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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.T., A Person Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

N.F.,

Defendant and Appellant.

B240466

(Los Angeles County  
Super. Ct. No. CK74200)

APPEAL from orders of the Superior Court of Los Angeles County. Anthony Trendacosta, Commissioner. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and Tracey F. Dodds, Deputy County Counsel, for Respondent.

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Mother N.F. appeals from the dependency court's orders: (1) adjudicating that her daughter, A.T., was at risk of emotional harm from mother's conduct in connection with false allegations that the father and not someone else had sexually abused the daughter; and (2) placing the child with the father. We affirm both orders because they are supported by substantial evidence.

### **FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

Mother N.F. and father K.T. are the parents of A.T., who was born in February 2005. The Los Angeles County Department of Children and Family Services (DCFS) became involved with A.T. and her parents beginning in May 2005, when father was arrested on a domestic violence charge. In all, 10 referrals concerning the minor were made to DCFS, but only one led to dependency proceedings: a 2008 petition alleging that father sexually abused the minor after the child began acting out sexually and supposedly told mother that father touched her genitals. However, father said the child told him that her cousin James – who was mother's nephew – was her molester. The dependency court in that case took jurisdiction of A.T., but instead of naming father as the molester, found that someone unnamed in the household had molested A.T. Jurisdiction in that case ended in September 2009.

In October 2011 DCFS filed another petition for A.T. based on new allegations that father was sexually abusing the girl. (Welf. & Inst. Code, § 300, subs. (b), (d).)<sup>2</sup> According to mother, A.T. told her that during her visits with father he had taken her into the bathroom and digitally penetrated her anus. According to mother, A.T. had been acting out sexually by undressing and trying to kiss boys. The police interviewed A.T. She said that on September 25, 2011, while at dinner with father at a local restaurant, she went to use the restroom. Father walked in to the restroom whispered into her ear, and

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<sup>1</sup> As with most dependency cases, the factual and procedural history is lengthy and complicated. We have tailored it as best we could to meet the issues raised on appeal.

<sup>2</sup> All further section references are to the Welfare and Institutions Code.

forced his hands inside her pants. One hand rubbed her vaginal area, and the other her buttocks, through her underpants. She claimed father put his finger inside her anus three times. She screamed and ran out of the bathroom. A.T. reported another incident, on October 2, 2011, that occurred when she used the bathroom at father's house. When she was done, father walked in and put his hands down her pants. However, A.T. changed her story during that interview, and claimed the second incident happened while at the County Fair with father.

By the time of the adjudication hearing in January 2012, certain key facts were undisputed: A.T. had been sexually abused by someone and was acting out at school and at home through behavior that was sexually suggestive or otherwise inappropriate.<sup>3</sup> Whether father was the abuser was in dispute, but conflicting and contradictory statements by both mother and A.T. suggested that he was not, and that instead mother was either coaching her daughter to lie, or, at a minimum, subtly cuing her to do so.

Dependency Investigator Lashawn Lenbird prepared a written report of her October 25, 2011, interview of A.T. Lenbird believed the girl's statements had been rehearsed because she used words and phrases that were not age appropriate. When the same questions were asked again, however, minor's responses were more in character for a child her age. A.T. told Lenbird that she had weekly psychological counseling sessions with Dr. Julie Banks. Mother would attend those sessions and A.T. said, "They don't want me talking to my dad." According to A.T., mother and Banks say "he's bad." When asked if she thought her father was bad, A.T. replied, "[n]o, I mean yes, I don't know."

Lenbird asked A.T. about her relationship with father. The girl answered, "He does nasty stuff." When asked what she meant, the girl said, "He touches me inappropriately." Asked what that meant, A.T. answered, "I don't know, but it's something really nasty." Lenbird asked the girl how she knew it was something really

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<sup>3</sup> As evidenced in a DCFS report prepared for the adjudication hearing, this behavior included spitting at other children, pulling down her own pants in the restroom while in front of other children, and crawling under the desk.

nasty if she did not know what it meant. A.T. gave the non sequitur answer, “My mom is not lying, because I tell her so.” When asked what she had told mother, A.T. said, “I told her that my dad does nasty stuff.” Asked to describe what father had done, the girl said, “He put his finger in my butt and my mom don’t lie.” Lenbird asked A.T. why she would say mother did not lie. The girl answered, “People think that my mom lies, but she don’t.”

Lenbird then asked A.T. about the incident where father placed his fingers inside her anus. According to the minor, she was at a restaurant with her father and had gone to use the restroom. While doing so, father came into the restroom and put his finger in her anus. When asked the name of the restaurant, the girl could not remember. When asked whether she had been alone with father at the restaurant, the girl said father’s girlfriend had been with them. When Lenbird asked whether she went to the bathroom alone or someone had accompanied her, A.T. answered, “My dad’s friend took me to the bathroom, but my mom don’t lie.” A.T. also said that the girlfriend was in the bathroom with her, but she could not recall whether the girlfriend was present when father entered the restroom.

Lenbird asked A.T. how it felt when father put his finger inside her anus. The girl answered, “I don’t know. I never remember the things that my dad did to me, that’s why my mom tells me. She reminds me of the nasty things that my dad did to me, because she says that I have a bad memory.” Asked if she ever remembered father putting his fingers in her anus or “pinoni,” the girl replied, “No, but my mom said that he did when I was two or three years old.”<sup>4</sup> Asked whether father did that to her during their last visit at the restaurant or the carnival, the girl said, “No, but my mom said he did. She has to remind me, because she said that I am forgetful.”

A.T. told Lenbird that she missed father, but “I’m not supposed to.”

Lenbird interviewed mother, who claimed that A.T. told her about father putting his fingers in the girl’s anus during a restroom visit. Asked what she did upon hearing

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<sup>4</sup> A.T.’s caregiver instructed the girl to use the term “pinoni” when referring to her vagina.

that, mother said she called her lawyer. Asked why she had not called the police, mother said, “the court told me not to make any more complaints.” Mother refused to provide her address so DCFS could assess her home, stating she was afraid father would then have access to her address.

When asked by Lenbird if there was a possibility that someone other than father had molested A.T., mother said no. She based this on nobody else having access to A.T. like father did. She denied that her nephew James had molested A.T. and suggested that father had fabricated that allegation.

Lenbird also interviewed father, and described him as “forthcoming” with information. Father said that he had been fighting to be part of A.T.’s life since the girl was three weeks old. According to father, mother told him that if he ever wanted to see A.T. again, he would have to marry her. “Once she had the baby she went all crazy on me.”

According to father, he took A.T. to the County Fair, along with his sister and niece, and it was those two females who took A.T. to use the restroom. As for the supposed incident at the restaurant, he was with his girlfriend, who took A.T. to the restroom. Father denied any inappropriate conduct with A.T., and described their relationship as positive.

Lenbird spoke with the Long Beach police detective assigned to the case. According to the detective, the department had received many reports concerning abuse allegations against father during the previous three years. A thorough investigation was performed in 2007, including interviews with father’s girlfriend and sister, whose stories were consistent with father’s version. The detective doubted that father had abused A.T., and was concerned that mother did most of the talking while a rape exam of the minor was performed. According to the detective, A.T. made statements that seemed inappropriate for a child her age, including, “I want monitored visits for my dad,” and, “My dad touched my vagina, my dad touched me inappropriately, are you going to arrest him?” The detective believed that mother was “guarded and overly anxious to get the father arrested.”

Lenbird's report stated that both she and the police believed there was only a slim chance that father was sexually abusing A.T., due to both the lack of evidence and the many inconsistencies in the child's statements, along with A.T.'s acknowledgment that mother was reminding her about the supposed molestations by father. Although the child's sexual behavior made it likely someone else was sexually abusing her, DCFS reported that mother's refusal to accept the possibility that the abuser was someone other than father, combined with mother's refusal to allow access to her home for an assessment, limited mother's ability to protect the child, placing her at further risk of future sexual abuse and emotional harm.

Finally, the report recommended that A.T. find another psychotherapist because Dr. Banks appeared to be siding with mother and was "not necessarily working toward the goal of reunifying the family." Instead, the report said, therapy "by a neutral third party that is willing to work towards the goal of reunification and preserving the family ties" would be in A.T.'s best interests. Three days after Lenbird's report was filed, DCFS filed an amended petition adding counts against mother for coaching A.T. to falsely accuse father of molesting her. (§ 300, subds. (b), (c).)

Mother and father testified at the adjudication hearing. Mother claimed that after visits with father on September 25, 2011, and October 2, 2011, A.T. told her that father took her into the restroom and put his finger inside her rectum. During the past four years, A.T. exhibited sexual acting out behavior, including undressing and walking around in the nude, lying on the floor and simulating intercourse, and putting her own fingers inside her vagina and rectum. A.T. also claimed father urinated on her and licked her nipples. She denied ever leaving A.T. alone with her nephew James, and also denied ever telling the girl she was forgetful.

Father testified and denied any of the abuse mother had mentioned. He never took A.T. to the bathroom and all of his visits with the child occurred in public places. Father testified that A.T. told him a few years earlier that James lay on top of her, rubbed against her, and inserted his thumb in her rectum.

A.T. testified under direct examination by mother's lawyer that she recalled going to the fair with her dad and her two aunts. She did not have to use the restroom while at the fair and in fact did not go to the restroom at all. She could not recall a single instance where father took her to the bathroom during one of their visits. She denied telling anybody other than mother that father had "touched her booty." Asked when she told her mom about that, A.T. replied, "After my visit. Because I wanted to." Asked again whether father touched her "booty" during the visit, A.T. said, "Oops." The court asked A.T. if she had just said anything else other than oops. The girl said, "Oops. I shouldn't have said that." When mother's lawyer started to ask why not, A.T. said, "I know I'm going to leave well enough alone." A.T. also testified that she had a make-believe "play brother" named Solomon.

DCFS argued that the petition should be sustained because the evidence made it clear that A.T. had been sexually abused, but mother was having the child fabricate the allegations against father to intentionally damage A.T.'s relationship with father. Not only had this already caused A.T. emotional harm, she was still at risk of more harm because she had made no progress through her current psychotherapy treatments. Counsel for A.T. agreed, arguing that the court should take jurisdiction of the child to prevent her "from being utilized as a weapon by her mother as a result of . . . mother's ongoing family law disputes with father." Father joined those arguments. Mother's counsel argued that mother had an honest belief in what A.T. told her and had no motive to lie.

The trial court said the facts were somewhat similar to those present in *In re Christopher C.* (2010) 182 Cal.App.4th 73 (*Christopher C.*), which affirmed dependency jurisdiction in a case arising from a bitter family law dispute where the children were coached to make false accusations against their parents and each other, and the dependency court found it difficult to determine what was true. Based on *Christopher C.*, the dependency court put forth three possible factual theories concerning A.T.'s accusations: (1) father was the molester; (2) father was not the molester, but mother was "poisoning the child by deliberately alienating her"; or (3) the child's mental and

emotional deficiencies led her to construct a fantasy world where “she is creating chaos in her life when she thinks she’s creating calm by feeding into her mother’s own theory.”

The court then pointed to objective evidence that A.T.’s stories were not true, including the fact that father’s account that adult females accompanied the girl to the restroom had been corroborated by those females. The court also found that A.T. was “severely emotionally deficient and suffering from emotional damage and injury,” as manifested in part by her sexual acting out behavior. The question for the court was whether that was contributed to or caused by either or both parents. Acknowledging that substantial animosity from the family law dispute played a part in this, the court said that “mother’s inability . . . to appropriately address it, and creating this – the messages that this child has picked up that plays into that. And it has put this child not where she should be, which is making very good progress with Dr. Banks, but not making any progress at all.” Based on that, the court amended the allegation against mother under section 300, subdivision (c) to state that A.T. was suffering, and was at substantial risk of suffering, “further serious emotional damage as evidenced by her untoward aggressive behavior including self abuse and sexually acting out. The custodial parent, the mother, is not capable of providing appropriate care for the child, placing the child at risk of severe harm.” On that basis, the court assumed jurisdiction of A.T., and the remaining counts against mother and father were dismissed.

The court then ordered an independent psychological evaluation of the child and her parents in preparation for making a disposition order, concluding that a neutral expert was the best choice to advise the court on that issue. The matter was then continued for that evaluation to proceed, and Dr. Michael Ward was later appointed to conduct the evaluation.

The disposition hearing was held on March 27 and April 3, 2012. On March 27, the court clarified for Dr. Ward what it found at the adjudication hearing. The court said it “should be clear enough that in the absence of my finding that the father is or was a perpetrator of sexual abuse, he was not because I did not find that by the evidence in either instance. [¶] Perhaps the court was inartful in both instances, but I do want to

make it clear that I do believe that the child was molested, and there's certainly evidence of that fact by her acting out in a way that is not appropriate for a child of her age. And it is certainly clear to the court that her relative was a perpetrator of sexual abuse on her. And that, in the court's view, explains, at least as far as I'm concerned, the reasons why she's acting out sexually in the way that she does." The matter was then continued to April 3.

A DCFS report prepared for that hearing began by noting that A.T.'s behavior at school had become worse than ever, and was "out of control." This behavior included pushing one child to the ground, which raised a large bump on the injured child's head, and touching another child inappropriately. A.T. had been living with her maternal aunt, and school officials reported that they were having trouble getting the aunt to respond to their concerns. When the school phoned the aunt to come take A.T. home on days when she caused problems and had been suspended, the aunt would not do so. The school asked the aunt to sign a consent form so the school could speak with Dr. Banks, but the aunt did not sign the form. The school then mailed the consent form to mother, but she denied receiving it. When the school handed mother the form, instead of signing it right then, she took it with her to sign, but never returned it.

The report also quoted excerpts from Dr. Ward's evaluation.<sup>5</sup> These included statements: questioning whether A.T.'s months of therapy had "improved anything, given that we are dealing with the same allegations and basic situation that existed 4 years ago?"; that "[s]omeone in authority, either officially or unofficially, needs to tell this child and her parents what we think is and has been going on here."; and that "this may be one of those rare cases where the Court might have to at least consider, for at least some period of time, possible changes in placement and therapy for this child, if there is to be any realistic chance at true, appropriate, and ultimate case resolution." The

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<sup>5</sup> Dr. Ward's 38-page report is not in the record. However, both the DCFS report and the dependency court quoted from it, and neither party has raised the full report's absence from the record as an issue on appeal, or challenged the accuracy of the quoted excerpts.

DCFS report stated that based in part on this, as well as its recommendations in previous reports, it believed it was not in A.T.'s best interests to continue therapy with Dr. Banks.

A last minute information document submitted to the court stated that DFCS denied a home assessment for the maternal aunt because of "applicant qualifications, cooperation and compliance." It concluded by stating that DCFS agreed that A.T. should be released to father. The court also received a letter from Dr. Banks, stating that it was in A.T.'s best interests to remain in therapy with her, and that A.T.'s accusations against father had been "consistent and unwavering."

Lenbird testified at the disposition hearing that she believed A.T. had suffered severe emotional distress while in mother's care. She based this on her belief that a household member had sexually abused A.T., but mother would not allow access to her home to assess its suitability and determine who lived there. Lenbird also pointed out A.T.'s testimony that mother had to remind her that father had molested her.

Mother testified that DCFS had been to her home in 2009, and denied that James molested A.T.

After hearing argument from the parties, the court began by reminding the parties about its earlier clarification for Dr. Ward that father was not sexually abusing A.T. "So something is wrong. And what's wrong is that none of the therapists have really come to grips with the issue. They've been sort of treading water." The court then read excerpts from Dr. Ward's report, including some of those included in the DCFS report. Reading between the lines of those excerpts and others, the court concluded that Ward was clearly implying that A.T. had been coached. The court said it did not believe mother had made enough progress in her own therapy to prevent her from coming back with other allegations. The same was true of the therapy A.T. was getting from Dr. Banks. In short, the court said, "it's clear that in four years or however long she's been going to Dr. Banks she's getting worse."

Although A.T. was bonded with mother and loved her, the court believed mother's intentions were misguided. On the other hand, A.T. appeared to be bonded with father as well, and there was no evidence that he had the kind of psychological difficulties that

would lead to the conclusion he molested the minor. As a result, the court found by clear and convincing evidence that keeping A.T. in mother's home was contrary to her welfare, and posed a substantial danger to her physical and mental well being. The court then placed A.T. with father, and ordered father to attend individual and parenting counseling. Mother was awarded monitored visitation with A.T., but the court gave DCFS the discretion to liberalize the visitation arrangements if warranted.

## **DISCUSSION**

### 1. *Substantial Evidence Supports the Adjudication Order*

The dependency court assumed jurisdiction of A.T. under subdivision (c) of section 300, which applies if the child “is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian . . . .” We review the dependency court's findings under the substantial evidence standard. We must affirm the court's findings unless, after reviewing the entire record and resolving all conflicts and drawing all reasonable inferences in favor of the order, we determine there is no substantial evidence to support them. Substantial evidence is evidence that is reasonable, credible, and of solid value. (*Christopher C.*, *supra*, 182 Cal.App.4th at p. 84.)

Mother contends the dependency court's factual findings were limited to A.T. having an imaginary brother and her use of someone else's middle name, but made no findings that showed the child had suffered the type of emotional damage required by section 300, subdivision (c). She also contends there was insufficient evidence that she was the cause of A.T.'s emotional problems. (See *In re Alexander K.* (1993) 14 Cal.App.4th 549, 557 (*Alexander K.*) [jurisdiction under subdivision (c) requires proof of causation].) We disagree.

First, specific factual findings are not required in dependency proceedings, and it is enough if the court finds that the child was a dependent under specified subdivisions of

section 300. On appeal, we may make implied findings from the record of the proceedings, and will affirm them if they are supported by substantial evidence. (*In re Steve W.* (1990) 217 Cal.App.3d 10, 27.) Second, the dependency court found more than mother contends at the jurisdictional hearing. The court found that A.T. had in fact been sexually abused, that her accusations against father were false, that mother was essentially promoting those false accusations, and that her severe emotional harm manifested itself through her sexual acting out behavior. In addition, the evidence showed that A.T.'s counseling sessions with Dr. Banks were not helping the girl, and were in fact based on the false premise, unchallenged by Dr. Banks, that father was sexually abusing the child. When combined with evidence that she was acting in a sexually suggestive manner at school, walking around nude, lying on the floor and simulating intercourse, and putting her own fingers inside her vagina and rectum, we believe there was sufficient evidence that A.T. suffered the requisite emotional harm.

This case is therefore unlike *In re Brison C.* (2000) 81 Cal.App.4th 1373 (*Brison C.*), which mother cites to support her contention that there was insufficient evidence of severe emotional harm. In *Brison C.*, the child was at the center of a bitter and extended custody battle involving unfounded competing claims that the father molested the boy and that the mother physically abused him. A petition was sustained under section 300, subdivision (c) based on the harm being caused by the custody battle, but the Court of Appeal reversed because, at the time of the hearing, the boy was in fact doing well with no real signs of severe emotional damage, and the parents had recognized their conduct was wrong and were in therapy to correct it. (*Id.* at pp. 1379-1383.) Here, by contrast, mother did not recognize that her accusations against father were false, or that her coaching or subtle cues to A.T. that father had abused her was wrong. Therefore, there was ample evidence that the girl had suffered severe emotional harm and remained at risk of future harm.

As for whether mother's conduct caused A.T.'s emotional harm, the court specifically addressed that issue, and found that mother's subtle cues or messages that father was molesting A.T. meant mother could not appropriately address A.T.'s

emotional problems, and put A.T. in a position where instead of making progress in therapy, she was not making any progress at all. Therefore, this case is unlike *Alexander K.*, *supra*, 14 Cal.App.4th 549, which mother cites to support her contention that there was no evidence her conduct contributed to A.T.'s emotional harm. In that case, the Court of Appeal saw no evidence in the record that any conduct by the parents played a role in their child's severe emotional harm. (*Id.* at pp. 559-560.)

## 2. *The Disposition Order Is Supported By Substantial Evidence*

The dependency court removed A.T from mother's physical custody under section 361, subdivision (c)(3), which applies when the court finds by clear and convincing evidence that the minor "is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward . . . herself or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of . . . her parent or guardian."<sup>6</sup> Although the dependency court must find that removal is warranted by clear and convincing evidence, we still apply the substantial evidence standard of review to those findings. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 916.)

Mother contends there was insufficient evidence to support such a finding because: (1) there is insufficient evidence A.T. suffered severe emotional damage; (2) at the disposition hearing, mother acknowledged that someone other than father might have molested A.T., showing there was no longer a risk of harm to the child; (3) mother and A.T. had a bonded, loving relationship, and mother never neglected or physically abused A.T., showing that mother was not a risk to the girl's emotional well-being; and (4) the court's order would only exacerbate the parents' ongoing custody dispute, causing A.T. more harm. We disagree.

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<sup>6</sup> The minute order refers to subdivision (b), but that subdivision is inapplicable. Because the language of the minute order tracks subdivision (c)(3), we agree with mother that the court in fact relied on that subdivision.

By distilling the dependency court's statements at the disposition hearing, we derive the following: The court now clearly and firmly believed that James was the molester, not father. Based on Dr. Ward's report, the court believed mother was coaching A.T. to falsely accuse father of being the molester. A.T. had not only failed to make progress while in therapy with Dr. Banks, but in fact had deteriorated. Although mother loved, and was bonded with A.T., mother's intentions were misguided. In short, mother was sabotaging the minor's relationship with father by misleading the girl to believe that father had molested her. By pursuing this false tack as part of the girl's therapy, the mother had not just blocked the girl's progress; she had in fact made matters worse.

For the same reasons we affirmed the adjudication order, there is more than enough evidence to support a finding that A.T. had to be removed from mother's custody so she could be protected from further memory coaching and switched to a new therapist who would help the child deal with the true facts concerning what happened to her. In addition to the evidence discussed in that portion of our decision, by the time of the disposition hearing, the court had Dr. Ward's report, evidence that A.T.'s behavior had worsened significantly, and evidence that mother would not cooperate with the school so the school could contact Dr. Banks for information about A.T.'s needs.

None of this is overcome by mother's appellate contentions. As to her second contention – that she no longer posed a risk of harm because she acknowledged at the disposition hearing that someone other than father might have molested A.T. – the trial court could have reasonably concluded that her testimony was insufficient. Mother testified that she did not accept that James had molested A.T. and that A.T. had not been around James. Asked whom she thought molested her daughter, mother then said, "It can be possibly anybody." Given the trial court's express finding that James was the molester, the trial court reasonably disbelieved this half-hearted statement by mother when placed against her testimony denying that James was the molester or that A.T. had even been around him.

Mother's other contentions are essentially rehashes of the evidentiary issues discussed in connection with the court's adjudication order. We reject them again for the same reasons, and restate our conclusion that there was substantial evidence to support a finding that the girl has suffered severe emotional harm, and was at risk of future harm unless she was removed from mother's custody.

### **DISPOSITION**

The dependency court's adjudication and disposition orders regarding minor A.T. are affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.