five-year-old daughter and told her never to carry a baby, and particularly not down stairs.

Earlier, the foster parents reported that they believed Mother and Father had followed them and their children to their house. Mother and Father denied doing so, and the Department warned them not to contact the children except during approved visits.

The day of the visit to the pediatrician, the foster parents notified the Department that they no longer wished to be a placement option for B.M. and M.K. Plans were made to move B.M. and M.K. to a new foster home on July 25, 2011.

The Department also reported that Father had been named as a perpetrator of physical abuse to the children in his mother's home and that an active felony warrant had been issued on July 15, 2011.

D. *The Jurisdictional Hearing*

After a number of continuances, the jurisdictional hearing was held on November 9, 2011. At that time, Mother submitted the matter to the court. The court then found true the allegations in the petition as to Mother, as amended by the Department and counsel.

With respect to Father, counsel called the Department social worker responsible for interviewing the two children who were abused in the home where father was staying with M.K. The social worker testified about the substantial abuse suffered by the

children. The Department also called a social worker who interviewed these children. She testified that one of the children told her that Father spanked her with a belt. A third Department social worker who was the dependency investigator in M.K. and B.M.'s case, and who prepared the jurisdictional report, also testified. She testified that Father and Mother did not obtain services to which they had been referred because of "noncompliance." Father told her that he was moving out of his mother's home not out of concern for M.K.'s safety, but because he did not want M.K. "to become a lesbian like his mother."

The matter of jurisdiction as to Father was submitted after this hearing and a ruling deferred until the contested dispositional hearing, which was scheduled for November 17, 2011. At that time, the juvenile court sustained the allegations contained in the petition as to Father as those allegations were modified by the court and counsel.

E. *Dispositional Report*

A dispositional report was filed on August 23, 2011. It recommended that both children remain in out-of-home placement. More specifically, it concluded that, because Mother had not shown sufficient ability to make independent decisions about parenting the two girls, her ability to protect them remained questionable. Indeed, Mother acknowledged to one of the Department social workers that she did not stand up for herself; this was confirmed by that worker, who opined that Mother was very timid and submissive in her dealings with others. The worker believed that these problems were possibly related to Mother's cognitive delays or other untreated mental health issues.

Additionally, the social worker expressed considerable concern regarding the "conditions of the family home." These very poor conditions, the worker concluded, may have been due to Mother's "own experiences as an abused/neglected child, her personal physical health and possible mental health issues. . . ."

The social worker also noted that Mother had told her that, in fact, her "old foster mother" had completed for her the Parent Questionnaire Mother had been required to submit. Further, the worker noted that Mother was unable "to write the day, date and time down" when filling out documents, and expressed some concern as to whether

Mother was “able to read and write.” Mother also had difficulty directly answering questions from the social worker, and often allowed Father’s father, with whom she was then living, to do so for her. And even when Mother answered herself, the answers to essentially the same questions posed by one of the social workers were “rarely consistent.”

Regarding Father, the report noted that, although Mother had become pregnant with M.K. soon after meeting him, she “endured verbal and physical abuse” from him and, thereafter, “became close” to Father’s father with whom, thereafter, “she remains in a relationship with.”

The social worker noted that Father had been the perpetrator of “significant physical abuse” of the two children living with his mother and clearly was in need of parent workshops and/or anger management classes. He had, however, just obtained a personal residence, but one the social workers had not seen it. This fact did not, however, change the risk to M.K. should she be transferred into his care. The Department expressed “no concerns regarding the parent-child interaction” it had observed between Father and B.M., and recognized Father’s desire to “reunify with his daughter.” However, it noted others had “voiced alarm” regarding Father’s inappropriateness when providing care for his daughter and it did not recommend unsupervised visits.

The dispositional report concluded that, at that time, “the risk of abuse/neglect for both minors continues to be high and safety concerns continue to be present. This level of risk is based on the young age of the girls, [Mother’s] possible cognitive limitations and her inability or unwillingness to follow through on the recommendations to assist in this area.” The social worker also noted her concerns about the fact that Father’s father lived with Mother and would live with her two very young daughters if they were returned to Mother. Concerns were also expressed regarding the condition of the home, the fact that Mother’s live-in boyfriend’s son was the father of one of the girls who would be living with Mother, and his personal “lack [of] insight and understanding.”

The report noted that, although both parents “want to care for their children,” there “has been a significant strain between [them] in the past and it is possible neither parent

is forthcoming with all of the needed information” More specifically, the report noted that neither parent had “taken responsibility for any actions related to the removal of the girls,” beyond Mother’s acknowledgment of her home being “in an unclean state.” Because of these considerations, the Department was “unable to recommend return of the minors to their mother at this time, given [that] her ability to assure the safety and protection of her young daughters remains in question, as does the health/safety of the home.” Further, the Department stated that “continued out of home care is determined to be in [the two daughters’] best interest at this time” with the goal of “reunify[ing] both girls together with a supportive and stable parent in a healthy and safe home.” Nevertheless, “[b]oth parents have separate, additional work to do before this is a reality.”

F. *Dispositional Hearing*

The dispositional hearing in this matter was held on November 17 and 18, 2011. On the first day of the hearing, the parties stipulated that Mother had had supervised visits with M.K. for several months starting in October 2010. She had taken B.M. along for those visits, which included age-appropriate activities for the two girls. The stipulation also included the facts that Mother had taken “excellent care of both” and that her home was then at an “acceptable standard.”

The sole witness at this hearing was the Department social worker assigned to M.K. and B.M.’s cases. This same social worker also prepared the dispositional report. She testified that some of her concerns about Mother’s care for the children had been partially “alleviated” at that point because Mother appeared to have a better understanding of the need to keep both her and her two daughters safe. However, the social worker added that Mother’s understanding was still somewhat “limited” because, among other things, of her “hesitancy or inability to understand or participate in safety planning with the kids” More specifically, the social worker testified that she was concerned about Mother’s revelations of “a history of domestic violence with” Father. Because of that history, Mother thought that she, B.M. and M.K. were “unsafe” around him. However, she had never followed through “in getting restraining orders” against

him and “doesn’t follow through on keeping herself safe” nor did she have a real understanding of the safety risks involved in the entire matter.

On the affirmative side, the social worker testified that Mother seemed very attentive and loving toward both of her daughters during her supervised visits with them.

Regarding Father and his potential custody of either of the girls, the social worker stated that her concerns derived from Father’s involvement in the abuse of other children in the home he was sharing with M.K. and his mother, the family “dynamics” between the two parents, and the sexual involvement of Father’s father with Mother. She added that another concern was that Father himself had, apparently, been abused by his parents, because in such circumstances “[i]t increases the risk that they will” then abuse their own children.

In this connection, counsel for Father submitted, and the court received into evidence, a psychological evaluation of Father confirming that he had been physically and emotionally abused by both his parents and, as a result, suffers from Major Depression Recurrent, Moderate and Schizoid Personality Disorder and an impairment in interpersonal functioning. Thus, the report concluded, Father’s ability to successfully parent is linked to his treatment for depression.

The social worker herself also submitted an additional “developmental assessment” for the two girls. It stated that M.K. was found to be below average in gross and fine motor skills and visual reception, to have low receptive language skills, and average expressive language abilities. B.M. was found to have age-appropriate skills in fine motor and visual reception, but below average skills in receptive and expressive areas of language development.

On the second day of the hearing, November 23, the court announced its decision and orders regarding further proceedings and actions. It stated that it had “decided to follow the recommendations” of the Department and “continue the detention of both children.” With regard to reunification services, it authorized “the Department to give the mother overnight visitation” but ordered the Department to come back to the court should it propose different recommendation regarding placement. The court set the

matter for a 90-day interim review on “that specific subject.” It also ordered Father’s visits—with M.K. only—to be increased to twice a week, although still supervised, with no discretion given the Department to allow unsupervised visits by him.

Mother filed a notice of appeal of the detention and dispositional orders with regard to M.K. and B.M. on December 12, 2011. Father filed his notice of appeal as to the jurisdictional and dispositional orders regarding M.K. on November 28.

III. DISCUSSION

A. *Orders Appealed From*

Father’s notice of appeal purports to be from both the jurisdictional and dispositional orders. However, in his briefs, Father does not contend that the jurisdictional order contains any error. Rather, in his opening brief he simply “joins in the arguments raised by mother on appeal.” Mother, of course, appeals only from the dispositional order. Therefore, in this appeal we consider only the issues Mother raises with regard to the dispositional order.

B. *Mootness*

On May 31, 2012, the court ordered M.K. and B.M. placed in Mother’s custody. (See Request for Judicial Notice.) The Department now argues that this order renders Mother’s appeal moot. We disagree.

The law is clear that “[t]he question of mootness must be decided on a case-by-case basis. [Citation.] An issue is not moot if the purported error infects the outcome of subsequent proceedings. [Citation.]” (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769.) On appeal, the court determines “whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404; *In re Dani R.* (2001) 89 Cal.App.4th 402, 404; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547; *In re Kristin B.* (1986) 187 Cal.App.3d 596, 605.)⁵

⁵ Because the court’s order returning the children to Mother says nothing about Father’s right (or lack thereof) to have custody, partial custody, or even expanded or unsupervised visitation rights with M.K., the appeal is clearly not moot as to him.

Here, the Department’s recommendations regarding, in particular, whether Mother should be permitted custody of M.K. and B.M., its apparent intention to work in that direction, and the “closeness” of its evaluation of Mother’s competence to handle her children, indicates that that this matter could well be back in front of the juvenile court at any time. Therefore, we will consider whether that court’s dispositional determination regarding both children was correct.

C. *The Dispositional Orders*

1. Father

Our standard of review of the court’s dispositional order is whether substantial evidence supports it—i.e., supports it under the “clear and convincing” standard of proof mandated by section 361, subdivision (c). (See, e.g., *In re James R.* (2009) 176 Cal.App.4th 129, 134-135; *In re Henry V.* (2004) 119 Cal.App.4th 522, 528-529 (*Henry V.*); *In re Megan S.* (2002) 104 Cal.App.4th 247, 250-251 (*Megan S.*.) As the *Megan S.* court stated: “The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to all appeals. If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings.

[Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary conclusion.

[Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]” (*Megan S., supra*, at pp. 250-251.)

We conclude that there was substantial evidence supporting the juvenile court’s dispositional determination regarding both children as to Mother and Father.

We turn first to Father and his daughter, M.K. As we noted above, Father has raised no issues pertinent to himself in his appeal. Rather, he has simply incorporated Mother’s arguments into his appeal. Mother’s briefs do not address any issue unique to father regarding the dispositional order of the juvenile court regarding M.K.

Nevertheless, even if Father had appealed from the court's dispositional order as to M.K., the trial court was clearly correct in its order limiting Father to two supervised visits per week. The record contains a great deal of evidence—far more than the evidence required to meet the applicable standard of review—that supports the court's dispositional order as regards Father and M.K. The court noted that Father “knew or should have known” of the abuse of other children witnessed by M.K. in her earlier living arrangement with him and his mother. The social worker testified that there was evidence that Father had, himself, been abused by his father, i.e., the person Mother was then living with, making this a “risk factor.” In such an instance, an “[i]ndividual's history of their own personal abuse increases [the] risk to their own children.” Pre-hearing reports by the Department detailed more of the details regarding the abuse of other minors, the arrest warrant issued for Father regarding the same, and the conclusions that “the risk to M.K. will remain unchanged” and the “risk to the girls remains high.” All of this clearly constitutes substantial evidence supporting the juvenile court's dispositional order.

2. Mother

Substantial evidence also supports the courts dispositional order as to Mother. According to a Department social worker, Mother still had a “limited understanding” of the importance of keeping both herself and her children safe. She also testified that there was still an “ongoing risk to the children” based on their “young age” and noted Mother's “hesitancy or inability to understand or participate in safety planning with the kids, as well as assess risk to herself and the children,” including among other things her failure to “follow through in getting restraining orders and . . . keeping herself safe.” In sum Mother simply did not have a “deep understanding as to the safety risks in this case.”

With regard to M.K., Mother is incorrect in stating that the court removed M.K. from her custody. As the Department points out and Mother concedes in her reply brief M.K. was not in Mother's custody when she was detained. Rather, at the time of her detention, M.K. was living with her father and the latter's mother, that mother's partner, and two children of the latter (both of whom, as noted above, were subjected to abuse

necessarily witnessed by M.K. and in which Father participated). M.K. was not, therefore, “removed” from her mother’s care.

Under section 361.2, subdivision (a), the juvenile court might have placed M.K. in the care of Mother, but could not do so if it found “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).) And a finding of “detriment” under this statute need not be based on “parental conduct” but, rather, on “all relevant factors” which might “determine if the child will suffer net harm.” (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1425.)

In this case, there was clearly substantial evidence that the placement of M.K. with Mother might well result in M.K. suffering “net harm,” i.e., the evidence discussed above relating to Mother’s lack of understanding and perception as to the risks her two children were necessarily exposed to because, among other things, of her “hesitancy or inability to understand or participate in safety planning with the kids, as well as assess risk to herself and the children.”

The same result obtains regarding B.M., who was living with Mother at the time of her detention. Although partially repetitive of what has been summarized above, that evidence includes:

1. The recitations in the June 2011 Detention Report that, when the Department’s agent went to Mother’s home, she found it “filthy. There are toys, clothing, garbage and a variety of household items strewn throughout the small home. The kitchen is piled high with garbage and dirty dishes. The bedroom that [Mother] and Mr. [K.], Sr. [i.e., Father’s father] sleep in is shared with three (3) year old [B.M.]. The bedroom is also piled high with trash, clothing and household items. There is a large snake in a cage in the living area. The cage has two latches that are easily assessable [sic] to [B.M.], who could conceivably open the cage. [Mother] explained that she does not know how to clean the home, despite [Child Welfare Services] intervening in regard to dirty house and intervention in the past eight (8) months.”

2. The July 11 Jurisdiction Report regarding both B.M. and M.K., which recited, among other things, that M.K. had been “exposed to [Mother’s] sexual activities with [M.K.’s] grandfather.”

3. The Disposition Report, filed on August 23 concluded that Mother’s ability “to protect her young daughters remains questionable” because “she has not shown an ability to make independent personal and parenting decisions” due to, apparently, her “possible cognitive delays or possible untreated mental health issues.” That report concluded that, although the “Department remains optimistic, cautious and hopeful that the children could be returned to [Mother’s] home soon . . . [a]t this time, the risk of abuse/neglect for both minors continues to be high and safety concerns continue to be present. This level of risk is based on the young age of the girls, [Mother’s] possible cognitive limitations and her inability or unwillingness to follow through on the recommendations to assist in this area.”

4. The same report also expressed concern regarding B.M.’s safety and care because of the presence in the household of Mother’s boyfriend, Father’s father, who was under “investigation as it relates to his parenting of his own son . . . combined with the fact that it is his home and property that was found in the concerning condition that it was at the time [B.M.] was removed.” Both Father’s father and Mother, the report stated, “appear to lack insight and understanding as to what, exactly, a clean and safe home consists of. They each require constant prompts and directives which appear directly related to their cognitive abilities or untreated mental health issues.”

5. The social worker who testified at the November 18 hearing regarding Mother’s ability and skill at child care noted concerns about “the young age of the children, [Mother’s] hesitancy or inability to understand or participate in safety planning with the kids, as well as assess risk to herself and the children. And that’s also related to historical patterns of not keeping herself and the children safe” because of “some incidents where [B.M.] and [M.K.] were unsafe around [M.K.’s] father, as well as incidents where she was unsafe. She has indicated she would get restraining orders as to

adults . . . but she doesn't follow through with that. She doesn't follow through in getting restraining orders [nor] with keeping herself safe.”

6. The social worker's testimony at the same hearing concerning Mother's “hesitance to participate in the safety plan” because “she does not have a deep understanding as to the safety risks” Regarding the same issue, at an earlier point in that hearing, the social worker characterized Mother's understanding of the “importance of keeping herself and her children safe” as “limited.”

Appellant Mother maintains that this—and other similar evidence in the record—does not constitute substantial evidence supporting the juvenile court's dispositional findings regarding B.M. for several reasons.

First, she argues that the evidence presented in both the pre-hearing reports and at the November 18 dispositional hearing did not meet the statutory standard of “clear and convincing evidence,” citing section 361, subdivision (c)(1). But although that statute does, indeed, specify that standard of proof, the law is clear that, in reviewing a dispositional order such as the one before us, we “do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]” (*Megan S.*, *supra*, 104 Cal.App.4th at pp. 250-251.) Despite this clear rule, Mother asks us to review the evidence in the light most favorable to her and to ignore the substantial evidence supporting the juvenile court's order. Mother has not carried her burden under the applicable standard of review.

Second, Mother argues that the evidence of the unsanitary conditions in her home was vitiated by a stipulation entered into at the November 18 hearing that “the condition of [Mother's] home is currently at an acceptable standard.” That stipulation does not undermine the substantial evidence adduced at the dispositional hearing regarding Mother's many problems regarding both of her daughters because, most basically, that

stipulation was entered into before the testimony of social worker, who summarized the substantial hazards at Mother's home at the time of the hearing. Moreover, continuing problems regarding providing for the health and safety of her two children as detailed in the July and August 2011 reports summarized above was not limited simply to the condition of Mother's home.

Third, Mother argues that neither child had been exposed to the abuse inflicted on the two other children living in M.K.'s former home and that, at the time of the hearing, neither child was in that unsafe environment and that, therefore, this circumstance did not justify the dispositional order regarding B.M. This does not change the facts, relied on the court in its order, that Mother stated that she was unaware of the serious and ongoing abuse inflicted on the two children living in the home, despite the fact that the signs of physical abuse were quite clear and that Mother had been regularly present in the home. In addition, our review of the record indicates that the juvenile court did not rely on this factor alone in removing the girls from Mother's care. Even if it had, and even if this factor was not relevant, substantial evidence still supports the dispositional order as to B.M. as we have noted above.

Next, Mother argues that the record contained positive evidence of her interactions with and expressions of concern for her daughters. Although the record does contain such evidence (which was perhaps the reason for the court's May 2012 order restoring custody of both children to Mother), the fact that there had been some progress shown by Mother in mid-2011 regarding her care for both of her daughters does not undermine the substantial evidence of her long-lasting and severe problems regarding their care and, specifically, their safety.

Finally, Mother cites *Henry V.*, *supra*, 119 Cal.App.4th at pages 525, 528, in support of her argument that the juvenile court erred in its dispositional order because it did not consider "reasonable alternatives" to the removal of both B.M. and M.K. from her care. *Henry V.* is inapposite for several reasons: that case involves the removal of a child from his home because of a single instance of possible physical abuse of the minor. (*Id.* at pp. 525-528.) Further, the juvenile court had combined the jurisdictional and

dispositional proceedings, and our colleagues in Division Three of this court were not convinced the trial court applied the “clear and convincing” standard of proof to the disposition hearing. (*Id.* at pp. 530-531.) Here, in contrast, this case involves long-standing and well-documented problems with both parents regarding the safety and basic care of their daughter, M.K. and Mother’s other daughter, B.M. It is also clear that the juvenile court recognized and applied the “clear and convincing” standard of proof.

IV. DISPOSITION

The juvenile court’s jurisdictional and dispositional orders regarding both B.M. and M.K. are affirmed.

Haerle, J.

We concur:

Kline, P.J.

Lambden, J.