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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.S., et al., Persons Coming Under
the Juvenile Court Law and Appellants.

B256618
(Los Angeles County
Super. Ct. No. DK04498)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOSE S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Steven R. Klaif, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Appellant Minors M.S. and K.S.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

Jose S. (Father) and his daughters, minors M.S. and K.S., appeal from the dependency court's jurisdiction and disposition orders regarding M.S. and K.S. The dependency court assumed jurisdiction over M.S. and K.S. after finding that Father sexually abused their female cousin, V.T., several years prior. The court also ordered Father removed from the home. All three appellants contend that the jurisdiction and disposition orders are not supported by substantial evidence and should be reversed. While their appeals were pending, the court terminated the challenged disposition order and issued a new order placing M.S. and K.S. with both parents. We conclude that the court's subsequent order renders moot appellants' challenges to the disposition order. We consider their jurisdictional challenges, however, and affirm the judgment of the dependency court.

FACTUAL AND PROCEDURAL HISTORY

On November 3, 2013, 12-year-old V.T. and her mother, Luz T., attended a health fair. A healthcare worker examining V.T. observed several superficial cuts on her left arm. The healthcare worker questioned V.T. about the cuts and immediately alerted the Los Angeles County Department of Children and Family Services (DCFS) when V.T. told her that she had been cutting herself "because she has been repeatedly raped by her live-in uncle since the age of nine." According to the healthcare worker, V.T. reported that she sees the uncle, appellant Father, every day and that the rape is "ongoing." The healthcare worker was not sure when the last rape took place and did not know how frequently the rapes occurred. The healthcare worker advised DCFS that V.T. had disclosed the rape to Luz "a few months ago," and that Luz had spoken with Father about V.T.'s allegations when she learned of them. She further reported that the family continued to reside with Father due to financial constraints and V.T. "continues to be left alone with the uncle." V.T. and Luz left the health fair before a representative from the Department of Mental Health had an opportunity to speak with V.T.

DCFS dispatched an emergency children's social worker to V.T.'s home address. Law enforcement officers also responded to the property, which contained three distinct residences: a front house in which V.T. and Luz lived with V.T.'s maternal grandparents, "and there were two additional homes in the back of their property, in which two maternal aunts [Luz's sisters] and their family [*sic*] reside." One of the maternal aunts is Maria S. (Mother), who is married to Father and lives on the property with him and their two daughters, appellants 14-year-old M.S. and five-year-old K.S. The other maternal aunt is Blanca B., who lives on the property with her two sons, one-year-old I.B. and nine-year-old I.T.

According to the report prepared by the responding law enforcement officers, V.T. told them that "when she was approximately eight or nine years old she entered [Father's] residence to retrieve a shirt that her cousin [appellant M.S.] borrowed. She walked upstairs into her cousin's bedroom. While inside the room, she heard footsteps coming up the stairs. She turned around and saw [Father] standing just inside the doorway of her cousin's bedroom. She walked past [Father] in an attempt to leave the room. [Father] grabbed her by her shoulders from behind and pulled her backwards causing her to fall back onto a full size bed nearby. Neither [Father] nor [V.T.] said anything at this point. [Father] approached her as she lay on the bed. [Father] used his hands to pull her pants and underwear down, exposing her vagina and buttocks. [Father] then pulled his pants down exposing his 'boxers.' As [Father] pulled his pants down, [V.T.] had an opportunity to pull her pants and underwear back up to its original position. [V.T.] sat up and began kicking her feet at [Father], striking him below his waist. [¶] [V.T.] then ran into a nearby bathroom and locked the door. [Father] approached the door and said something to the effect of, 'if you tell somebody, something's gonna happen to you.' [V.T.] took [Father's] statement as a threat and feared for her safety so she did not tell anyone about his actions." V.T. "never saw [Father's] penis at any time throughout this incident."

The police report further reflects that V.T. told law enforcement that she felt that she was at fault for the abuse and should have done something else to prevent it. She advised the police that she “had been cutting herself for the last month due to the increasing amount of stress over this incident.” “She also added there was no other incident of sexual abuse by [Father].”

V.T. and Luz initially advised the responding officers and social worker that Father currently was in Mexico caring for a sick relative. They told the social worker that Father “no longer lives on the property and is residing in Mexico.” These stories were proved false when Father arrived on the scene. Luz and V.T. “attributed their misrepresentation of the truth due to them not wanting their family members to know, because they were staying with them and had no place to go, so they wanted to wait until they left the house they were living in, before they informed the family about the allegations of sexual abuse.” Luz told the social worker that she lied because she had not yet told her family about V.T.’s allegations and did not want to upset them. She further explained that she knew Mother “would not believe it. She would pretend that everything is okay, but once everybody left, there would be a problem, so it is best that we just leave the property.” V.T. similarly stated that she and Luz “did not have any place to go” and thought the “family would be really mad at us, which they probably are.”

The law enforcement officers took Father into custody and read him his *Miranda*¹ rights. According to the police report dated November 3, 2013, Father “answered, ‘Yes, Yes, Yes, Yes, Yes’ and wished to discuss[ed] this incident with” the officers. The police report contains the following summary of the interview: “In summary, the suspect stated that he recalled a onetime incident with the victim [V.T.]. The suspect and victim

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

were inside a bedroom in his residence. The suspect pushed the victim backward onto a bed. He then pulled her pants down, exposing her lower extremities. The suspect initially told me he pulled his pants down as the victim described but later recanted. I asked the suspect why he pulled the victim's pants down and he told me he did so in order to 'See' her vagina but later recanted that statement as well and said he was 'Just playing' with the victim. I asked the suspect if the victim looked scared during the incident and he stated she did." Although the police report indicates that Father's statement was digitally audio recorded and copied onto a compact disc, no copy of the recording was submitted to the dependency court. The police arrested Father on the charge of lewd acts with a child under the age of 14, Penal Code, section 288, subdivision (a). His case remained pending at the time of briefing in this case.

Meanwhile, the social worker on the scene interviewed V.T., Luz, and several other members of the extended family. According to the social worker's detention report, V.T. told him that she was at Father's house and she "was upstairs and [Father] came up there in the room and he pulled [her] pants off and then took off his pants and tried to rape [her]." Father held her down and tried to get on top of her to have sex with her, but she was able to get off the bed, run to the bathroom, and lock the door. Father did not touch her genitals or display his genitals to her. "He never tried anything after that one time." V.T. reported that she had not had contact with Father "for a long time [n]ow." She never directly told her mother about the incident; Luz found out "about two weeks ago," after V.T. posted something on Facebook and a cousin who saw the post alerted Luz.

Luz told the social worker, "[m]y daughter and I were at a health fair at the Coliseum, and I guess when they were taking her blood pressure that they saw the cuts on her arm and they were asking her why she was doing that and my daughter told them that my sister's husband had tried to rape her. His name is [Father]. The people at the fair told my daughter that she was going to be hospitalized for two days, because I guess they thought she was going to kill herself, but my daughter told them that she did not want to

hurt herself, but they wanted to talk to her more. No, [V.T.] never told the people that the sexual abuse was ongoing or that it happened more than one time. My daughter got scared because they keep [sic] telling her that she was going to go to the hospital. My daughter wanted to leave the fair, so we just left, because [V.T.] was walking out anyway, so I just decided to leave with her. [¶] I found out about the sexual abuse about two weeks ago. My daughter did not initially tell me. My cousin told me what happened. I guess my daughter posted something on Face Book [sic] and my cousin seen [sic] it and told me. When I talked to [V.T.], she told me that when she was about 9-years-old, that [Father] tried to rape her. She told me that she was at my sister's house and went upstairs and [Father] was behind her when she turned around and he pulled down her pants and panties and pulled his pants down and tried to rape her. My daughter said she got up off the bed and ran into the bathroom and then he left. She said that she want [sic] back to the front house after that. She said she was scared, so she did not tell anyone.” Luz told the social worker that she was shocked to learn that V.T. had been engaging in self-mutilation. Luz had “wondered why she always wore sweaters and things like that even after playing in her soccer game.” Luz said she supported V.T. and believed her. Luz also told the social worker that she understood how stressful sexual abuse could be because she went through it as a child. Luz declined to talk further about the abuse she experienced.

The social worker also spoke with Mother. According to the report, Mother “stated, I was not aware of the sexual abuse allegations and I do not see when that could have happened. My husband is a good man, and I just do not believe he would do what he is being accused of. I have never seen or suspected my husband of sexually abusing our children or any other children. No, he does not have any substance abuse problems. He had no mental health problems. There is not Domestic Violence. He is a good person and a good father and husband. He and [V.T.] never had any kind of ongoing interactions.” Mother explained that Father “goes to work and comes home,” but works

two jobs so is not at the house a lot. She signed a safety plan that required Father to stay out of the home until DCFS completed its investigation.

Mother gave the social worker permission to enter the family's "well maintained" home to interview M.S. and K.S. individually. M.S., who was 13 at the time, told the social worker that father was "a good father" who "works a lot" and "has never tried to touch me in a way that makes me feel uncomfortable." She reported that she was "not having any problems at home with my mom or dad." K.S., who was four at the time, "presented as a very happy little girl." She told the social worker that Mother and Father were "nice to me" and that Father "never hurt me" or "made me feel yucky." K.S. knew where her "private parts" were and stated that no one touched her there.

The other adult family members that the social worker interviewed – Blanca B. and "Mr. [T.]," the maternal grandfather – denied knowledge of the incident. Blanca stated that she had never seen Father abuse any children, and Mr. T. stated that Father was a "good hard working man" whom he could not "imagine . . . doing anything like this to hurt any of the children." Mr. T. said that he did "not believe that this is the truth" and wondered "why [V.T.] would just now say something about this." Blanca's two sons, nine-year-old I.T. and one-year-old I.B., appeared fine. I.T. denied seeing Father "do anything bad to my cousins" and stated that Father "has never done anything bad to me."

The social worker nonetheless made "Companion Referrals" for Mother and Father's family and Blanca's family on November 4, 2013. A social worker was assigned to Mother and Father's family on November 12, 2013. She visited the family on November 22, 2013. "Mother and the children were very welcoming and friendly and were easy to engage." Both M.S. and K.S., who were interviewed privately and separately, denied physical, emotional, and sexual abuse. M.S. told the social worker that she "feels safe at home." M.S. knew that Father had not been home "because 'someone is accusing him of something,'" but she did not know what. M.S. reported that she had never seen Father alone with V.T., who had since moved away from the family

compound. K.S. “was very talkative.” She told the social worker that Father was “living with her ‘Tio’” and she missed him.

Mother also told the social worker that she and the girls missed Father, who was staying with a paternal uncle. Mother said that the family was willing to move to a new home so that V.T. and Luz could move back from the friend’s house at which they currently were staying. Mother stated that Father typically works seven days a week and is the sole provider for the family. She also reiterated that “she knows father would never sexually abuse any children especially not [her] neice/[V.T.]” (*Sic.*)

The social worker had a follow-up visit with the family on December 12, 2013. Mother stated that she was “stressed” without Father around. She and the girls visited him at the uncle’s house “but the children are always sad when father cannot come home with them.” M.S. and K.S. denied any abuse.

The social worker visited again on December 21, 2013. Mother showed her a criminal protective order requiring Father to stay 20 feet away from V.T. and advised her that Father had a criminal court hearing scheduled for January 16. Both Mother and M.S. told the social worker that they missed Father. Mother asked if Father had to remain away from the home, and the social worker explained that the safety plan Mother had signed (1) was voluntary and (2) had only been valid for seven days. The social worker encouraged Mother to supervise the girls at all times.

On December 26, 2013, the social worker spoke with the social workers who were handling the other families’ referrals. According to those DCFS employees, V.T. had had a normal medical exam and reported that she had stopped cutting herself. She had not had any contact with Father. The referral for her family had been closed as inconclusive earlier in the month. The referral for Blanca’s family had been closed as unfounded.

DCFS continued its involvement with Mother and Father’s family, however. The social worker visited the family on January 18, 2014. Father had moved back home but was at work during the visit. His attorney had advised him not to speak with DCFS in

any event. Both M.S. and K.S. told the social worker that they were happy to have Father home. Both children were up to date on their physical exams and immunizations. M.S. had missed some school but reported that she was back and was doing good. She had low but passing grades in most of her subjects.

The social worker visited the family again on February 22, 2014. Father was at work. M.S. and K.S. both denied any abuse or neglect. Mother also reported that M.S.'s grades had improved. Mother agreed to take M.S. and K.S. to be forensically examined for sexual abuse. A few weeks later, the examining physician reported that both children had normal exams. According to the social worker's report, the physician "documented that there was no disclosure of abuse by minor/[M.S.], however if the allegation of father's sex abuse of [V.T.] is substantiated then strong consideration should be given to removing the father from this home."

A social worker visited the family again on March 19, 2014. Mother, M.S., and K.S. were interviewed separately. Mother reported that Father had moved back into the home in January, after his initial court date. He was working 11:00 a.m. to 11:00 p.m. seven days a week and was never alone with the girls. "Mother stated that although she does not believe father sexually abused her niece ([V.T.]) or would abuse minors [K.S.] or [M.S.], she fully understands the risks to minors as a result of the allegations." M.S. and K.S. denied that Father ever made them feel uncomfortable. "Both minors smiled and appeared comfortable and happy when they spoke of their father and made appropriate eye contact to the [social worker] when referring to their father."

On March 24, 2014, the social worker received and reviewed the police report from November 3, 2013. The social worker spoke with mother about the police report on March 27, 2014. Mother stated that she had read the report and heard the audio recording of Father's statements to the police. Mother stated that she and Father's attorney "are not satisfied with the report," because Father only speaks Spanish but was interviewed in English. Mother did not believe the sexual abuse occurred.

DCFS had a final follow-up visit with Mother, M.S., and K.S. on April 2, 2014. Mother continued to express doubts about Father's ability to understand the police during his November interview. According to the social worker's report, she stated, "I believe he (father) was repeating what the officer said. He did not understand the questions. He doesn't speak English." Mother also indicated that she did not believe that Father sexually abused V.T., because Father denied the allegations to her, V.T.'s story was inconsistent, and Father has never been alone with V.T. due to his demanding work schedule. M.S. and K.S. denied experiencing any sort of abuse or neglect. DCFS nonetheless detained them and placed them in the sole care of Mother. Mother stated that the children were upset by the arrangement, but Father "would rather leave the home so that the children can remain with mother because he does not want to put his children at risk of removal from both parents." The social worker explained that any visits by Father prior to the detention hearing on April 8, 2014, would need to be monitored.

On April 7, 2014, the day before the hearing, the social worker telephoned mother. Mother "would not listen to reason and was very adamant that the father did not sexually abuse the maternal cousin." Mother also indicated that Father had been transporting her and the children in his vehicle and had contact with the children "because they miss their father." The social worker reminded mother that the children were not allowed to have unmonitored contact with Father, and that mother could not serve as the monitor. Mother stated that she understood.

At the April 8, 2014, hearing, DCFS alleged that M.S. and K.S. were persons described by Welfare & Institutions Code, section 300, subdivisions (b) and (d).² Specifically, it alleged that "On a prior occasion, the children[']s father, Jose S[.], sexually abused the children's maternal cousin [V.T.] at the age of nine years old, by pushing the maternal cousin onto a bed, pulling the maternal cousin's pants and underpants down, the Father pulling his pants down and laying on top of the maternal

² All further statutory references are to the Welfare & Institutions Code unless otherwise indicated.

cousin in an attempt to rape the maternal cousin. The children's mother, [Mother] knew of the sexual abuse of the maternal cousin and failed to take action to protect the children. The mother allowed the father and [sic] to have unlimited access to the children. The father admitted the sexual abuse of the maternal cousin to Law Enforcement. The mother does not believe the maternal cousin's disclos[ure] of sexual abuse by the father. On 11/04/2013, the father was arrested for Lewd Acts with a Child. Such sexual abuse of the maternal cousin by father and the mother's failure to protect the children endangers the children's physical health, safety and well-being, creates a detrimental home environment and places the children at risk of physical, harm, damage, danger and sexual abuse." The court found that DCFS made a prima facie showing that M.S. and K.S. were persons described by section 300, subdivisions (b) and (d). The court released the girls to mother pending a jurisdictional hearing. Father was permitted to have a minimum of three monitored visits with M.S. and K.S. per week, and to have mother-monitored telephone contact with them.

The social worker interviewed Mother, M.S., and K.S. on May 6, 2014. According to the social worker's report, Mother was angry that DCFS had accused her of knowing about but failing to report the abuse; she claimed that V.T.'s disclosure and Father's arrest "came as a shock to everyone," including her. Mother never suspected any sexual abuse and did not believe any had occurred. Mother stated that Father "works every day morning and night" and was working at a job in Encino around the time of the incident. She told the social worker, "[h]e would wake [up] at 6am to leave at 7am to get there [at] 8am. He would get off at 5pm. Sometimes he would come home. He would get here, if he came home to eat, which was rare, he would get here at 7-7:30pm. After that he would take a shower and leave. He had to go to his other job by 8pm but he would have other people cover him. He worked until 2-3am in the morning. This was the same routine every day," even on weekends, though Father would take a day off if the family "needed to take the girls out shopping or something." During the limited times when Father was home, Mother explained, the family, including Luz and V.T., was "all

in the same place in [*sic*] the same time.” Mother also noted that the abuse allegedly “happened between December 2008 and February 2009,” around the time K.S. was born, and that she was home with K.S. Mother indicated that she had started attending sexual abuse awareness classes and that the children had monitored visits with Father on Sundays. The social worker opined that the children were at low risk of abuse or neglect in Mother’s care.

M.S., then 14, was aware of the “big old problem with [her] dad and cousin” but believed that the accusations against Father were false. She told the social worker that her “dad wouldn’t hurt nobody” and had never touched her. She felt safe with Father, whom she reported visited on Mondays or Thursdays. M.S. became upset when asked about the accusations against Father and said that she had forgotten what mother had told her about them. M.S. reported that Father worked every day and would leave for work around 8:00 a.m., after she had left for school. Sometimes he would have days off in the mornings, and infrequently he would join the family for dinner. M.S. echoed Mother’s comments that when Father was around, everyone, including Mother, M.S., K.S., Luz, and V.T. would hang out together. M.S. wanted to resume living with her mom and dad.

K.S., who was five at the time, did not know why she had a social worker. K.S. reported that she felt safe with Father. K.S. did not go to school yet and did not know the difference between a good touch and a bad touch.

The social worker also interviewed Luz, who was staying at one of the houses on the property for a few days because she and V.T. were ill. Luz reported that the abuse had happened in the morning, during the week, when she and V.T. had been taking care of K.S. Luz did not know why V.T., who “was 8 or 9,” would not have been at school. According to Luz, the abuse occurred when V.T. went to Mother and Father’s house to get diapers. V.T. unexpectedly encountered Father, who “was next to her up on her face.” Luz reported that V.T. had told her that Father “threw her to the bed and tried to pull her pants down,” but would not tell Luz anything further. Luz indicated that V.T. did not say that Father raped her and that “a forensic” “said that everything was okay.”

Aside from the incident, Luz did not know of any other time that V.T. had been alone with Father. Luz reported that Father worked in the mornings “and mostly nights. He left latest at 10-10:30am” and got home around 2:00 or 3:00 a.m. Sometimes he would come home “in between,” and would “[b]e with his kids” in his home. V.T. would either be with Luz or be over there. Luz would not allow the social worker to interview V.T. because V.T. “was sick with fevers.”

At the hearing on May 19, 2014, the court admitted into evidence without objection DCFS’s detention report and its jurisdiction/disposition report, to which the November 3, 2013, police report was attached. DCFS did not seek to admit any further evidence. The court trailed the hearing to allow Father’s counsel to obtain and review “the transcript from the minor’s testimony,” as well as Father’s interview with the police. Father ultimately did not seek to admit these materials or any other evidence, however, and neither did Mother or the children. The parties stipulated that Mother was participating in “the C-SAP program” as of April 10, 2014, and that Father had attended five sessions of a 52-session sex offenders program and three sessions of a Spanish-speaking parenting class.

After hearing argument from DCFS, Mother, Father, and the children, the court sustained the allegations under section 300, subdivisions (b) and (d), though the court struck from the petition the language pertaining to Mother because it did not “see indication that she knew about this and she failed to protect.” The court also struck the clause “in an attempt to rape the maternal cousin” from the allegations against Father. The allegations as sustained were: “On a prior occasion, the children, [M.S.] and [K.S.’s] father, Jose [S.], sexually abused the children’s maternal cousin [V.T.] at the age of nine years old by pushing the maternal cousin onto a bed, pulling the maternal cousin’s pants and underpants down, the father pulling his pants down and laying on top of the maternal cousin. The father admitted the sexual abuse of the maternal cousin to Law Enforcement. On 11/04/2013, the father was arrested for Lewd Acts with a Child. Such sexual abuse of the maternal cousin by father endangers the children’s physical health, safety and well-

being, creates a detrimental home environment and places the children at risk of physical, harm, damage, danger and sexual abuse.” The court noted that it sustained the subdivision (b)(1) allegations as to Mother not because Mother failed to protect the children at the time of the abuse but “because Mother is having a hard time believing that now, which we see time and time again.”

The court credited V.T.’s general story of the incident, noting that despite “minor inconsistencies,” “[t]he basic resuscitation [*sic*] stays the same.” The court noted the absence of evidence as to why V.T. might fabricate her account, and further noted that “it just seems to be too much of a coincidence that she would have a general inconsistent [*sic*] statement, the Father would admit and later change it around and I don’t even know it was ever really a withdrawal of the confession, he just changed it to well I was playing.” The court further stated, “the court is being asked to believe that it is more likely than not that she made this up, that his confession was either [*sic*] didn’t happen or was in English when it should have been in Spanish. No. All things taken all the evidence as a whole, it is more likely than not that this happened.” When prompted by Father’s counsel, the court clarified that “[t]he factual basis of the nexus” between the abuse of V.T. and substantial risk of harm to M.S. and K.S. “was abnormal sexual behavior with a nine year old. And the only thing that has occurred [of] significance is that time has pas[sed]. This was untreated, these are children both of them, somewhere reasonably around the same age. That this has never been addressed and it creates a risk.”

As to disposition, the court found “pursuant to [section] 361(c) by clear and convincing evidence that there’s a substantial danger or would be if the children were returned to the home of the Father to the physical health, safety, protection or physical or emotional well-being of the children. And there are no reasonable means by which the children’s health may be protected without removing the children from the Father’s custody.” The court accordingly ordered M.S. and K.S. removed from Father. The children were placed with Mother. The court also ordered “unmonitored visits in a

neutral setting with both girls together” for Father, and granted DCFS the discretion to “liberalize further” with regard to the frequency and duration of the visits.

Father and the children timely filed notices of appeal.

On February 6, 2015, Father filed an unopposed motion requesting that we take judicial notice of a minute order memorializing the events of a January 13, 2015, hearing before the dependency court. The motion is granted. (Evid. Code §§ 452, subd. (d); 459.) Accordingly, we note that, on January 13, 2015, the dependency court terminated the previous disposition order that is the subject of this appeal and ordered M.S. and K.S. placed with both Mother and Father, with family maintenance services to be provided. We further note that the court retained jurisdiction over M.S. and K.S.

DISCUSSION

I. Mootness

Appellants request that this court reverse the jurisdiction and disposition orders of the dependency court and remand “with directions that the juvenile court vacate those orders and issue new orders of home of parents and dismissing any orders of removal from father.” The dependency court already has revised its disposition order. As we judicially noticed, the court ordered M.S. and K.S. placed with both parents as of January 13, 2015.

We decide on a case-by-case basis whether subsequent events such as the January 13 disposition order render an appeal moot. (*In re M.C.* (2011) 199 Cal.App.4th 784, 802.) “An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief.” (*Ibid.*) Here, the appeal as a whole is not moot. The court’s jurisdictional findings, if erroneous, could have severe and unfair consequences to appellants in future family law or dependency proceedings. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.) Appellants’ challenge to the May 22, 2014, disposition order is moot, however. The children have been returned to the home of both parents, which is the relief appellants sought by challenging the disposition order. Accordingly, this court

dismisses as moot appellants' challenges to the disposition order and considers only their challenges to the dependency court's jurisdiction order.

II. Standard of Review

At the jurisdictional hearing, the dependency court's finding that a child is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355, subd. (a); *In re I.J.* (2013) 56 Cal.4th 766, 773.) At the disposition stage, a dependency court may not remove a child from his or her custodial parent unless there is 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).)

"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.]" (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)' [Citation.]" (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) "Substantial evidence is evidence that is reasonable, credible, and of solid value." (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

We may not substitute our assessment of the credibility of a witness in place of the trial court's assessment. "We cannot reject the testimony of a witness that the trier of fact

chooses to believe unless the testimony is physically impossible or its falsity is apparent without resorting to inferences or deductions. As part of its task, the trier of fact may believe and accept as true only part of a witness's testimony and disregard the rest. On appeal, we must accept that part of the testimony which supports the judgment." (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.) In other words, we do not disturb the trial court's determination unless it exceeds the bounds of reason. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

III. Analysis

M.S., K.S., and Father³ contend that there was insufficient evidence to support the court's findings that abuse occurred and that they faced a substantial risk of serious physical harm or sexual abuse at the time of the jurisdictional hearing, as required by section 300, subdivisions (b) and (d), respectively. (See *In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1396.) We disagree.

A. Substantial evidence supported the finding that V.T. was abused.

Father and the children argue that the dependency court should have applied "the child dependency hearsay exception" set forth in *In re Cindy L.* (1997) 17 Cal.4th 15 and *In re April C.* (2005) 131 Cal.App.4th 599, "to weigh and evaluate V.[T.]'s accusations against Father." The child dependency hearsay exception as articulated in these cases allows the admission of out-of-court statements by children who allegedly suffered sexual abuse if certain criteria are satisfied. (See *In re April C.*, *supra*, 131 Cal.App.4th at pp. 609-610.) One of these criteria is that the court find "that the time, content and circumstances of the statements provide sufficient indicia of reliability." (*Id.* at p. 609.) Appellants assert that V.T.'s statements did not carry sufficient indicia of reliability to support the court's findings because her statements, taken together, "were inconsistent,

³ Father has joined and adopted by reference the arguments made by M.S. and K.S. to the extent they may inure to his benefit. M.S. and K.S. have done the same with respect to arguments asserted by Father. (See California Rules of Court, rule 8.200(a)(5).) We accordingly discuss all of the parties' arguments together, as though they were raised in a single brief.

lacked physical corroboration as her HUB result was a normal exam, and lacked reliability as her initial disclosure which should have been the most reliable was completely discredited.” They make a similar contention about Luz’s statements.

The problem with this argument is that no one objected to the admissibility of V.T.’s or Luz’s statements in the dependency court (or, indeed, to any of the social studies that were admitted pursuant to section 355) or challenges their admissibility now. Whether V.T.’s and Luz’s statements meet the admissibility requirements set forth in a hearsay exception accordingly is irrelevant. The only question before us at this stage of the case is whether substantial evidence supported the dependency court’s findings; we cannot and do not concern ourselves with the admissibility of that evidence in the first instance. (*In re E.B.* (2010) 184 Cal.App.4th 568, 577.) M.S., K.S., and Father are essentially asking this court to reweigh the dependency court’s conclusion that V.T.’s accusations and Luz’s statements were reliable and credible. We decline to do so. As explained above, “It is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citation.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]’ [Citation.]” (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 578.)

The dependency court was entitled to find Luz and V.T. to be credible despite the inconsistencies in their statements. (See *In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.) Their statements to police and social workers provided substantial evidence to support the juvenile court’s conclusion that Father sexually abused V.T. on one occasion.

So too did Father’s statements to police, which also were admitted into evidence without objection. Father and the children contend that the police report “was unreliable and insufficient by itself to support the allegations when considered along with [V.T.]’s

and Maternal Aunt Luz’s prior implausible statements.” They point to Mother’s repeated statements that Father did not understand the English-language questions posed to him during the interview as a basis for disregarding the inculpatory statements documented in the police report. The dependency court was entitled to evaluate and weigh the credibility of Mother’s and Father’s statements, however, and we do not disturb its assessment. We agree that it would be very troubling for an interview to have been conducted in a language that the interviewee did not understand, but the audio recording of the interview was not admitted (or even offered) into evidence and the dependency court was not required to accept as true Mother’s representations about its contents.

B. Substantial evidence supported the finding that M.S. and K.S. faced a current risk of abuse.

Father and the children contend that “[s]ufficient evidence does not exist to find that there is a substantial risk that father’s children, [M.S. and K.S.], are at risk of being sexually and physically abused.” They argue both that “the evidence did not support that there was a likelihood that father would sexually abuse his daughters,” as demonstrated by the girls’ comfort with their Father and denial of abuse, and that “Father’s single episode years prior was not so ‘sexually aberrant’ as to create a substantial risk of harm to his children.”

These distinct yet entwined arguments are aimed at the two-pronged nature of the substantial risk inquiry. Both subdivisions (b) and (d) of section 300 require a finding of “substantial risk” of harm to the subject children. As the Supreme Court explained in *In re I.J.*, *supra*, 56 Cal.4th at p. 778, “[s]ome risks may be substantial even if they carry a low degree of probability because the magnitude of the harm is potentially great [¶] . . . [¶] Conversely, a relatively high probability that a very minor harm will occur probably does not involve a “substantial” risk. Thus, in order to determine whether a risk is substantial, the court must consider both the likelihood that harm will occur and the magnitude of potential harm’ [Citation.]” That is, “as the abuse becomes more

serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.” (*Ibid.*)

Father contends that the abuse of V.T. – which he does not admit – was not particularly serious or aberrant. The children echo this contention to some degree in their briefing. There is no bright line rule for determining the degree of aberrance or seriousness of abuse. Here, however, we are not persuaded that the abuse inflicted upon V.T. was merely “a very minor harm.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 778.) The dependency court found credible V.T.’s accusations that Father cornered her in a bedroom, pulled her pants and underwear down to expose her genitals, pulled his own pants down, and lay on top of her. The incident ended there only because V.T., who was nine years old at the time, was able to kick Father and seek safety in the bathroom. V.T. continued to experience stress from the incident years later. “Also relevant to the totality of the circumstances surrounding the . . . abuse is the violation of trust shown by sexually abusing one child while the other children were living in the same home [and family compound] and could easily have learned of or even interrupted the abuse.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 778.) This incident, while perhaps not as heinous as the abuse described in the case appellants cite, *In re Ana C.* (2012) 204 Cal.App.4th 1317, nonetheless is sufficiently troubling to reduce the probability threshold necessary to sustain the dependency court’s substantial risk finding. We are not persuaded that the lapse of a few years without further reported incident “demonstrates that there was no basis for the juvenile court to assert jurisdiction over” M.S. and K.S.

Appellants also contend that there is no evidence that M.S. and K.S. have been abused in the past or are likely to be abused in the future. They emphasize that M.S. and K.S. were happy with Father and did not report or show signs of neglect or abuse. “But section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) We recognize that “[i]t is of course impossible to say what any particular sexual predator . . . is likely to do in the future in any particular instance. But in our view that very

uncertainty makes it virtually incumbent upon the juvenile court to take jurisdiction over” M.S. and K.S. They are more likely to be alone with Father, may lack the ability to fight him off as V.T. did, and, in the case of K.S., lack the ability to distinguish between good and bad touches and are approaching the same age as Father’s previous victim V.T. (*In re I.J.*, *supra*, 56 Cal.4th at p. 779; see *Los Angeles County Dept. of Children and Family Services v. Superior Court of Los Angeles County* (2013) 215 Cal.App.4th 962, 964.) “Undoubtedly, appellate courts have rarely if ever been faced with a situation in which a father sexually molests one female minor in the household and the juvenile court does not find another female minor in the household to be at risk. The cases cited categorically state that aberrant sexual behavior directed at one child in the household places other children in the household at risk, and this is especially so when both children are females. [Citation.]” (*Los Angeles County Dept. of Children and Family Services v. Superior Court of Los Angeles County*, *supra*, 215 Cal.App.4th at p. 970.) V.T. resided in the family compound of homes and spent a significant amount of time in Father’s household. Moreover, both Mother and Father continue to deny that the abuse occurred and Mother demonstrated an unwillingness to keep Father away from the girls when directed to do so.

In short, there was evidence beyond mere concerns of “collateral damage and the children’s reactions to the allegations” to support the court’s jurisdictional findings. The dependency court’s explanation of the “[t]he factual basis of the nexus” between the abuse of V.T. and substantial risk of harm to M.S. and K.S. is not to the contrary. The court explained that Father engaged in “abnormal sexual behavior with a nine year old. And the only thing that has occurred [of] significance is that time has pas[sed]. This was untreated, these are children both of them, somewhere reasonably around the same age. That this has never been addressed and it creates a risk.” The court properly considered all of the evidence before it rather than simply presuming that the previous incident, of which Father had not been convicted, was alone sufficient to constitute a substantial risk.

(Contra *In re Quentin H.* (2014) 230 Cal.App.4th 608.)⁴ Its conclusion was not undermined or negated by its decision to permit Father to have unmonitored visits with the girls, together, in a neutral location; the visitation order ensured that Father was never alone with one of the girls while serving the overarching statutory goal of “preserv[ing] and strengthen[ing] the minor[s’] family ties whenever possible.” (§ 202, subd. (a).)

DISPOSITION

The jurisdiction order of the dependency court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.

⁴ We also note that only four years had passed between the incident and the instant petition. In *In re Quentin H.*, 26 years had passed between father’s prior conviction and the juvenile dependency petition. (*In re Quentin H.*, *supra*, 230 Cal.App.4th at p. 612.)