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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re CHARLIE B., a Person Coming
Under the Juvenile Court Law.

B242012

(Los Angeles County
Super. Ct. No. CK81417)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

GERMAN B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Donna Levin,
Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

German B. (German) appeals jurisdiction and disposition orders as to his son, Charlie B. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

F.B. (mother) and German are the parents of Charlie B., born June 2011. Mother and Calvin J. (Calvin Sr.) are the parents of Charlie's half-siblings, F. (born Mar. 2000), Calvin Jr. (born Feb. 2005), and Kathleen J. (born Nov. 2008).

I. The Family's Prior DCFS History

A. Petition and Detention Report

On February 23, 2010, Calvin Sr. reported to the Department of Children and Family Services (DCFS) that F. had told him that mother grabbed her by the hair and slammed her head into a door after F. walked in on mother and German having sex. F. also told Calvin Sr. there was no food in the house and mother and German used methamphetamines daily.

A children's social worker (CSW) interviewed mother on March 2, 2010. She denied any current drug or alcohol use. She said she had been dating German for about a year, but denied that he lived in the family home. She said German visited her at night when the children were asleep and none of the children had ever walked in on her and German having sex. She refused to submit to drug testing until the children were returned to her.

Mother denied hitting any of her children, although she admitted spanking Calvin Jr. on his behind. She specifically denied pulling F.'s hair or hitting her head against a door, and said someone "is putting things in [F.'s] head."

F., then age 9, told the CSW on March 4, 2010, that German lived in mother's home and made her uncomfortable. She said German "slaps my butt" when she walked by him, tried to pick the lock on her bedroom door, and tried to touch her. She said one night he came into her room and rubbed her legs while her brother was in the room. She

said she was scared of German and would lock herself in the bathroom and cry when he tried to get into her room. She said she had told her mother about German's behavior, but mother did not believe her.

F. told the CSW that she had found a plastic bag full of "crack," and that once her sister Kathleen, age 1, had found the bag on her mother's bed and tried to put it in her mouth. She said mother called the drugs her "boyfriend's medicine." She said she had seen her mother use the "white 'stuff,'" stating "she [mother] rubs her finger in the bag and puts it in her nose and sometimes her mouth." She said that German "does it too."

F. said that when mother got mad at her, she pulled her hair and "slam[med] my head into the wall." Further, F. said, "on different occasions [mother] has hit her head on hard objects like the metal bed frame and smacks her legs with a hanger, belt or sandal. She denied having any current marks or bruises but [said] that in the past she had a mark on her back and on her head. Child stated that she is afraid of her mother because 'she hits me a lot.' She then indicated that the mother shakes Kathleen (1) when she is screaming or crying and that she also hits and kicks her brother Calvin (5). She added that her mother also pulls Kathleen's (1) hair and shakes her. When asked to describe how long her mother has been physically abusive she stated 'This has been going on forever, my dad [Calvin Sr.] used to pull my mom off of me.' . . . [F.] indicated that on a recent occasion (child was unable to disclose exactly when) she walked into her mother's room while she was having sex with her boyfriend German. She said her mother became angry and grabbed her by her hair and hit her head into the wall."

Calvin Jr., age five, told the CSW he wanted to stay with Calvin Sr. When asked why, he said, "I don't like going over there." The CSW asked if he could explain, and he called out to his father, "Can I tell her[,] dad?" When Calvin Sr. told him to tell the truth, Calvin Jr. said he did not like his mother's boyfriend because "he sleeps on top of my mom, I mean on the bed with my mom . . . they were making a noises [*sic*]." Calvin Jr. "would not explain any further details and just kept repeating I don't like going over there." He said he felt safe with Calvin Sr., and his mother's home is "not my house anymore." He also reported that mother had tried to hit him with a blue bat. The CSW

noted that Calvin Jr. appeared very nervous throughout the interview and repeatedly asked Calvin Sr. if he could tell the CSW.

On March 5, 2010, Wayne S., mother's former boyfriend, said he was aware that mother used cocaine and methamphetamines. He stated, "[W]hen I was at her [mother's] house on 2/13/10 I was in the living room with Kathleen and [mother] went into her room and I saw her get a straw or a rolled up dollar bill or something like that and she snorted some white substance up her nose." Wayne was aware of mother's relationship with German, which he did not believe to be healthy because German "deals Meth and he tried to offer Calvin some Meth which he declined and he's selling Meth from [mother's] house." Wayne insisted German used drugs with mother and said the children were afraid of him.

DCFS removed the children from mother on March 4, 2010.

B. Jurisdiction and Disposition Hearing

On May 10, 2010, F. testified in camera that she did not like German because he touched her in a place that made her feel uncomfortable. The touching happened "probably, like, two times." German "was touching my butt, picking my door knob." Another time, German "pulled [the] [b]ack of my shirt to make me touch his private parts." F. said she never told mother about these things.

F. testified that mother hit her "for no reason sometimes." Her dad, her friends, and her grandma all saw mother hit her. She estimated that mother hit her "[p]robably like two times a day." She said mother "grabs my head and she bangs it on the bed." She did that "[p]robably five times." F. also testified that she "probably" saw her mother hit her brother and sister. Mother hit her brother once at a barbeque after he threw a hula hoop and it hit her. On that occasion, mother "was pushing him, kicking him, socking him." Calvin Sr. pulled mother off her brother. F. also said mother shook Kathleen when she cried.

F. testified that she saw drugs in her mother's house "[s]o many times." The drugs were "white in a plastic bag." Mother would tell F. "to go cook her something and I will peek over there and . . . she would stick her finger in the bag and like put it in her nose."

At the conclusion of the hearing, the court sustained the following paragraphs of the amended petition pursuant to Welfare and Institutions Code, section 300, subdivisions (a), (b), and (d):¹ (a-1) mother physically abused F. by striking her head against a wall and metal bed frame, striking her legs with hangers, belts, and shoes, and pulling F.'s hair, endangering F.'s physical and emotional health and safety, and placing Calvin Jr. and Kathleen at risk of physical and emotional harm; (a-2) mother physically abused Calvin Jr. by striking and kicking him and attempting to strike him with a bat, endangering his physical and emotional health and safety, and placing his siblings at risk of harm; (a-3) mother physically abused Kathleen by shaking her, endangering her physical and emotional health and safety, and placing her siblings at risk of harm; (b-5) mother and Calvin Sr. have a five-year history of domestic violence and engaging in violent altercations in the children's presence; (b-6) mother has a history of substance abuse, including marijuana, and is a current abuser of cocaine, methamphetamine, and alcohol, which renders her incapable of providing regular care and supervision of the children; (b-7) Calvin Sr. has a history of substance abuse, including marijuana, which periodically interferes with his ability to provide regular care for the children; (b-8) mother allows her male companion, German, who is a current user of illicit drugs, to reside in the family home and have unlimited access to the children; and (d-1) mother's male companion, German, sexually abused F. by fondling her buttocks and legs, endangering her physical and emotional health and placing her siblings at risk.

The court found that substantial danger existed to the children if they were released to either mother or Calvin Sr. and ordered them placed with DCFS. The court ordered mother to participate in individual counseling, drug counseling, anger management counseling, and random drug testing.

¹ All further statutory references are to the Welfare and Institutions Code.

C. Mother's Lack of Compliance and F.'s Recantation of Her Allegations Against Mother and German

Mother continued to deny the allegations of the amended petition and to live with German. Further, she missed seven drug tests between February and June 2011, failed to enroll in courses ordered by the court, and failed to attend individual counseling. In February 2011, she told DCFS she was pregnant with German's child.

Between January and May 2011, F. refused to have any contact with Calvin Sr. and told her CSW that Calvin Sr. made her lie about the allegations regarding mother and German.

F. sent two undated letters to the court saying that Calvin Sr. forced her to fabricate the allegations of abuse by mother and German. The first letter stated as follows: "My name is [F.] I'm writing you this letter to tell you how sorry I'm for lying on my mom and I'm very upset with my dad [Calvin Sr.] because he was the one that told me what to say he said that if I don't say the things he said that he would never see us again. And I did not want that the things that he asked me to say was to say that my mom . . . beat us and curses at us. Another thing he said to say was that [German] was touching me in inappropriate places. [German] is a nice man that all he was doing was making mom happy I'm sorry for lying on [German]. [¶] All my mom did was love us and be there for us my dad is not a nice person because he had me and my little brother [Calvin Jr.] sleeping in a car while my mom was sad and worried about us. My dad [Calvin Sr.] needs to pay for what he did to my mom. I love my dad but he did a lot of mean things and hurt a lot of feelings. My dad said that if I don't say that about [German] that they would never get back together and I was confused because all I wanted is for my mom and dad to be happy and be a family again but my mom deserves better I realized she's cool and she cares about us and love us very much. My dad promised me a lot of things that he can't keep and I was happy at the time. And now that all these months had passed I'm very happy to be with my mother and I love her and she

loves me to I'm afraid of my dad now he's mean and now I regret all of the bad things I said in court that's why I'm sorry."

The second letter said as follows: "My name is [F.] case # . . . I been trying to talk to you and the social worker does not pay me no attention I just want to tell you that me and my dad [Calvin Sr.] were very jealous because my mom . . . had a boyfriend. that is why I said the things that my dad asked me to say and the one that should be punished is my dad because he was the one that started all this. Your honor I don't want to be away from home anymore, I want to be with my mom. Iam 11 years old, but I could understand now I understand that all relationships have problems and some separate. [¶] [German] never has touched me and I said that because my dad told . . . to me and my dad were jealous about him. Your honor please help me so that I can return home to my mom again. My grandma is good and she takes care of us but it is not the same like being with my mom. Your honor I think I committed injustice with my mom because of my dad being jealous I know he's my dad and I love him very much but I realized that we caused a lot of pain to my mom and [German]. [¶] I realized that I feel ashamed for looking you in the face for lying but if someone has to be punished is my dad. [¶] Your honor I told the social worker . . . that I would like to speak to you but she does not pay me any attention for me lying in court my youngest siblings are paying for the consequences. [¶] Your honor my grandmother is good and she takes good care of us but no like my mom iam available to say the truth and nothing but the truth in court 5/19/2011. [¶] But I don't want to see my dad because he has caused a lot of pain to us. [¶] Your honor I swear to god that my mom had never hit us and I swear to god that [German] never touched none of us your honor I went to a visit with my dad and he told me he rather see us in a foster home that with our mom that is why I don't go to see him at the visits I think my dad was selfish and more selfish now because he knows my mom is having a baby. [¶] I would like that on court me and my dad can do a lie ditectar test so you can see that I am telling the trouth. [¶] Thank your honor for reading this letter. Please help me."

D. The Section 366.21, Subdivision (f) Hearing

The court held a permanency hearing (§ 366.21, subd. (f)) on July 13, 2011. F. testified that she felt guilty about having lied to the judge. She said she lied when she testified that German had touched her inappropriately and about “[m]y mom hitting me and stuff.” She said she had also lied when she said mother hit Calvin Jr. and Kathleen. She said she lied because “my dad told me to lie” and because he told her she would not see him again if she did not lie. F. said she also lied when she said she had seen her mom using drugs. F. said that no one told her to write the letters and no one proofread her letters.

Mother testified that she never hit or kicked her children. She did not believe German ever sexually abused F. Mother and German no longer lived together, but she still saw him on a regular basis.

At the conclusion of the hearing, the court concluded that mother had not substantially complied with her case plan and it discontinued her reunification services. The court released Calvin Jr. and Kathleen to Calvin Sr., and released F. to maternal grandmother. Mother was granted supervised visitation.

II. The Present Petition

DCFS removed Charlie B. (born June 2011) from mother and German on July 15, 2011. It filed a juvenile dependency petition on July 20, 2011, alleging jurisdiction over Charlie pursuant to section 300, subdivisions (a), (b), and (j). Charlie was detained with his maternal grandmother.

DCFS filed a detention report July 20, 2011. It stated that F., Calvin Jr., and Kathleen had been declared dependents of the juvenile court on or about March 9, 2010, and that mother failed to comply with court orders. Mother continued to deny the sustained allegations concerning the three older children and allowed German to care for Charlie without supervision. German had not made himself available to DCFS on a regular basis.

On July 20, 2011, the juvenile court held a detention hearing and found a prima facie case for detaining Charlie. The court found that maintaining Charlie in his parents' home was contrary to his welfare, substantial danger existed to his physical and emotional health, and there were no reasonable means by which Charlie could be protected without removing him from the family home. The court granted mother and German monitored visitation three times per week and ordered family reunification services to be provided to the parents.

III. Jurisdiction and Disposition

A. Jurisdiction/Disposition Report

DCFS filed a jurisdiction/disposition report on August 18, 2011. With regard to the various allegations of abuse, it stated as follows.

1. Alleged Physical Abuse of F. by Mother

On August 4, 2011, F. told the CSW that she had lied when she reported her mother physically abused her and her siblings. She said: "That's a lie. She didn't hit me against the bed and she didn't hit my brother or sister. My Dad was training me to say those things. He told me to make up that she hit my brother and sister with a belt and hanger. My Dad was jealous because my mom had a boyfriend. I was 9 1/2 when he told me to lie, then I told my social worker, the judge, my lawyer, and my therapist. My Dad would hit me a lot, he pulled my hair a lot."

Mother denied physically abusing any of her children, stating as follows: "I never hit my kids. I never touched them. These are all lies. How could I hurt them? There is no need to hit them, they are sweethearts. Time-out, yes. I will take away their games or TV. I'll do anything for them. I broke up with Calvin Sr. because he found out I was dating German. Next thing I know, I have social workers in my home three days later. Calvin Sr. did not want me dating anyone else or any other man raising my children. This is how it all started."

German said he never saw mother hit any of the children. Maternal grandmother also said mother never hit the children and that Calvin Sr. “told [F.] to say these things.”

Calvin Sr. said that after a visit with his children, they told him they did not want to go back to mother because she physically abused them. When asked why F. later denied any abuse, Calvin Sr. said he believed F. was being coached by mother. He said he believed mother told F. what to say in the letters to the judge because “[t]he words used in the letter were not words that my daughter would use.”

2. Alleged Sexual Abuse of F. by German

On August 4, 2011, F. claimed to have fabricated the allegations of sexual abuse by German. She said: “That was a lie too. I made it up. It didn’t happen. My dad was jealous that my mom had a boyfriend. He told me to lie. He trained me for half a year. He would tell me to say that my mom hit me, that she used drugs, and that her boyfriend touched me. German never touched me.”

Mother also denied that German sexually abused F.: “That’s not true. There was never any sexual abuse. German would come to see me at night then leave in the morning. I wasn’t trying to expose my children to a new man. So when could the sexual abuse take place? These are false allegations. I am willing to take a lie detector test. German would have been dead if he would have touched my daughter. German is respectful. That’s why he hasn’t run because he knows that he didn’t do anything.”

German said he started dating mother after she and Calvin Sr. broke up. When Calvin Sr. found out about the relationship, “he told [F.] to lie that I was sexually abusing her. Calvin Sr. told [F.] that if she wanted them (Calvin Sr. and mother) to get back together then she needed to say those things. But I never touched her. I can guarantee it. I was never alone with [F.] I have a daughter in Mexico and I wouldn’t want something like that to happen to her. They even did a physical exam on [F.] and there was no evidence. It was a lie by [F.] and Calvin Sr.”

Calvin Sr. told the social worker that F. said “that German touched her and I confronted him. We got into a fight and the police took me [and] arrested me.” Maternal grandmother said she did not believe German sexually abused F.

3. Alleged Substance Abuse by Mother and German

As to mother’s alleged drug abuse, F. said: “I’ve never seen her use drugs. I don’t think she does. I’ve never seen her drink beer. She is going to classes. I’ve never seen my mom drunk. She took good care of us.” F. also said she had never seen German use drugs or alcohol.

Mother admitted using marijuana in the past, but said she stopped when she was pregnant with F. She said German never used drugs and never drank excessively. When asked why she did not comply with the court’s orders to randomly drug test, mother said, “I have not been calling the number, I forget.”

German said he saw mother drink only once, at a party. He never saw mother use drugs. German denied using drugs and said he drank one or two beers once or twice a month. Maternal grandmother denied that mother or German used drugs.

Calvin Sr. said that mother had not used drugs when they were together, but that subsequently he “was cleaning the house once and I found meth in the home.” He believed German also used meth because “he was my neighbor so I know he does meth.”

B. Interim Review Report

DCFS filed an interim review report on November 30, 2011. It noted that mother had made no progress since the last court hearing. She had not enrolled in any court-ordered programs and was not drug testing. She had completed five sessions of individual counseling, but said she had ceased counseling because of problems with Medi-Cal. Mother visited Charlie consistently, and maternal grandmother did not note any problems during visits.

German had not made any contact with DCFS since September and had failed to appear for drug testing on October 7, October 18, and November 1, 2011. DCFS could

not determine whether he was participating in any court-ordered programs. Mother reported that she was still in a relationship with German and “thinks that [German] is not doing what the Court ordered since he is always working.” Maternal grandmother reported that German visited Charlie at least once per week and there were no problems during visits.

C. Jurisdiction and Disposition Hearing

At the December 14, 2011 jurisdiction and disposition hearing, the juvenile court found jurisdiction over Charlie pursuant to section 300, subdivisions (a), (b), and (j), and sustained the following paragraphs of the petition: (a-1, b-1, j-1) mother physically abused Charlie’s half-siblings, F., Calvin Jr., and Kathleen, who were current dependents of the court, and failed to regularly participate in court-ordered individual counseling, placing Charlie at risk of physical abuse; (b-2) German sexually abused F. by fondling her buttocks and legs, and mother failed to protect F. when she knew of German’s sexual abuse, placing Charlie at risk of sexual abuse; and (b-3) mother has a history of substance abuse, including use of cocaine, methamphetamine, marijuana, and alcohol, which rendered her incapable of providing regular care and supervision of Charlie. The court struck an allegation concerning German’s drug use, saying, “There’s no information as to [German’s] drug history or anything else, except for the Jackson father saying, ‘I was his neighbor and I know he took meth,’ so I have no information as to that.” The court further found by clear and convincing evidence pursuant to section 361, subdivision (c), that there was a substantial danger to Charlie’s physical and emotional health and well-being if he were returned to mother, and there were no reasonable means by which his physical health could be protected without removing him from mother. The court continued disposition as to German.

D. German’s Motion to Reconsider Adjudication Findings

In a report filed January 23, 2012, DCFS informed the court that the Los Angeles Police Department (LAPD) had administered a lie detector test to Calvin Sr. on

January 20. Calvin Sr. told the LAPD investigator that “he had told the child [F.] to lie about [German] sexually abusing her because he did not want another man raising his child.” This disclosure reportedly was not made while Calvin Sr. was attached to the polygraph machine.

Despite Calvin Sr.’s admission, DCFS “continues to recommend that [German] receive family reunification services. [German] has not made himself available to DCFS. In addition, he has not been compliant with drug testing, parenting, and individual counseling. On 1/17/2012, this DI-CSW met with [German] in order to personally notice him for the 1/23/12 hearing. [German] apologized for not making himself available[,] stating that he was having ‘personal problems’ and he had left to [*sic*] San Francisco for a few weeks in order to work. [German] also acknowledged that he has not been visiting his son as often. He indicated that he does want custody of his child and is willing to comply with court orders. He acknowledged that currently he is having a hard time because he has been having personal problems and he has been without work. [¶] The maternal grandmother . . . indicated that [German] told her that he did not want to have anything to do with DCFS or the Court. Per [the CSW], [German] stated that he was going to lie to the social workers and tell them he was working in San Francisco. DCFS is concerned in regards to his current ability to care for the child. [German] has made sporadic contact with the child and has not made himself available to the department. He was not drug testing or complying with parenting or individual counseling. There are also concerns that he is still in a romantic relationship with the mother as he has made statements to that effect.”

German filed a motion to reconsider the adjudication findings on February 22, 2012, noting that F. had recanted her allegations against him and that Calvin Sr. had told the LAPD that he had told F. to fabricate the allegations. On March 13, 2012, the court ordered a readjudication as to Charlie.

A DCFS dependency investigator (DI) interviewed German on March 15, 2012. He told the DI he was not attending parenting or other programs because of his work schedule, and he had not been visiting Charlie because his job required him to leave the

city. He said he recently had found stable work that would allow him to visit Charlie more often. He agreed to drug test and to call the DI the next day. German acknowledged that he did not have a crib or any baby items for Charlie, but said he would purchase those things if Charlie were returned to him. He also said he would make arrangements for maternal grandmother to babysit Charlie during the day if the child were returned to his care. However, maternal grandmother told the DI that German never contacted her in regards to such arrangements and that she would prefer not to be the babysitter, although she felt it was her obligation as the grandmother.

German did not contact the DI or submit to on-demand drug testing on March 16. When the DI asked for an explanation on April 24, German said he had not called because he had no time during work. The DI then asked if German would test on demand the following day, and German initially agreed, but then said he was working in Corona and would call to confirm if he could test. He also said he had not resumed parenting classes because he had to wait until another class opened up. German said he had been visiting Charlie regularly.

The DI spoke with maternal grandmother on April 25, 2012. She said German had not visited Charlie in two months and had not called to inquire about him. Grandmother appeared frustrated at German's lack of interest in his child. When asked about any concerns in regards to German and his ability to care for Charlie, "the [maternal grandmother] mentioned substance abuse from [German]. The [maternal grandmother] appeared guarded and indicated that she did not want to keep the child from [German]. The [maternal grandmother] stated that she was afraid of retaliation if she told anything to this DI. The [maternal grandmother] however stated the following in regards to [German]: She stated that about two years ago the child F. found a bag that contained 'white powder,' the [maternal grandmother] stated that when she confronted mother that she told her that it indeed belonged to her and [German]. The [maternal grandmother] also reported a more recent incident about three months ago, when she took the child Charlie for a visit at [German's] home as she had been doing. However, [German] was so intoxicated when she arrived at the home that she cancelled the visit."

On May 7, 2012, maternal grandmother told the DI that German had not visited or called to inquire about Charlie in over two months. German reportedly also had not made any contact with DCFS.

Based on the DI's report, DCFS advised the court on May 9, 2012, that it was "extremely concerned as to releasing the child to [German] at this moment. [German] has sexually abused the child [F.] and the court sustained the petition to that effect. . . . On 8/04/2011, [German] told this DI that he would agree to participate in sexual abuse counseling. However, [German] has not completed sexual abuse counseling or any other programs. In addition, [German] has been a no show to his drug tests for several months despite agreeing to test. There have also been reports about [German] abusing alcohol and/or drugs. More concerning is that [German] has not visited or called the caregiver to ask about the child Charlie in over two months and even before this his visits were sporadic in nature." Further, DCFS did not consider credible Calvin Sr.'s statements that he had told F. to lie about sexual abuse: "When this DI CSW interviewed [Calvin Sr.] on 8/10/2011 he indicated that he became so angry about [F.'s report of sexual abuse] that he confronted [German] and got into a physical fight which resulted in law enforcement arresting him. This DI obtained [Calvin Sr.'s] CLETS and he does have an arrest on 4/27/2010 This DI will be requesting the police report. It is not likely to believe based on the above information that [Calvin Sr.] would have risked being arrested unless he really believed that [German] had touched her."

E. Readjudication Hearing

On May 9, 2012, Calvin Sr. testified that he had told an LAPD officer that he had instructed F. to lie about sexual abuse by German. Calvin Sr. said that mother had told him German's brother had blown kisses at F. "and things like that. So I didn't know which one it was. Later on it came out that it was the brother and not him." Calvin Sr. said F. had not told him that German sexually abused her, but "she told me other things. I didn't want her in that house, so I was trying to figure out how to get her out of the house." On cross-examination, Calvin Sr. said he did not like it that F. was finding drugs

in the house, and “things that she was telling me just had me not thinking in a right mind. I was just trying to get her out of the house and protect her.” He said he told F. to say that German was “[t]rying to get in her room, and I don’t remember what else I said.” He said he finally told the police the truth because “I wanted to make things right with my daughter, that’s why. My daughter was mad at me and not talking to me at the time because she was upset at me. I want her to know that I am trying to make things right with her about being honest about the situation and taking it off of her shoulders.”

At the conclusion of testimony, the court declined to dismiss the sexual abuse count, stating: “I think that there’s still [a] preponderance of the evidence, given what’s gone before, given what [F.] has originally said, given that the (d) was stricken, that this was a (b). I still do not — and I have not heard really anything from [German], and that’s his prerogative. But I have not heard a lot other than [F.] recanted and she was mad at her father [Calvin Sr.] because he told her to do that, and now all of a sudden, he’s saying, ‘Yes, she recanted. It’s true.’ And that’s all I have. . . . I can’t really characterize this as a miscarriage of justice because I don’t have enough to do that. And because I don’t have enough, I have to go with the original findings, and I am going to now resustain (b)(2) and (j)(2) as to [German].”

The court then entered a disposition order, finding by clear and convincing evidence pursuant to section 361, subdivision (c), that there was a substantial danger to Charlie’s physical health, safety, protection, physical and emotional well-being if he were returned home, and there were no reasonable means by which he could be protected without removing him from German’s physical custody. The court ordered DCFS to provide German with family reunification services and ordered him to do six on-demand drug and alcohol tests. The court said: “[C]onsidering what I think the totality of the circumstances and the evidence presented and issues in this case, . . . I don’t think that it’s too difficult for [German] to complete six random and on-demand tests, and that’s what I will order. . . .” In the event of a missed or dirty test, German was ordered to complete a full substance abuse program. The court further ordered him to enroll in

parenting classes, individual counseling to address case issues, and sex abuse counseling. German was granted monitored visits with Charlie.

German timely appealed.

DISCUSSION

German contends: (1) there was insufficient evidence to support the jurisdictional finding that Charlie was at risk of sexual abuse; (2) there was insufficient evidence to support the court's dispositional order removing Charlie from German's custody; and (3) because there was insufficient evidence German abused drugs or alcohol, the drug testing requirement should be stricken from the reunification plan. We address these issues below.

I. The Juvenile Court's Jurisdictional Findings Were Supported by Substantial Evidence

German urges that the juvenile court's jurisdictional findings that he sexually abused Charlie's half-sister, F., and that Charlie therefore was at risk of sexual abuse, were not supported by the evidence. He notes that F. recanted her report of sexual abuse and that Calvin Sr. testified that he told F. to lie about the alleged abuse. Further, German argues, even if there were substantial evidence that he sexually abused F., "speculation that a father accused of sexually abusing an unrelated ten-year-old female may sexually abuse his infant male child is insufficient to support jurisdiction."

DCFS responds that there is substantial evidence that German molested F. and that Charlie is at risk of harm because "siblings of molested children are at risk of sexual abuse and are entitled to the protection of the juvenile court." In any event, it says, a jurisdictional finding against one parent is good against both, and thus the sustained allegations against mother, which mother has not appealed, require us to affirm juvenile court jurisdiction over Charlie.

We agree with DCFS that the juvenile court’s sustained allegations against mother are sufficient to support the exercise of jurisdiction over Charlie, and thus we need not decide whether there is substantial evidence of risk of sexual abuse to Charlie. Because the focus of the dependency system is the child, not the parent, “it is necessary only for the court to find that one parent’s conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. (*In re P.A.* (2007) 155 Cal.App.4th 1197, 1212; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.) Once the child is found to be endangered in the manner described by one of the subdivisions of section 300—e.g., a risk of serious physical harm (subds. (a) & (b)), serious emotional damage (subd. (c)), sexual or other abuse (subds. (d) & (e)), or abandonment (subd. (g)), among others—the child comes within the court’s jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. (*In re Claudia S.* [(2005)] 131 Cal.App.4th [236,] 246.) For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. (*In re Alexis H.*, at p. 16.) As a result, it is commonly said that a jurisdictional finding involving one parent is “‘good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent.’” (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1161.) For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence. (E.g., *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 [addressing remaining findings only ‘[f]or [f]ather’s benefit’]; *In re Joshua G.* [(2005)] 129 Cal.App.4th [189,] 202 [when a jurisdictional allegation involving one parent is found supported, it is ‘irrelevant’ whether remaining allegations are supported]; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330 [declining to address remaining allegations after one allegation found supported]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72 [same].)” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492.)

In the present appeal, German asks us to review the evidentiary support for only the jurisdictional findings involving his conduct. Because he does not challenge the jurisdictional findings involving mother's drug abuse and physical abuse of the children, any decision we might render on the allegations involving German will not result in a reversal of the court's order asserting jurisdiction. We thus do not reach German's contentions regarding the jurisdictional findings regarding sexual abuse of F.²

II. The Juvenile Court's Disposition Order Was Supported By Substantial Evidence

German contends that there was insufficient evidence to support the court's disposition order removing Charlie from his custody. Specifically, he says, there was not clear and convincing evidence that Charlie was at risk of sexual abuse unless removed from his custody or that placement with German would be detrimental: "[E]ven if true German inappropriately touched [F.], German was not living with [F.], he had no access to her, and she was not his child. Absent evidence he posed a serious risk of harm to his infant son, his past behavior with [F.], which could not recur as long as he maintains a separate residence, did not justify detaining Charlie from him."

We do not agree that removing Charlie from German's custody was unwarranted. A removal order under section 361, subdivision (c) is proper "if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] 'The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.' [Citation.] The

² German is correct that, in cases where alternative jurisdictional findings have consequences for a parent beyond jurisdiction, some appellate courts have considered whether those findings are supported by substantial evidence. While there is no doubt the court retains the discretion to consider alternative jurisdictional findings, we decline to do so here because we are unaware of any specific legal or practical consequence to German from the sexual abuse finding, either within or outside the dependency proceedings. (See, e.g., *In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1493-1494.)

court may consider a parent's past conduct as well as present circumstances. [Citation.]” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.)

To issue a removal order, the juvenile court must find by clear and convincing evidence that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.” (§ 361, subd. (c)(1).) Whether the conditions in the home present a risk of harm to the child is a factual issue to which we apply the substantial evidence test. (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 170.)

In the present case, the juvenile court’s finding of substantial danger to Charlie if he were to be returned to German is supported by substantial evidence, even *without* reference to the finding that Charlie was at risk of sexual abuse. That evidence included the following:

Evidence of drug and alcohol abuse. F. told her social worker that her mother and German used “white ‘stuff,’” which mother referred to as her “boyfriend’s medicine,” that they put in their noses and mouths. F. also said that German smoked marijuana and “drinks beer a lot, my mom buys him the big bottles of beer and he gets drunk.”³ Calvin Jr. told the CSW that German drank beer with his brother, and Wayne B. told a social worker that German “deals Meth and he tried to offer Calvin some Meth which he declined and he’s selling Meth from [mother’s] house.”

German failed to appear for court-ordered drug testing on September 16, October 7, October 18, and November 1, 2011. When a DI spoke to German on March 15, 2012, he agreed to drug test and to call the DI the next day to get instructions regarding drug testing; however, German neither contacted the DI nor submitted to on-demand drug testing. When the DI asked for an explanation on April 24, German said he had not called because he had no time during work. The DI then asked if German would

³ F. later recanted these allegations, saying, “I’ve never seen German use drugs or alcohol.”

test on demand the following day, and German said he could not commit to testing because of his work schedule.

On April 25, 2012, maternal grandmother told the DI that about two years earlier, F. had reported finding a bag in mother's home that contained "white powder." When grandmother confronted mother about it, mother said it belonged to her and German. Maternal grandmother also reported an incident that occurred in approximately January 2012 when she had taken Charlie for a visit at German's home, but he was so intoxicated when she arrived at the home that she cancelled the visit.

Inability to provide childcare or an appropriate home for Baby Charlie. On March 15, 2012, German told a DI that he did not have a crib or any baby items for Charlie. He also said that he had not been able to visit Charlie recently because of his work, but said he would make arrangements with maternal grandmother to babysit Charlie during the day if the child were returned to his care. However, maternal grandmother told the DI that German never contacted her in regards to such arrangements and that she would prefer not to be the babysitter. On April 25 and May 7, 2012, maternal grandmother told the DI that German had not visited or called to inquire about Charlie in over two months and grandmother appeared frustrated at German's lack of interest in his child.

Evidence of failure to cooperate with DCFS and to participate in court-ordered programs. On July 20, 2011, the CSW reported that she had had face-to-face contact with German and that German had not made himself available to DCFS on a monthly basis. On November 30, 2011, DCFS reported the CSW had attempted on numerous occasions to make contact with German at his phone number and his brother's cell phone number, but she had been unable to reach him. On October 18, 2011, the CSW mailed a letter to German asking him to call her, but as of the date of the report, he had not made any contact. Thus, DCFS said, it could not determine whether German was participating in any court-ordered programs. On January 23, 2012, DCFS reported that a CSW met with German on January 17, 2012; German apologized for not making himself available, stating that he was having "personal problems" and had been in San Francisco for a few

weeks in order to work. However, maternal grandmother told the CSW that German had said he did not want to have anything to do with DCFS and was going to lie and say he was working in San Francisco. On March 15, 2012, German admitted to the DI that he had not been attending parenting or other programs.

In view of the evidence that German abused drugs and alcohol and was not able to provide appropriate living arrangements or childcare for Charlie, the court was well within its discretion in concluding that there would be a substantial danger to Charlie's health, safety, and well-being if he were returned to German. Further, based on the evidence of German's unwillingness to cooperate with DCFS or to avail himself of court-ordered services, the court was well within its discretion in concluding that there were no reasonable means by which Charlie's physical health could be protected without removing him from German's custody. The court order removing Charlie from German's custody was supported by the evidence.

III. The Juvenile Court Did Not Abuse Its Discretion by Ordering German to Drug-Test

Finally, German urges that the drug testing requirement of the reunification plan should be stricken because his alleged drug abuse was not a basis for the court's finding of jurisdiction over Charlie, and the reunification plan must attempt to eliminate only those conditions that led to the court's findings that the child is a person described by section 300. For the following reasons, we do not agree.

The court addressed a similar contention in *In re Christopher H.* (1996) 50 Cal.App.4th 1001 (*Christopher H.*). There, Christopher was removed from his father's custody after his father was arrested for driving under the influence of alcohol. The juvenile court sustained allegations pursuant to section 300, subdivisions (b) (that Christopher was a high-risk baby for whom father was unprepared to care) and (g) (that father was incarcerated and therefore unable to care for Christopher). The court did not sustain an allegation that father had alcohol-related problems that negatively affected his ability to care for Christopher, finding that when father was arrested for driving under the

influence, Christopher was in the hospital and so could not have been placed at risk by his father's behavior. However, the court ordered father to undergo a substance abuse evaluation, to participate in any recommended treatment, and to submit to random drug and alcohol testing. (*Id.* at p. 1005.)

Father contended on appeal that the drug and alcohol condition imposed was beyond the court's jurisdiction because drug and alcohol abuse was not a basis on which the petition was sustained. The court disagreed. It noted that at a dispositional hearing, the juvenile court must order child welfare services to facilitate reunification and the court "has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion."

(*Christopher H., supra*, 50 Cal.App.4th at p. 1006.) Further, when the court is aware of parental deficiencies "“equally deleterious to the well-being of a child, but which had not arisen at the time the original plan was formulated,”" the court may address them in the reunification plan." (*Id.* at p. 1008.) A dispositional order cannot be reversed "absent a clear abuse of discretion." (*Id.* at p. 1006.)

In the case before it, the court found that the record demonstrated that German had a substance abuse problem that created a potential risk of interfering with his ability to make a home for and care for Christopher. (*Christopher H., supra*, 50 Cal.App.4th at p. 1007.) Under these circumstances, "the court would have been remiss if it failed to address appellant's substance abuse even though that problem had not yet affected his ability to care for Christopher. The court reasonably concluded appellant's substance abuse was an obstacle to reunification that had to be addressed in the reunification plan. [Citation.]" (*Id.* at p. 1008.)

In the present case, although the evidence of German's substance abuse is not as overwhelming as was the evidence of substance abuse in *Christopher H.*, the juvenile court did not abuse its discretion in ordering German to submit to random drug and alcohol tests. As discussed in the last section, F. told her social worker that her mother and German used "white 'stuff,'" which mother referred to as her "boyfriend's medicine," German repeatedly failed to appear for court-ordered drug testing, and

maternal grandmother reported that she recently had been unable to leave Charlie with German for a visit because German was too intoxicated. Based on this evidence, the court-ordered drug testing was appropriate.

DISPOSITION

The jurisdiction and disposition orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.