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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re N.C., et al., a Person Coming Under
the Juvenile Court Law.

DEL NORTE COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant.

A138503

(Del Norte County
Super. Ct. No. JVSQ13-6017, JVSQ13-
6018)

J.B. (Mother), mother of N.C. and M.C. (the Twins), born in January 2007, appeals from dispositional orders continuing the Twins in the custody of their father, D.C. (Father). The Twins are subjects of a custody dispute in marital dissolution proceedings between Mother and Father. Mother accuses Father of sexually molesting the Twins, and at one point she absconded with them. The court determined in these dependencies that the Twins would be safe with Father pending further investigation into the family's circumstances and the allegations against him. Mother's objections to this result have no merit, and we affirm the jurisdictional and dispositional orders.

I. BACKGROUND

On February 21, 2013, the Twins were removed from Father's home and placed in emergency foster care after the Del Norte County Department of Health and Human

Services (the Department) received a referral alleging that N.C. had touched her vagina and said, “daddy is doing it again.” In the Twins’ interview by Department social workers, N.C. “did not disclose specific inappropriate touching” by Father, but M.C. reported that Father had touched her vagina the day before. There were ongoing custody disputes between the parents in family court, and the Department reported 32 referrals for the family since July of 2008. Several of the referrals alleged sexual abuse by Father, but the Department had been unable to verify those allegations. The Department was “extremely concerned about the continued emotional harm the children have suffered as a result of the contentious custody dispute between [Mother] and [Father]. . . . Both parents have instilled fear in the children . . . that they will not be able to see the other parent ever again.”

The dependency petitions included failure to protect allegations (Welf. & Inst. Code, § 300, subd. (b))¹ stating that: “[Father] has failed to follow through in scheduling medical or psychological treatment services for the child” (b-2); and “[Mother] has made numerous allegations of sexual abuse, physical abuse and general neglect of the child by [Father]. As a result of those allegations, the child has been subjected to numerous interviews and examinations, including a SART (Sexual Assault Response Team) examination” (b-3).

The petitions alleged serious emotional damage to the Twins (§ 300, subd. (c)), stating: “The child is caught in the middle of a contentious custody dispute. The parents are unwilling to protect the child from their own negative actions and comments as well as [those] of other adults in the homes” (c-1); “On or about December 21, 2013, law enforcement responded to [the Twins’ school] for report of a physical altercation between [Mother] and [F]ather’s girlfriend, Julie The altercation occurred in the presence of [M.C.]” (c-2); “The child is afraid to talk about what goes on in the home of her father, because she will get into trouble” (c-4); and “The parents have been involved in a

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

contentious custody dispute during which time [Mother] absconded with the children” (c-5).

The petition for M.C. alleged sexual abuse (§ 300, subd. (d)) as follows: “On or about January 21, 2013, the child disclosed that her daddy touched her privates with his thumb” (d-1); and “On or about October 2, 2012, the child reportedly told her mother, ‘daddy touched me with his finger’ ” (d-2). The sexual abuse allegations as to N.C. were: “On or about January 17, 2013 [N.C.] disclosed that ‘daddy touched me down there’ and pointed to her privates. [N.C.] stated daddy took her underwear off and was unable to verbalize how daddy touched her” (d-1); and “On or about October 20, 2012, child’s sibling stated to her mother, ‘daddy touched me with his finger’ ” (d-2).

At the February 26 detention hearing, Judge LaCasse appointed counsel for Mother and Father. Judge Follett, who was presiding over the divorce case, had previously appointed counsel for the Twins. The social worker explained that “when we get a new detention hearing scheduled, and it’s before Judge Follett, he generally assigns attorneys at that time.” The court considered the immediate issue for consideration to be “whether I detain the children, leave them where they are, in the care, custody and control of the Department” The court found that “continued residence, based on the reports, in the home of the parents is contrary to the children’s welfare.” The court ordered that the Twins be removed from Father’s home and that “[t]emporary placement [be] vested with the Department” The court set a jurisdictional hearing.

A minute order was filed stating that Judge Follett would preside at the jurisdictional hearing, but Mother moved to disqualify him for bias (Code Civ. Proc., § 170.6), and the motion was granted. The case was referred to the Judicial Council for assignment.

The Court Executive Officer wrote a memorandum dated March 8, 2013, to the case files stating: “Thursday, March 7, 2013 I received a call from Ceci from County Counsel. She stated that the Department had received confirmation that the allegations of sexual abuse had been unfounded in the above entitled case and they wanted to return the children to the father. I told her I would call her back. [¶] I called Judge Leonard

LaCasse and informed him of this information. He stated that if the attorney for the minors wanted a hearing on this subject, he was available for a telephone conference tomorrow. He stated if the attorney for the minors was ok with this information, to tell the Department to return the children forthwith. I spoke with . . . the attorney for minors. He stated he did not want a hearing and was fine with the children being returned to the father. [¶] I thereafter called Ceci at County Counsel and informed her of this information.”

Before the March jurisdictional hearing, Mother filed approximately 100 pages of documents, many from the divorce case, concerning her parental fitness and Father’s alleged child abuse. According to the declaration of psychologist Kathie Mathis, the Twins’ primary residence was changed from Mother’s home to Father’s home after a custody trial in December 2011, based largely on a custody evaluation report by Charles Herbelin. Mathis was critical of Herbelin’s report, as was psychiatry professor Michael Stone, who interviewed Mother and reviewed documents involving the family. In a May 2, 2012 letter to Mother’s attorney in the divorce case, Stone wrote: “Numerous documents I reviewed attest to the high likelihood that both twins were, at various times and in a variety of ways, molested by their father.” Shannon Aten, a friend of Mother’s and a retired nurse, declared that M.C. reported on June 16, 2009, that Father “poked [her vagina] hard with his finger.” M.C.’s vagina was red and swollen, and Aten believed that Father had penetrated it with his finger. Arlene Kasper, a court appointed visitation monitor, and Doug Lewis, a friend of Mother’s, declared that M.C. reported on January 10, 2013, that she and Father had touched N.C.’s vagina.

The Department’s jurisdiction report recommended that “the allegations of [s]exual [a]buse against [Father] be dismissed and that the [Twins] be returned to the home of [Father],” with provision of maintenance services to Father and reunification services to Mother. The report stated that the Twins were “currently with [Father] on an extended visit, pending the next court date of March 15” The report indicated that the Twins were interviewed by Napa County Sheriff’s Detective Pacheco on March 5, that they did not disclose any inappropriate touching by Father, and that Pacheco did not

believe Father was sexually abusing them. Department social worker Salatnay had “interviewed the girls on numerous occasions over the past several months . . . [and] the responses received from the girls during interviews do not match what the referral is alleging, making it extremely difficult to substantiate the allegations that are reported.”

The report said Mother incorrectly believed that Father had four relatives working in the Department. Mother had “surround[ed] herself with people who are ill informed and making up blatant lies about those involved in ongoing investigations, thereby calling into question any and all credibility on Mother’s behalf.” The report indicated that Mother had been charged with child abduction (Pen. Code, § 278) on March 10, 2012, and attached a February 3, 2012 protective custody warrant for the Twins, stating that they were last known to be in the company of Mother, and a February 8, 2012 Del Norte County “Wanted” flyer for the arrest of Mother and her father, B.B. (Maternal Grandfather) for absconding with the Twins. Despite a recommendation that sexual abuse allegations be dismissed, the report concluded with a blanket recommendation in support of all of the petitions’ allegations.

Mother testified and called eight other witnesses at the March 15 jurisdictional hearing. Retired nurse Aten and visitation monitor Kasper testified as they had in their declarations about the evidence of sexual abuse they witnessed in June 2009 and January 2013. Kasper also testified that she saw N.C. put her fingers in her vagina in February 2013, and heard her say that Father “locks the door and makes me do it.” Mother testified that M.C.’s statement in June 2009 was her first indication that Father was molesting the Twins. Another incident occurred around Thanksgiving Day of 2012, when the Twins reported that Father took N.C. to his bedroom, locked the door, and hurt N.C. with his finger. Deborah Cain testified that she observed bruising on M.C.’s inner thigh when she monitored the Twins’ visits with Mother in 2012. John Burke, another monitor of Mother’s visitation with the Twins in 2012, testified that M.C. told him that N.C. “is pulled out of her bed [at Father’s house] a lot.”

Mother testified that she had successfully helped raise another man’s children for 13 years, and Gloria Goodman, who worked for Mother from 1997 to 2001, testified that

Mother had been a loving parent to those children. Maternal Grandfather, who had retired as the chief criminal investigator in the Humboldt County District Attorney's Office, testified that he and Mother took the Twins to Humboldt County in January 2012 because they could not arrange local SART examinations for them. He acknowledged that Mother kept the Twins for several weeks thereafter before turning them over to law enforcement.

After the evidence was presented, the court had the following exchange with counsel for the Department and the Twins: "The Court: . . . [The Twins] are being molested or they are being coached to suggest that they are being molested, so in either event don't I have to take jurisdiction? Isn't that the conundrum? [¶] [Twins' Counsel]: Yep. [¶] [Department Counsel]: That's the Department's position, your Honor. [¶] The Court: Yeah, I mean if they are being molested, I've got to intervene. The court has to intervene. [¶] If they are not being molested but all this stuff is being orchestrated to suggest that they are and that he's some kind of monster, then I have to intervene. [¶] [Department Counsel]: That's right. [¶] The Court: That's where we are. . . . [¶] [Twins' Counsel]: It's fishy enough to me that you need to intervene."

Salatnay testified that the Department was proposing that Father have temporary custody of the Twins, and the court confirmed that the Department was "comfortable" with that arrangement. When the Maternal Grandfather argued that the Twins would be safer with Mother, the court responded: "[A]t the end of the day, I have to rely on the Department's judgment. And I don't always agree with them. I think you would believe that. [¶] But I think, in this case, I'm going to." When Mother's counsel argued for a foster placement, the court responded: "[The Twins] are bonded to their father, they are bonded to their mother. They love both of their parents. [¶] Taking them away from both of them is doubling their trauma. [¶] There is some risk that, you know, one of them is being molested. I don't—I don't think it's very significant risk myself . . . when I dig into it. But I'm still keeping an open mind on it. But I don't see it there yet, and there's no way I can really know."

The court sustained all of the allegations in the petitions, and set the dispositional hearing for April 12.

The Department's disposition report reiterated the recommendations that the Twins be declared dependents, that Father receive family maintenance services, and that Mother receive family reunification services. At the jurisdictional hearing, the court had asked whether resources were available to retain a forensic psychologist or psychiatrist to examine the twins. Father advised that Dr. Jacqueline Singer had been appointed and paid to perform psychological evaluations in the divorce case. The court indicated that it was familiar with Singer, found her work to be thorough, thought she could provide helpful information, and hoped that her report could be expedited. The Department's proposed case plan directed Mother and Father to participate in a family assessment with Singer "in order to determine the specific needs of the family so they will be able to establish a positive co-parenting plan and they will be able to work with the Department to identify objectives that could be met by service providers." The disposition report stated: "[I]t is the Department's opinion that until the Family Assessment is completed by Dr. Jacqueline Singer, the direction of the case is unknown." The goal of the case plan was to have the Twins "[r]emain [h]ome."

Mother and Father were married for almost three years, and the allegations of sexual abuse began around the time of their divorce, when the Twins were 18 months old. Although Mother believed that the Twins were in danger with Father, they "appear[ed] comfortable" in Father's home, and the Department believed they were safe there. The twins appeared to be "developmentally on track," but their kindergarten teacher reported that "their academics are slipping and [M.C.], who had been a leader in class does not want to even participate and her interest in reading has decreased as well. . . . [T]he girls adjusted quickly in foster care but now that they are placed with their father, their behavior both academically and socially is slipping."

The report described Mother as "an intelligent woman who has been successful as a small business owner." Robin Harte-Lehman, who had observed many visits between Mother and the Twins, reported that Mother was "very good" with them, but "guid[es]

[their] responses to multiple questions with what seems to be a goal of the girls telling her something that can be heard by the visitation supervisors as harmful to [Father].” Father was described as “a mature, independent man who has helped raise five older daughters and now has two grandchildren who visit his home frequently.” Father thought “it would be best if the girls only visited their mother in a supervised setting. He is concerned that she is so desperate that she or someone close to her will take the girls and run.”

Early in the April 12 dispositional hearing, the court made clear that it had not made a finding as to whether the Twins had been molested: “I have a substantial reservation in my mind as to the truth of these alleged sexual molestation issues. But I haven’t made a specific finding on that one way or the other. And I don’t need to, to take jurisdiction over the children. [¶] . . . [M]aybe I was a little ambiguous about that last time. . . . I’m not persuaded by the proof that was provided to me the children are being molested. That doesn’t mean it didn’t happen. But irrespective of that I still think the court needs to intervene in this case. I think the department was acting appropriately when they brought this case forward.”

Mother’s counsel reported at the outset of the hearing that he had just been handed a document “in the nature of a Marsden kind of thing.” The document, a declaration by Mother, was critical of counsel’s performance. The declaration cited parts of the disposition report allegedly showing that the Department was biased against Mother. Mother declared: “I understand that the court would be skeptical of any parent criticizing the Child Welfare Services in a dependency proceeding. However, the father and his family are very wealthy and influential members in Del Norte County (they are personal friends of the sheriff, his mother is a former county supervisor, and they have friends and family all working within the Department of social Services and Child Welfare Services in particular).” The court read the declaration and allowed it to be filed, but excluded hearsay statements in the document.

Social worker Ward, who authored the disposition report and case plan, testified that Mother had very good visits with the Twins. Ward said that she was working with Father to address the Twins’ educational performance, and that results from standardized

tests were pending. Father had addressed a problem identified in the petitions by arranging counseling for the Twins. Ward stated: “Our plan is to update the case plan. We would like to have the evaluation completed by Dr. Singer, first. Given some direction from that, we would like to go forward with updating the case plan. That is our plan. At this point I believe . . . this will suffice.” Ward was asked, “Do you really feel the court needs to go forward at all or could the family court take care of this?” She answered, “I believe it’s a tough question. . . . There’s something there that’s within this family that we don’t know what it is. . . . But I believe at this point we need to have a clearer direction.”

After hearing Ward’s testimony, the court stated: “[T]his is not a standard garden variety 300 case where mom and dad are on meth or beating each other up every night and the children are traumatized. Those cases, as hard as they are, are easier for the court and social worker because there’s a problem and a plan that addresses the problem. This is a difficult case in a lot of ways. [¶] But I appreciate the difficulty of a social worker having to come up with a plan that addresses . . . the problems that [led] to dependency in the first place without knowing actually what we’re dealing with, sort of like squeezing jello and trying to hold it. So because of that I’m going to adopt the plan.” Counsel for the Twins requested that Mother receive increased visitation, Ward advised that the Department agreed with the request, and the court gave the Department discretion to grant it. The court adopted the Department’s recommendations, said that it would keep “a close watch” on the cases, and set an interim review hearing for June 28 and a six-month review for October 11.

II. DISCUSSION

A. Structural Error

Mother contends that two structural errors require reversal of the jurisdictional and dispositional orders irrespective of any prejudice to her. (See *In re James F.* (2008) 42 Cal.4th 901, 914 [structural errors are “ ‘defects affecting the framework within which the trial proceeds’ so that they ‘defy analysis by “harmless error” standards’ and can never be harmless”]; see also *In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1115

[structural errors have been found in dependency proceedings].) The first alleged structural error was Judge Follett's appointment of counsel for the Twins before the detention hearing. The second was Judge LaCasse's decision to allow the Twins to return to Father's home before the jurisdictional hearing. Neither of these decisions was structural error, and if any error at all were harmless.

Children subject to dependency proceedings are generally entitled to be represented by counsel (see *In re Celine R.* (2003) 31 Cal.4th 45, 60, fn. 3), and parents have standing to assert their children's right to counsel "because independent representation of the children's interests impacts upon the [parents'] interest in the parent-child relationship" (*In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 565). Thus, it is possible a parent could be prejudiced by failure to appoint counsel for a child, or by a delay in making an appointment. But it is difficult to see how a parent would conceivably be prejudiced by a *premature* appointment, because in that event the child will be represented from the outset of the case. If the parent has an objection to the appointment of a specific lawyer, he or she can raise it at the first hearing. Thus, any error associated with the possible premature appointment of counsel cannot be deemed to have disrupted the structural framework of these cases.

Mother asserts, and we will accept for purposes of this opinion, that Judge Follett had no authority to appoint counsel for the Twins before the detention hearing, even if he intended to preside at that hearing. But any error was clearly harmless. The Department advises and Mother does not dispute that the attorney appointed for the Twins was one of those in the superior court's rotation for appointment to represent parents or children in dependency cases. No grounds for objecting to the appointment are claimed. Thus, it made no difference whether the appointment was made at or before the detention hearing.

As for the other alleged structural error, we will assume that Judge LaCasse deprived Mother of due process when he returned the Twins to Father's home a week before the jurisdictional hearing without giving her an opportunity to object. But the error was not structural because its potential prejudice was transitory and the substance was revisited and reconsidered by the dependency court. (*In re James F.*, *supra*, 42

Cal.4th at p. 914.) On this record, we conclude the error was harmless beyond a reasonable doubt because Mother had a full and fair opportunity to litigate the placement at the jurisdictional hearing and lost. (*In re Mark A.* (2007) 156 Cal.App.4th 1124, 1146 [*Chapman* harmless error standard applies to constitutional errors in dependency cases].)

B. Judicial Bias

Mother claims that the alleged structural errors she identifies showed that Judges Follett and LaCasse were biased. The claim is manifestly without merit. Since Judge Follett’s only involvement in the case was appointing counsel for the Twins and granting Mother’s motion to disqualify him, any bias he may have had did not affect the outcome. His acts evinced no bias in any event.² Judge LaCasse made at most a harmless error. No “ ‘extreme facts’ ” are presented that would mandate his disqualification (*People v. Freeman* (2010) 47 Cal.4th 993, 996), and his ruling exhibited no bias.

C. Jurisdictional Findings

Mother maintains that the jurisdictional findings against her must be reversed because the court predetermined the issues before hearing her witnesses, and relied on matters that were outside the record or speculative. She challenges the findings on two of the allegations on the ground that they unlawfully penalized her for making reports of child abuse.

(1) *Prejudgment of the Issues*

Before witnesses were called at the jurisdictional hearing, Mother’s counsel stated: “We feel the father’s a danger. We have a lot of witnesses out there ready to testify. [¶] We don’t think that there’s any reason that my client should be offered any kind of services. She’s doing what she can, and I think we hopefully will be able to show that.” The court responded: “Well, I think you need to understand there’s so much obvious turmoil in the lives of these two children that *this court is going to take jurisdiction*, so I would be very careful about saying the mother doesn’t want services or doesn’t need services, because *I’m going to take jurisdiction*. [¶] So put on any evidence

² Mother’s request that we take judicial notice of excerpts from the record in Mother and Father’s divorce case where Judge Follett was presiding is denied.

that you want.” (Italics added.) Mother argues that the court’s remarks showed that it had predetermined the jurisdictional issues.

The balance of the hearing transcript shows that it did not. After listening to the testimony of numerous witnesses, the court suggested that further evidence was required, asking “does any party in interest want to, for example, cross-examine the Napa County Sheriff’s Investigator?” The court inquired about resources for a forensic psychologist and about Father’s living arrangements. The court invited, and actively participated in, arguments from the parties on the jurisdictional issues. The record as a whole shows that the court did not impermissibly prejudge the jurisdictional issues. (See *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 590–591 [record “in its entirety” refuted claim that judge had predetermined child custody issue]; *In re Marriage of DeRoque* (1999) 74 Cal.App.4th 1090, 1097, fn. 2 [in “proper context,” judicial remarks did not demonstrate prejudgment].)

(2) *Matters Outside the Record or Speculative*

Before evidence was introduced at the hearing, counsel for the Twins said, “I am not at all convinced that there’s sexual abuse going on. I’m not saying there isn’t, but I’m not really entirely convinced. [¶] . . . [¶] It’s clear to me that there’s so much turmoil going on that the kids are in a high state of anxiety. Wherever the truth lies, they are in a very high state of anxiety.” The court said, “[W]e seem to have a plague of concern, not just in this case, but we had a case just yesterday where . . . we saw a *Facebook article of how to coach your children*, which buzz words to use, this sort of thing. So it’s really hard to get to the bottom of these things, I understand that.”

After testimony was taken, the court entertained argument from Maternal Grandfather. The court then confirmed with counsel that the Department continued to believe that the allegations of sexual abuse were unfounded, and told the Maternal Grandfather: “I understand that you sincerely believe that your . . . grandchildren are in danger and I respect that. If I were in your position, I would feel the same way, but you’ve been around. This is not your first rodeo either. [¶] Yesterday I had one of these cases where one of the parties had, I think a *12-page email from some internet thing*

about how to set up your husband so that you can get child custody, and it's on and on and on in detailed information on . . . *how to coach the kids*, how they should refer to their pee-pee and owie and that sort of thing. It would turn your stomach. [¶] So we're not God here. We don't . . . know who is telling the truth and who is not.”

Mother gleans from the foregoing remarks that the court based its jurisdictional findings against her on matters outside the record, but the statements merely showed the court's concern that advice was available on how to coach children to report sexual abuse. The court did not find that Mother had coached the Twins to make such reports. The record shows that the court, the Department, and counsel for the Twins thought that such coaching was one possible explanation for the Twins' behavior, not that coaching had necessarily occurred. (Cf. *People v. Steele* (2002) 27 Cal.4th 1230, 1267 [triers of fact properly bring their life experiences to bear “regarding evidence subject to varying interpretations”].)

After evidence was received at the jurisdictional hearing the court said, “Kids explore themselves. Kids have a fear. My kid was afraid of gophers when he was five years old. Nobody even talked about gophers in our house. We didn't even have a lawn for God's sake, and he was obsessed about going outside, about gophers. What was that? How do you sort that stuff out? [¶] . . . [¶] . . . [A]nd there's so much stuff on T.V. and . . . you don't know what your kids are seeing.”

Mother characterizes these remarks as improper speculation, and objects to the court's reliance “upon its personal experience with its son about a fear of gophers.” But the court was using this anecdote of personal experience to merely point out that the Twins' behavior was not necessarily attributable either to abuse by Father or coaching by Mother. (Cf. *People v. Steele, supra*, 27 Cal.4th at p. 1267.) Again, no error or prejudice is apparent.

(3) *Allegations B-3 and C-7*

Mother argues in her supplemental brief that the jurisdictional findings as to allegations b-3 and c-7 violated Penal Code section 11172. Allegation b-3 (failure to protect) stated: “[Mother] has made numerous allegations of sexual abuse, physical

abuse and general neglect of the child by [Father]. As a result of those allegations, the child has been subjected to numerous interviews and examinations, including a SART (Sexual Assault Response Team) examination.” Allegation c-7 (serious emotional damage) likewise stated: “The child has been subjected to numerous interviews and examinations, including a SART (Sexual Assault Response Team) examination at the request of [Mother] who has made numerous allegations of sexual abuse by [Father].”

Penal Code section 11172, subdivision (a) provides: “No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article . . . Any other person reporting a known or suspected instance of child abuse or neglect shall not incur *civil or criminal liability* as a result of any report authorized by this article unless it can be proven that a false report was made and the person knew that the report was false or was made with reckless disregard of the truth or falsity of the report” (Italics added.)

Mother cites no authority for her argument that the challenged findings resulted in “civil liability” within the meaning of Penal Code section 11172, and we are not persuaded. In deciding whether jurisdiction is warranted in a dependency case, a court should be able to consider whether a child has suffered serious emotional damage because one parent has accused the other of sexual abuse, whether or not such allegations were willfully or recklessly false.

D. Continuing the Dispositional Hearing

Mother contends that the court abused its discretion when it denied her request to continue the dispositional hearing. The request was made in a declaration she filed at the hearing, which stated that her appointed counsel was providing inadequate representation, and sought the continuance so she could obtain another attorney.

Mother’s request did not comply with section 352, subdivision (a) which requires that requests for continuances be filed at least two court days before the hearing, unless, as did not happen here, “the court for good cause entertains an oral motion for continuance.” Continuances are discouraged in dependency cases (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 604), and appointed counsel told the court that he was

prepared to proceed. The court had several good reasons to deny the continuance, and there was no abuse of discretion.

E. Substantial Evidence that the Twins Were Safe With Father

Mother argues: “The juvenile court’s implied finding at the dispositional hearing that return of the girls to [Father’s] care, without any conditions, would not create a substantial risk of detriment to their physical or emotional well-being must be reversed because it was not supported by substantial evidence.” We disagree.

The allegations of sexual abuse by Father were unsubstantiated. Father told the Department that the Twins “seem to be doing fine; they are eating and sleeping well and play together without acting sad or depressed or worried about things.” The disposition report stated that Father “appear[ed] to love and care for the girls and he responds appropriately to their needs or requests when observed by the Department.” The Department reported that the Twins “appear[ed] comfortable in their home with [Father],” and the Department believed that the Twins were safe there. The Department’s opinion could be considered particularly reliable in this instance because, according to the detention and jurisdiction reports, it had numerous meetings with Mother and Father, and numerous interviews with the Twins, before the cases were initiated. The foregoing evidence was sufficient to support the court’s decision.

Mother contends that the court could not find that the Twins would be safe with Father because the court had sustained the sexual abuse allegations in the petition. This argument elevates form over substance because the finding that the sex abuse allegations were sustained was plainly inadvertent. The Department recommended that those allegations be dismissed, but forgot to remove them from the recommended findings it furnished to the court. The court did not catch the mistake and adopted the recommended findings, but made it clear at both the jurisdictional and dispositional hearings that it was not making any determination that sex abuse had transpired. We reject the substantial evidence argument.

F. Sufficiency of the Reunification Plan

Mother contends the disposition must be reversed because “the Department’s plan to make a plan as to the reunification of [Mother] and the children was insufficient.” “The Legislature has given juvenile courts broad discretion to fashion reunification orders designed to address the problems that have led to a dependency proceeding.” (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1229.) The orders need only be reasonable, and tailored to the family’s particular circumstances. (*Ibid.*) Given the risks and uncertainties present here, it was not unreasonable as a matter of law for the Department to adopt a reunification plan that provided Mother with visitation, ordered her to participate in a forensic evaluation, and deferred further measures pending the outcome of Mother’s evaluation.

Mother argues that the court had a duty “to ensure that a plan for [her] involved the removal of the girls from [Father’s] care and provided her with assistance in regaining custody of the girls. A plan to make a plan *after* Dr. Singer had evaluated the situation and made a recommendation . . . was insufficient.” This argument fails because it is based on the false premise that “the court had found that [Father] had actually sexually abused the girls.”

G. Incompetence of Counsel

Mother contends that her trial counsel was incompetent for not advancing the arguments Mother makes on appeal concerning structural errors, judicial bias, and inadequacy of the case plan. As we have explained, these arguments lack merit. Thus, it is not reasonably probable that the outcome would have been different if the arguments had been raised in the trial court. (*In re Emilye A.* (1992) 9 Cal.App.4th 1695, 1711 [different result must be reasonably probable].)

Mother contends that the Twins’ attorney was incompetent in 12 different respects. We will assume for purposes of this opinion that Mother has standing to challenge the performance of Twins’ counsel, but again find no grounds to reverse. Apart from alleged failures to properly investigate the cases, counsel’s claimed derelictions all relate to Mother’s failed arguments on appeal. Nothing suggests that,

with additional investigation, counsel could have uncovered information that likely would have changed the result. No prejudice is established.

III. DISPOSITION

The jurisdictional and dispositional orders are affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.