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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re CHRISTIAN K., a Person Coming
Under the Juvenile Court Law.

B253853

(Los Angeles County
Super. Ct. No. DK01814)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOHN K.,

Defendant and Appellant.

APPEAL from judgment and order of the Superior Court of Los Angeles County,
Honorable Julie Blackshaw, Judge. Affirmed.

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

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

John K. (father) appeals from the dependency court's judgment declaring his son, Christian K., a dependent of the court under Welfare and Institutions Code¹ section 300, subdivisions (a) and (b). Father contends substantial evidence does not support the sustained jurisdiction allegations and that the court abused its discretion by ordering Christian removed from father's custody without considering reasonable alternatives to protect the child. Father also challenges an order directing him to participate in sexual abuse counseling for perpetrators. We affirm.

FACTS² AND PROCEDURAL BACKGROUND

Christian was seven years old when the family came to the attention of the Los Angeles County Department of Children and Family Services (the Department). He is the biological son of father and Ashley K. (mother). Father and mother married in 2001. Mother also has a daughter from a previous marriage, Chloe C., who came to live with father and mother when she was seven years old. At the time of the underlying events, Chloe was 17.

At age four, doctors diagnosed Christian with a benign brain tumor associated with precocious puberty and gelastic (laughing) seizures. Among other things, the condition can cause Christian to act out aggressively and hypersexually due to an excess of testosterone. Doctors have prescribed Christian different medications to control his testosterone levels with varying degrees of success.

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² Because resolution of this appeal turns upon the existence of substantial evidence supporting the juvenile court's judgment and disposition order, we state the facts in the manner most favorable to the court's determination, resolving all evidentiary conflicts in favor of the court's findings. (*In re I.J.* (2013) 56 Cal.4th 766, 773; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

Father and mother have a history of domestic violence and have each been arrested on such charges. Mother reportedly had two affairs in the past and, at the time of the detention, was seeing another man. Mother also suspected father of having an affair. Due to the infidelity, mother and father had been sleeping in separate bedrooms since 2010. They nevertheless remained legally married and continued to live together in the same house with Chloe and Christian.

On August 12, 2013, the Department received an expedited response referral regarding Christian and Chloe. Chloe had been crying at school and later reported that father touched her breasts and asked her to orally copulate him that morning. Chloe said she was afraid to go home because mother would not be there due to her work schedule.

Local police dispatched an officer to the high school to investigate the report. Chloe told the officer that father had questioned her that morning about whether she had sex with her boyfriend. When she told father she had not, father reportedly began unbuckling his belt and told Chloe to “ ‘Suck me.’ ” Chloe said she felt scared and began to leave, at which point father told her to sit back down so they could finish talking. Father then reportedly walked over to Chloe, pushed her down, and straddled her, while attempting to unbutton her shorts. Chloe began to cry and attempted to push father away, but father resisted, telling her that he “just wanted to see if she was a ‘Virgin’ or not.” She reported father was unable to unbutton her shorts, but did slide his hands under her bra and touched her breasts. This continued for two minutes, until Chloe broke free and ran to her bedroom. Approximately five minutes later, father reportedly came to her room, told her he would not hurt her and that he needed to take her to school. Chloe said this was the first time father had ever done anything like this.

After the interview, the investigating officer had Chloe make a series of “pre-text” phone calls to father. During the calls, when Chloe asked father “why [he] did that to [her] in the morning,” father responded “because you . . . you need to be taught.” When Chloe protested that it “was not okay,” father responded “you don’t understand it okay, it’s supposed to be fun.” When Chloe continued to protest, he told her “[you] don’t need to worry . . . you’re an adult now.” Finally, when Chloe said she would tell mother what

happened, father responded, “No, you tell her what happened and you’re going to have to move out.” Following the phone calls, police asked Chloe to communicate with father by text messages. During the exchange, father texted Chloe that he was bringing home Hawaiian chicken so her “boobs get bigger,” that he paid for mother’s “boob job” and it was unfair that mother was now sleeping with another man, he suggested to Chloe that they should “get even steven” with mother, and told her to “Google” the word “Sugardaddy.” Shortly after the text exchange, police detained father.

During his interview with police, father attempted to explain that “nothing happened in the house” and that he had only “tried to scare” Chloe. He said Chloe admitted she “ditched [school] to have sex,” at which point he became angry, “straddled” her legs while standing in front of her, and said: “ [Y]ou have sex? [Y]ou suck people? [Y]ou want to have sex? [Y]ou want to suck me?” Father admitted grabbing his pants at belt level while pulling up and down several times in front of Chloe. When asked about touching Chloe’s breasts, he denied touching her, but admitted “lift[ing] up her shirt” to point out “she has no ‘boobs.’ ” In a subsequent interview with police, father said he lifted Chloe’s shirt and bra to make a point about how little clothing she wore, but he never touched her breasts.

Father said he was frustrated that Chloe’s mother was having sex with someone else and not with him, he felt “cooped up a long time,” and perhaps that had caused him to “look at [Chloe] a little differently.” He reiterated that he was “trying to teach her a lesson,” but conceded “ ‘whether it was right or wrong, it was probably beyond what I would normally do.’ ” When the investigator pressed him, father admitted “most of it was discipline, but some of it was attraction,” and he could not say what “percentage” of his actions had been motivated by which.

Based on Chloe’s report and father’s admissions, the police placed father under arrest for sexual battery. The Department issued an emergency protective order to mother and instructed her that father was not to return to the home.

During its investigation of the alleged sexual battery, the Department learned of mother's and father's history of domestic violence. Chloe reported that mother and father argued frequently and she had seen father punch mother in the chest on two occasions. She said they did not engage in physical altercations frequently, but did sometimes throw items, such as chairs, during the arguments. Chloe also reported an incident in which mother and father had argued in the car on the freeway. During the argument, mother grabbed father's arm, causing him to lose control of the car and swerve. Chloe said father responded by punching mother on the chest. Christian similarly reported that he saw father and mother "fight a lot." During one of the arguments, he said mother kicked the car window and yelled at father while they were driving to the paternal grandparents' house.

Mother admitted to "several" incidents of domestic violence with father. During one of the incidents in 2006, her argument with father became so heated that she flipped a coffee table, prompting Chloe to call the police, which resulted in mother's arrest. She also reported a domestic violence incident in 2010, during which father scratched her eye so severely it required medical treatment. Father told the treating doctor that mother had scratched her own eye. When mother corrected him, the doctor called the police, resulting in father's arrest. Mother said she considered domestic violence to be " 'normal' " because it happened in her family in China.

Father acknowledged his involvement in the 2006 and 2010 domestic violence incidents. He also reported a third incident in which mother was arrested after punching him during an argument. And he reported a fourth incident resulting in mother's arrest, during which mother began throwing furniture after observing what she believed was a hickey on father's arm. Father claimed mother was an alcoholic and that all the incidents stemmed from her becoming violent when she was intoxicated. He also said mother had become emotionally unstable after Christian's birth and, though she was on medication for depression, it did not seem to stabilize her condition. Father admitted that each of the domestic violence incidents had occurred in the children's presence.

While its investigation was ongoing, the Department received a second referral regarding Christian. The referral stated Christian had exhibited extremely aggressive and sexualized behavior at school. Christian's doctor confirmed that Christian's medical condition could cause him to act out in a hypersexual way, and the doctor raised concerns that father and mother might not be properly administering Christian's medication. The latter suspicion proved to be unfounded when test results showed Christian in fact had the expected levels of medication in his system. His hormone levels, however, did not appear to be responding to the medication, prompting his doctors to begin considering other treatment options.

On September 12, 2013, the Department determined it was necessary to detain Chloe and Christian due to safety concerns uncovered in its investigation. However, before Chloe could be detained, the Department learned that mother had arranged for Chloe to fly to China to live with her biological father.

Shortly thereafter, the Department also learned that father had picked Christian up from mother's home, notwithstanding the emergency protective order, and had taken the child back to the paternal grandparents' house. Father said mother had become intoxicated at her restaurant and spent the night at her boyfriend's house. The report prompted the Department to obtain a removal warrant for Christian.

On October 16, 2013, the Department filed a juvenile dependency petition on behalf of Chloe and Christian alleging, among other things, that father had sexually abused Chloe, that mother knew about the sexual abuse and failed to protect Chloe and Christian, and that mother and father had a history of domestic violence that placed the children at risk of harm. The juvenile court found a prima facie case for detention, and ordered Christian detained in the Department's custody, with monitored visits for the parents.

On October 29, 2013, the detective working on father’s criminal case advised the Department that the prosecution had been stalled because “ ‘the suspect’s family flew the victim to China so that she could not testify in court.’ ” The detective indicated the prosecution was rebuilding the case without Chloe and that the criminal action would be postponed for approximately two months.

On November 6, 2013, the juvenile court held an adjudication hearing on the dependency petition relating to Christian.³ With respect to the sexual abuse allegations, father’s counsel argued Chloe’s statements and the police reports should be excluded under section 355, because Chloe was unavailable to testify.⁴ The court denied the motion, holding Chloe’s statements were admissible under Evidence Code section 1370 because she qualified as a victim of sexual abuse.⁵ Nevertheless, the court dismissed the jurisdictional allegations concerning father’s sexual abuse of Chloe and mother’s failure to protect as they related to Christian, but sustained the allegations concerning the parents’ domestic violence under section 300, subdivisions (a) and (b).

³ The court continued the adjudication hearing as to Chloe because she remained in China with her biological father.

⁴ Section 355, subdivision (c)(1) provides, in relevant part: “If any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions: [¶] (A) The hearsay evidence would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay. [¶] . . . [¶] (C) The hearsay declarant is a peace officer”

⁵ Evidence Code section 1370, subdivision (a) provides: “Evidence of a statement by a declarant is not made inadmissible by the hearsay rule if all of the following conditions are met: [¶] (1) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant. [¶] (2) The declarant is unavailable as a witness pursuant to Section 240. [¶] (3) The statement was made at or near the time of the infliction or threat of physical injury. . . . [¶] (4) The statement was made under circumstances that would indicate its trustworthiness. [¶] (5) The statement was made . . . to a law enforcement official.”

On January 10, 2014, the court held a contested disposition hearing regarding Christian's placement. In advance of the hearing, the Department submitted a last minute information report indicating that father's criminal case had been dismissed due to Chloe's unavailability to testify; the restraining order to protect Chloe had been lifted and father had returned to the family home; father had been participating in parenting classes and attending individual counseling; and the paternal aunt and uncle's home had been approved for Christian's placement.

Father testified at the hearing about his progress in the parenting classes, which included instruction on domestic violence. He also testified that the last domestic violence incident with mother occurred in 2007 or 2008, notwithstanding his earlier admission that the most recent incident occurred in 2010, when he was arrested for scratching mother's eye. Since the criminal case was dismissed, father said he moved back into the home with mother so they could jointly care for Christian. He testified that they continued to sleep in separate bedrooms. He also affirmed that he would be amenable to living in a separate residence if the court ordered this as a condition for releasing Christian to his custody.

After argument by counsel, the juvenile court ordered Christian to remain removed from parental custody and for the family to receive reunification services. The court expressed concern that father did not fully appreciate the threat posed to Christian by the domestic violence, particularly in view of father's testimony "downplay[ing]" the severity of the incidents. The court also found the parents had not been forthright and honest about their efforts to address the domestic violence issues.

The court expressed further concern about father's sexually inappropriate conduct, explaining, "even putting aside all of Chloe's statements since she's not here, the father has admitted to inappropriate sexual communications with Chloe that provides some of the court's concerns because of the particular medical situation of his son." The court found that father lacked an understanding of appropriate sexual conduct with his children, and this posed a substantial risk to Christian. To address the issue, the court ordered father to participate in sexual abuse counseling for perpetrators.

DISCUSSION

1. *The Jurisdictional Findings Are Supported by Substantial Evidence*

Father contends there was insufficient evidence to support jurisdiction under section 300, subdivisions (a) and (b), because there was no evidence that the parents were “currently engaging in violent altercations,” nor evidence that Christian “ever suffered *any* harm” as a result of the parents’ past altercations. We disagree.

“ ‘In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ‘ “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” ’ [Citation.]” [Citation.]” (*In re I.J., supra*, 56 Cal.4th at p. 773.)

Section 300, subdivision (a) authorizes dependency jurisdiction where the court finds “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” Section 300, subdivision (b) authorizes jurisdiction if the court finds “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left.” Under either subdivision, “ ‘a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or

the minor’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.’ ” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.) In declaring a child dependent, the court need not wait until the danger has matured into certainty. “Reasonable apprehension stands as an accepted basis for the exercise of state power.” (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1003.)

There is no dispute—indeed, father does not dispute—that domestic violence in the presence of children can support juvenile court jurisdiction under section 300, subdivision (a) or (b). As one court observed, domestic violence “[o]bviously” places children at risk of physical harm “since, for example, [children] could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg, or by [a parent] falling against them.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Further, “domestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” (*Ibid.*)

Moreover, notwithstanding father’s contention that there was no evidence of ongoing physical violence between the parents, it is well recognized and documented that “ [p]ast violent behavior in a relationship is “the best predictor of future violence.” Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of these relationships. . . . Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner.’ (Comment, *Beating Again and Again and Again: Why Washington Needs a New Rule of Evidence Admitting Prior Acts of Domestic Violence* (2000) 75 Wash. L.Rev. 973, 977-978, fns. omitted.)” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.)

Here, there was ample evidence to support the juvenile court’s finding that the parents’ pattern of domestic violence altercations placed Christian at substantial risk of serious physical harm. Among other things, Chloe reported at least two incidents in which father struck mother on the chest during an altercation, including one in the car on the freeway, in which father lost control of the vehicle. Chloe also reported that the

parents' clashes sometimes involved throwing furniture—a fact confirmed by mother's and father's own accounts. For his part, father admitted to at least four violent altercations with mother that required police intervention, *all of which occurred in the children's presence*. The most recent incident resulted in father's arrest when the doctor treating mother's injury called the police after father misrepresented that mother had scratched her own eye. All of this supported the juvenile court's conclusion that mother and father had not resolved their ongoing issues with domestic violence, and that the potential for a future incident placed Christian at risk of serious physical harm.

The foregoing also distinguishes this case from *In re Daisy H.* (2011) 192 Cal.App.4th 713, wherein the record disclosed only one incident of domestic violence that was not witnessed by the children and that took place seven years before the petition was filed. (*Id.* at p. 717.) Father's reliance on *In re J.N.* (2010) 181 Cal.App.4th 1010 is similarly misplaced. That case involved a solitary incident in which the parents were apprehended for driving while intoxicated with their children in the car, but “nothing in the record supported a finding[] that either parent had an ongoing substance abuse problem.” (*Id.* at p. 1022.) Here, though there may be only one reported incident of the parents endangering the children while driving, there are several admitted instances of domestic violence in Christian's presence. This pattern of violent altercations between father and mother amply supports the court's jurisdictional findings. (Cf. *In re J.N.*, at p. 1021 [juvenile court expressly found “no pattern of past risk”].)

2. *The Disposition Order Was Not an Abuse of Discretion*

Father also challenges the court's disposition order on the ground that the evidence of domestic violence fails to support a finding that Christian's physical health would be substantially endangered were he returned to father's physical custody. In that regard, father argues any concerns about domestic violence with mother could have been addressed by ordering father to move to a separate residence as a condition of custody. Lastly, father contends the order requiring him to attend a program for sexual abuse perpetrators should be stricken because his alleged abuse of Chloe was not a basis for taking jurisdiction over Christian. We find no abuse of discretion.

Before a dependent child may be taken from the physical custody of a parent, section 361, subdivision (c)(1) requires the juvenile court to find “clear and convincing evidence” of “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 [parent’s] physical custody.”

“The juvenile court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) In reviewing an order for abuse of discretion, we “ ‘must consider all the evidence, draw all reasonable inferences, and resolve all evidentiary conflicts, in a light most favorable to the trial court’s ruling. [Citation.] The precise test is whether any rational trier of fact could conclude that the trial court order advanced the best interests of the child. [Citation.] . . . ’ [Citation.] The trial court is accorded wide discretion and its determination will not be disturbed on appeal absent ‘a manifest showing of abuse.’ [Citation.]” (*In re Robert L., supra*, 21 Cal.App.4th at p. 1067.)

This standard applies notwithstanding the requirement that an order removing a child from the physical custody of a parent must be based on “clear and convincing evidence.” (See § 361, subd. (c).) “The ‘clear and convincing’ standard . . . is for the edification and guidance of the trial court and not a standard for appellate review. . . . [O]n appeal from a judgment required to be based upon clear and convincing evidence, ‘the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.’ [Citation.]” (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 881.)

As we discussed in the prior section, there is ample evidence in the record supporting the juvenile court’s finding that father’s pattern of domestic violence with mother would place Christian at substantial danger were he returned to father’s custody.

Father nevertheless argues reasonable means existed to protect Christian by ordering the parents to live separately as a condition for returning the child to father's custody.

The juvenile court impliedly found the parents could not be trusted to abide by such an order, particularly in view of the fact that father had returned to the family home, despite the discord with mother, immediately after the criminal restraining order was lifted. The court stated the parents' explanation for father moving back in with mother "doesn't really make sense," nor was the court persuaded that "somehow by living together in separate rooms, that helps Christian." Critically, the court also found that the parents had not been forthright and honest about the domestic violence—a finding supported by father's attempts to downplay the severity and give misleading dates about the incidents during his testimony. In view of its intimacy with the case and unique opportunity to personally observe the parties' demeanor and conduct in court, credibility determinations are the juvenile court's exclusive province, and will not be disturbed absent indisputable evidence of abuse. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200.) There is no such evidence here.

Moreover, father's proposed accommodation would not have addressed the juvenile court's other concern about father's inappropriate sexual conduct with Chloe and the deleterious effects potentially posed to Christian's emotional wellbeing. Father argues this concern was entirely unfounded, as there was no evidence that he ever acted inappropriately toward Christian. He also attacks Chloe's credibility, labeling her a "liar" and noting that her psychiatrist described her as "emotionally immature, psychologically [naïve, and] seeking attention by exaggerating and exacerbating a situation." However, even without Chloe's testimony, there was ample evidence in the pretext phone calls, father's text messages to Chloe, and father's own admissions to police after his detention to support the juvenile court's finding that he lacked a suitable understanding of "appropriate sexual conduct with his children." And, while there was no evidence of sexual misconduct toward Christian, the trial court had legitimate concerns about how father's lack of understanding could impact the child's emotional health, particularly in view of Christian's medical condition.

That evidence all supports the juvenile court’s order directing father to attend a program for perpetrators of sexual abuse. At the dispositional hearing, the juvenile court has broad discretion to determine what reunification services will best serve and protect the child’s interest and to fashion a dispositional order in accord with this discretion. (§ 361.5, subd. (a); Cal. Rules of Court, rule 5.695(h); *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006 (*Christopher H.*)) The reunification plan “ ‘must be appropriate for each family and be based on the unique facts relating to that family.’ ” (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1458.) Section 362, subdivision (d) states in pertinent part: “The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.”

Because the juvenile court dismissed the sexual abuse allegations as to Christian, father contends the order requiring sexual abuse counseling for perpetrators should be reversed. We disagree. The court in *Christopher H.* rejected a similar contention. There the juvenile court dismissed a jurisdictional allegation asserting the father’s alcohol related problems negatively affected his ability to care for the dependent child, but nevertheless ordered the father to submit to drug and alcohol testing as a condition for reunification. (*Christopher H., supra*, 50 Cal.App.4th 1001 at p. 1006.) Notwithstanding the jurisdictional ruling, the *Christopher H.* court held the order was not an abuse of discretion because there was evidence that the father’s “substance abuse problems pose a potential risk of interfering with his ability to make a home for and care for Christopher.” (*Id.* at p. 1007.) That evidence, the court explained, distinguished the case from *In re Basilio T.* (1992) 4 Cal.App.4th 155—the case principally relied upon by father here—where there was no evidence that the parents had a substance abuse problem. (*Christopher H.*, at p. 1007, citing *Basilio T.*, at pp. 172-173.) The *Christopher H.* court concluded, “given [the father’s] repeated driving under the influence convictions and positive blood test for methamphetamine, the [juvenile] court would have been remiss if it failed to address [the father’s] substance abuse even though that problem had not yet affected his ability to care for Christopher.” (*Christopher H.*, at p. 1008.)

So too here. Given the evidence supplied by father's own admissions of his sexually inappropriate conduct with his 17-year-old stepdaughter, coupled with Christian's medical condition, the juvenile court would have been remiss had it failed to order reunification services to address this issue. We find no abuse of discretion.

DISPOSITION

The jurisdictional findings and disposition order are affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

EDMON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.