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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re C.S. et al., Persons Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

NICOLE L., et al.,

Defendants and Appellants.

D060169

(Super. Ct. No. NJ14428A-C)

APPEAL from orders of the Superior Court of San Diego County, Ana L. Espana,  
Judge. Affirmed.

During the night of January 4, 2011, Braydon S., who was not quite three years old, was severely injured while in the care of his stepfather, Cody L. Braydon's mother, Nicole L., and Cody asserted Braydon's injuries were caused by Braydon's older brother, not quite five-year-old, C.S. Nicole and Cody (together the parents) appeal jurisdictional

and dispositional orders concerning Braydon under Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> and under section 300, subdivision (j), concerning their infant daughter, Danica L., and C.S.

Cody contends the court reversibly erred by excluding from evidence an audio recording and transcript of a police interview of Braydon, and substantial evidence does not support the finding of jurisdiction. Nicole contends substantial evidence does not support the jurisdictional finding that she did not protect the children, and the juvenile court violated her right to due process by predicating the children's return on her confession that Cody injured Braydon. She also argues the court reversibly erred by removing the children from her custody, and the evidence does not support a finding there were not reasonable means to protect them short of removal. She additionally claims the court abused its discretion by ordering C.S. and Braydon placed with their paternal grandparents (the paternal grandparents). In addition, each parent joins in the arguments of the other. We affirm the orders.

#### FACTUAL AND PROCEDURAL BACKGROUND

Nicole brought Braydon to a hospital on the morning of January 5, 2011, after she returned home from work and found him vomiting, lethargic and complaining of pain. She told hospital personnel Cody said that during the night before, while he was caring for the children, Braydon and C.S. had been fighting, and Braydon had twice fallen off an upper bunk bed. Braydon's injuries included an occipital skull fracture, a grade-three

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code unless otherwise specified.

liver laceration and multiple bruises. At the hospital, Dr. Jennifer Davis concluded Nicole's account did not adequately explain how Braydon had been injured, and the injuries were not consistent with a fall from a bunk bed or injuries inflicted by a young child, but were the result of severe physical abuse. The children were taken into protective custody. The San Diego County Health and Human Services Agency (the Agency) petitioned under section 300, subdivision (b) on Braydon's behalf and under subdivision (j) on behalf of C.S. and Danica. C.S. and Braydon were detained with their paternal grandparents and Danica with the maternal grandparents.

Cody denied hurting Braydon. He said the boys would not stop talking in bed at night so Nicole gave them Melatonin before she left for work to help them sleep. He told of three incidents the night Braydon was injured. During the first, he found the boys wrestling at about 9:30 p.m. and put them back to bed. At about 11:30 p.m., he came into their room and saw C.S. standing over Braydon and pulling a toy away from him. Braydon was crying and would not let go. Cody told the social worker he put Braydon to bed and put C.S. in a 15-minute time out, then put him in bed. Cody said he fell asleep, then at about 2:00 or 3:00 a.m., he awoke to a crack sound and found Braydon on the floor of the boys' room, crying with toys scattered around. He said C.S. told him Braydon had climbed to the top bunk several times and had fallen. Cody said Braydon told him, "[C.S.] gave me a bad owie." He said he put the boys to bed again and called Nicole.

C.S. showed the social worker where Braydon had fallen from the bunk bed. He said Braydon had fallen onto tile in the hallway and bumped his head. Nicole said that

during the night Cody had sent her a text message, saying Braydon had fallen from the top bunk and when she spoke with him while she was driving home from work, he said Braydon's head looked bad. When Nicole got home, Cody told her Braydon had gotten into some chocolate. She said she saw what looked like chocolate on his face and pillow, but when she got closer realized it was vomit. She said C.S. had behavior problems and had been becoming increasingly violent, and she had been taking him to therapy. She said C.S. told her Braydon had gotten up on his (C.S.'s) bed and fell five times and that Braydon told her and the doctor "[C.S.] did it."

During a forensic interview, C.S. said Braydon's "body broke," both he and Cody did it by hitting, and "that's not so bad." C.S. said Braydon fell on the tile and that was what Cody told him. C.S. said Cody hit Braydon on his arms with his fists, and "I was doing everything . . . he tells me all the words I need for Braydon."

When the interviewer attempted to talk with Braydon, he began crying and asked for the paternal grandmother. Several days later, the interviewer was successful in interviewing him. When questioned about why he had to go to the hospital, Braydon said Cody hit him on his head, back and buttocks. The transcriber reported that he said "Nona (the paternal grandmother) think Cody hit me," but the court determined this portion of the recording was inaudible and did not consider it.

Cody admitted his former wife had a restraining order against him and he did not have contact with his daughter from that relationship. His criminal history includes a report of a physical altercation and threat of suicide, firing a rifle and violating the restraining order.

The paternal grandmother reported she had been suspicious that Cody was abusing C.S. and Braydon and after the boys were detained with her, Braydon made spontaneous statements indicating Cody had hit him. Nicole said she believed the paternal grandparents were providing C.S. and Braydon with negative information about Cody and questioned the care they were receiving in the grandparents' home.

On February 16, 2011, the Agency filed amended petitions alleging Cody had exposed Braydon to excessive physical discipline/physical abuse and damage.

Carlsbad Police Officer Jody Knisley reported that when he asked Braydon how he got hurt, Braydon without hesitation said "Daddy," then momentarily hesitated and said "[C.S.]" This statement conflicts with the recording and transcript of the interview in which Knisley asks Braydon how he hurt himself and Braydon answered several times, "[C.S.] did." Knisley later asked, "Did Daddy hit you?" and Braydon answered, "Yeah." The court denied several requests by Nicole and Cody's attorneys to admit the full recording and transcript of the interview into evidence on the ground Knisley was not available and the recording could not be authenticated.

The jurisdictional and dispositional hearings were heard in June and July 2011 over several days. Numerous witnesses testified.

Child abuse expert Dr. Davis testified that when she examined Braydon at the hospital, he had multiple bruises, including blunt trauma to his chest and abdomen with elevated enzymes, an occipital skull fracture, and a grade-three liver laceration. She opined it was possible, but not likely, that a fall from an upper bunk could cause the occipital skull fracture. She said a liver laceration would be caused by a direct blow to

the abdomen and if a fall caused the liver laceration, Braydon would have had to have fallen on an object. She concluded a child of C.S.'s age would not have the strength to cause the injuries. She remembered hearing Braydon say, "[C.S.] did it," and said, although the statement should be considered, Brandon may have been speaking of injuries other than the most serious ones. She said child abuse is the only reasonable explanation of the cause of Brandon's many injuries.

The paternal grandmother testified the children often stayed at her home while Nicole was working. She said when Nicole went back to work after her maternity leave with Danica, Braydon started having bruises on his head and neck and he appeared afraid to return home on January 3. She said Nicole told her C.S. was being aggressive with Braydon. The paternal grandmother testified that after Braydon and C.S. were detained with her, she heard Braydon say, "Cody broke my head," "Cody smashed my face," and "Stop it, Cody. Stop it." She said C.S. is hyperactive, but not aggressive. The paternal grandfather testified that at times when he was driving the children home after a visit, they both would cry and say, "no mommy's house." The maternal grandfather testified C.S. did not appear to be afraid of Cody, and he had seen no reason for concern. He said C.S. was occasionally rough with Braydon.

The social worker who was initially assigned to the case testified Cody denied hitting Braydon. She said C.S. told her Braydon had jumped onto the tile in the hallway, C.S. had provided various accounts of what had happened, and one time he said he had pushed Braydon from the bunk. She said Nicole told her C.S. sometimes pushed Braydon and hit him with toys. Another social worker testified that when she asked

Braydon about his "owies," Braydon repeatedly said "C.S. did it." She reported Braydon had appeared lethargic when she and Nicole were in the hospital room with him, but when the paternal grandmother entered, he jumped into her arms.

The social workers' supervisor opined that when Braydon said "C.S. did it," he did not necessarily mean C.S. had caused all of the injuries. The supervisor testified she had listened to the recording of Officer Knisley's interview of Braydon, and when asked who had done this to him, Braydon repeatedly indicated C.S. had hurt him, and he also said his daddy did it. She said Nicole felt great animosity toward the paternal grandparents because Nicole believed they were accusing Cody.

Forensic Interviewer Christine Schultz testified that when she asked C.S. how Braydon got hurt, his response was, "I couldn't tell you." When she asked if Cody had hit Braydon, he said Braydon just fell on the tile. He said, "Braydon just hurt his self really bad," and "his body just broke." When she asked who broke Braydon's body, he said, "I did and Cody did." She said when asked if anyone else hurt Braydon, C.S. said, "it was a joke." The interviewer said C.S. said he had not seen Braydon fall, but Cody told him Braydon fell on the tile. Braydon showed the interviewer how Cody hit him on his head, arm back and buttocks, and slapped his face.

Nicole testified she had sought counseling for C.S. because of his aggressive behavior. She said during the night that Braydon was injured Cody had sent her text messages about the boys fighting and C.S. standing over Braydon and trying to pull a toy away. He later called to say he had heard a thud and found Braydon lying on the floor crying, and later Braydon had gotten into candy and was covered in chocolate. Nicole

said when she checked on Braydon she realized it was vomit and he appeared lethargic. She said Braydon said, "[C.S.] did it." She did not believe Cody would hurt the children, but that the paternal grandparents had coached Braydon. She testified she had seen C.S. push Braydon off C.S.'s upper bunk bed, and C.S. told her Braydon had fallen from his [C.S.'s] bed five times the night he was injured. Nicole admitted that in late December she had asked the paternal grandmother to care of the boys because Cody was becoming stressed because "they [C.S. and Braydon] were wild" while she was at work.

Pediatric Orthopedic Surgeon Dr. Thomas Grogan testified Braydon had a recent occipital skull fracture, multiple bruises, and blunt abdominal trauma consisting of a grade-three liver laceration. He said a fall from a bunk bed could cause the occipital skull fracture, and a four and a half year old could inflict trauma causing the liver laceration.

Pediatric Radiologist Dr. Patrick Barnes testified that it is not possible by looking at the images of the occipital skull fracture, the liver laceration and the bruising, to distinguish accidental from non-accidental injuries, but when considering the history, falls from a bunk bed and battering by an older sibling could have caused the injuries.

Child Abuse Specialist Dr. Cynthia Kuelbs testified she believed some of Braydon's injuries could have been caused accidentally, but there were too many injuries to be explained by two falls from a bunk bed, and a four year old could not cause a liver laceration to a two year old unless he jumped on him with great force.

After considering the evidence and argument by counsel, the court found the allegations of the petitions true. After further testimony and argument, it removed

custody from the parents, ordered the children placed in the care of relatives and ordered reunification services.

## DISCUSSION

### I: *Evidentiary Rulings*

#### A. *Exclusion of the Police Interview of Braydon*

Cody, joined by Nicole, contends the court reversibly erred by excluding the audio recording and transcript of the interview of Braydon by Officer Knisley. The parents argue the recording and transcript conflict with Knisley's report, showing the report was grossly inaccurate and that it substantially prejudiced his defense. They claim the recording and transcript should have been admitted under Evidence Code sections 1414, subdivision (b) and 1421.

An appellate court reviews a trial court ruling as to the admissibility of evidence under an abuse of discretion standard. (*In re Cindy L.* (1997) 17 Cal.4th 15, 35.)

The Agency concedes the court erred by excluding the audio recording and transcript under Evidence Code section 356 because it was necessary to review the whole interview to give proper context to the police report. In his reply brief, Cody complains the Agency cannot concede error under Evidence Code section 356, when at the hearing it argued the recording and transcript must be excluded as hearsay that could not be authenticated.

Putting aside the question of under which evidentiary rule the recording and transcript should have been admitted, we agree the court abused its discretion by excluding this evidence. Officer Knisley's written report was not an accurate depiction of

what transpired during the interview. The recording and transcript show that Braydon, when asked who had hurt him, said several times, "[C.S.] did." When Knisley asked Braydon if "Daddy" had hurt him, Braydon replied, "yeah" and "no." When a woman in the background asked if someone had grabbed him, Braydon answered that C.S. did and C.S. was in trouble. Knisley's report, on the other hand, inaccurately stated that when he (Knisley) asked Braydon if his daddy had hurt him, Braydon said yes, and when he asked again how he got hurt, Braydon told him, "Daddy," hesitated, and then said "[C.S.]". Knisley said these questions were the only ones he asked. The report also stated Braydon initially said Daddy had hurt him and moments later said C.S. did it. The report was a misleading account of the interview because, as the recording and transcript show, contrary to what Knisley reported, Braydon repeatedly said C.S. had hurt him and he answered "yeah" and "no" to Knisley's leading questions of whether his daddy had hit him.

The parents, however, have not shown prejudice by the court excluding the recording and transcript. The court had evidence from other sources that Braydon had implicated C.S. as the cause of his injuries. The court commented Braydon had told several people "C.S. did it," but he had also said Cody had hurt him. The record of the proceedings does not show the court placed excessive reliance on the police report. Instead, in making its jurisdictional findings, the court relied in large part on the testimony and reports of Dr. Davis, whom it found to be very credible, and also on the social workers' assessments and the forensic interviews by Christine Schultz. These

sources were clear in concluding that although C.S. may have hurt Braydon, Cody was the source of the severe injuries.

The court took many factors into account when it reached its conclusion that Cody had injured Braydon. These include Braydon's and C.S.'s statements pointing to both C.S. and Cody as the cause of the injuries, the nature and timing of the injuries, the significance of each medical expert's testimony about the likely causes, the paternal grandmother's report of noticing recent bruises to Braydon while in Cody's care, and the fact that Nicole had indicated Cody was frustrated with caring for the boys while she was at work. Because the court knew Braydon had pointed to C.S. as well as to Cody as the people who had hurt him, and there was an abundance of evidence to support a finding that Cody was the cause of the severe injuries, Cody has not shown that the court's error in excluding the recording and transcript of Knisley's report from evidence prejudiced his cause and resulted in a miscarriage of justice.

The parent's assertion the recording and transcript could have been used to impeach Dr. Davis and undermine her credibility is without merit. Cody argues that Dr. Davis's statements were inconsistent in that, during Knisley's interview of Braydon, Dr. Davis stated Braydon is "bright and smart," and then during her court testimony said what Braydon said should be viewed "with a grain of salt." Dr. Davis's statements about Braydon did not undermine confidence in her expert medical testimony or conflict with her opinion that Braydon is bright and smart. By saying Braydon's statements should be viewed with caution, she was merely expressing concern that he was not quite three years

old and thus not able to provide complete and accurate information about how he was hurt.

The parents claim prejudice because Officer Knisley's interview showed Braydon was susceptible to leading questions and that therefore, if the court had heard the interview, it would have known that Braydon was being led by the paternal grandmother to say Cody had hit him. This argument is not persuasive. Braydon is a very young child and it would be expected that he would be influenced by leading questions. It was not necessary for the court to review Knisley's interview to be aware of this fact.

The parents assert the only solid, credible evidence of the cause of Braydon's injuries were his statements to Officer Knisley during the interview in the hospital. They argue if the recording and transcript of this interview had been admitted, there would not have been substantial evidence to support the jurisdictional findings because Braydon's statements during Knisley's interview of him would have overridden the statements during the forensic interview as they were closer in time to the injuries and therefore more credible. They claim Dr. Davis's truthfulness is in doubt and if the excluded evidence had been considered, the record would be insufficient to support a finding of jurisdiction.

This assertion is incorrect. Even if the police interview had been admitted, there would have been substantial evidence to support the jurisdictional findings. The court was aware Braydon had said when the social worker initially interviewed him that "[C.S.] did it." It was also aware from the social workers' reports that C.S. and Braydon had said Braydon had fallen off the upper bunk bed, and both boys had said C.S. had hit Braydon.

It considered this evidence as well as Braydon and C.S.'s other statements about Cody and C.S. causing the injuries, along with the testimony and reports by medical experts in making the true findings. The social workers, Dr. Davis, and Dr. Kuelbs knew of Braydon's initial statements that "[C.S.] did it." The experts and the court could reasonably determine that although C.S. may have hurt his younger brother, Braydon's statement that "[C.S.] did it" did not explain all of the severe injuries he had suffered.

Cody and Nicole misplace reliance on *In re Lucero L.* (2000) 22 Cal.4th 1227. In *In re Lucero L.*, the California Supreme Court held hearsay statements of a very young child are admissible under section 355, subdivision (c)(1)(B), but cannot be relied upon exclusively unless the court finds there are specified factors present that show they are sufficiently reliable. (*Id.* at pp. 1231, 1246.) Here, the court considered Braydon's and C.S.'s statements during the forensic interviews and it also considered other evidence that Cody had injured Braydon, including the expert medical testimony and medical reports and assessments by the social workers. The court did not rely exclusively on the boys' statements, and their statements were corroborated by other significant evidence.

Under the totality of the circumstances, the court's erroneous exclusion of the audio recording and transcript of Knisley's interview with Braydon soon after he was injured was harmless error and did not result in a miscarriage of justice.

B. *Braydon's Statements During the Forensic Interview*

Cody and Nicole assert the court erred by not giving any weight to Braydon's statement during his forensic interview that the paternal grandmother believed Cody had hit him.

The individual who transcribed the recording wrote in the transcript, "Uh, uh. Nona (the paternal grandmother) think Cody hit me." The court listened to the recording and reviewed the transcript, and decided the statement was not audible and did not consider it as a factor in its analysis. The court said it could hear the word, "Cody," and heard the interviewer say, "What?" The forensic interviewer stated she did not recall Braydon saying, "Nona think Cody hit me." The court properly reviewed the evidence concerning the statement and reasonably determined it could not understand this part of the recording of the forensic interview so decided to assign no weight to the statement. The parents have not shown court error or misconduct in deciding the statement was inaudible and giving it no weight.

We find not persuasive the parents' argument that there is not substantial evidence to support the jurisdictional findings because the paternal grandmother's coaching led to Braydon pointing the finger at Cody during the forensic interview. The paternal grandmother was not present during C.S.'s forensic interview when, in response to the question who had broken Braydon's body, C.S. said "I did and Cody did.," Nor was she present when C.S. said he and Cody were hitting Braydon and demonstrated that Cody was hitting Braydon with his fist. The court did not reversibly err by excluding the evidence of Braydon's inaudible statement during the forensic interview.

## II: *Substantial Evidence to Support Jurisdiction*

Cody and Nicole contend the finding of jurisdiction was not supported by substantial evidence. They claim there was not substantial evidence of a current risk and insufficient evidence to support the findings under section 300, subdivision (b) or

subdivision (j). They argue there was not substantial evidence to show Nicole failed and was unable to protect the children. They press the argument that the forensic interviews were flawed and may not be considered as evidence to support the findings of jurisdiction, and that Dr. Davis was an unreliable witness.

A. *Legal Authority*

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) " "The rule is clear that the power of the appellate courts begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact." [Citation.] " (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1227.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.' " (*In re Luwana S.* (1973) 31 Cal.App.3d 112, 114.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The purpose of dependency law is to:

"provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused . . . [or] neglected . . . and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm."  
(§ 300.2.)

A petition is brought on behalf of the child, not to punish the parents. (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599.)

B. *Substantial Evidence Nicole Failed to Protect the Children*

Substantial evidence was presented to show Nicole failed and was unable to protect the children. There had been indications that should have put her on notice that the children were not safe in Cody's care. In late December, Nicole had asked the paternal grandmother to care for C.S. and Braydon because it was stressful for Cody to have them while she was at work, and she began giving them a sleep aid in the evening before she left to drive to her job. The paternal grandmother had noticed Braydon was bruised and asked Nicole and Cody if they were hitting the children. There was abundant evidence that Cody had caused life-threatening injuries to Braydon. Yet Nicole refused to believe Cody had hurt him. This evidence shows a failure to protect the children.

Nicole relies on *Blanca P. v. Superior Court* ( 1996) 45 Cal.App.4th 1738 (*Blanca P.*), to argue she should not be required to "confess" that Cody injured Braydon. In *Blanca P.*, after evidence had come to light casting doubt on a true finding of a father's sexual abuse, the reviewing court remanded the case for a new 18-month hearing to reconsider the issue. (*Id.* at pp. 1759-1760.) The court commented there can be a "confession dilemma" for a parent and that parent's partner when an innocent parent is accused of molesting a child. (*Id.* at p. 1752.)

*Blanca P.* does not apply here. In contrast to the mother in *Blanca P.*, Nicole was on notice that the boys were at risk of harm before she left them with Cody and went to work on the evening of January 4. Cody was not a parent accused of molesting a child where the evidence was in doubt. After many days of trial and the substantial evidence that was presented to show Cody had caused Braydon's injuries, Nicole was unwilling or

unable to accept the court's true findings. She was not required to "confess," but her lack of ability to accept the true findings and continued insistence that C.S. had caused all of Braydon's injuries showed she was not able to protect the children at the time of the hearing.

C. *Findings Under Section 355.1*

Nicole and Cody assert the court failed to make findings under section 355.1 based on Count 1 in the petition and regardless of whether the court made the required findings, the statutory presumption of section 355.1 was rebutted.

Section 355.1 creates a presumption affecting the burden of producing evidence when a child has suffered an injury or detrimental condition that would ordinarily not be sustained in the absence of unreasonable or neglectful conduct by the parent. (§ 355.1, subds. (a), (c).)

Section 355.1, subdivision (a) states as follows:

"Where the court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a minor is *of a nature as would ordinarily not be sustained except as a result of the unreasonable or neglectful acts or omissions of either parent, the guardian, or other person who has care or custody of the minor*, that finding shall be prima facie evidence that the minor is a person described by subdivision (a), (b), or (d) of Section 300." (Italics added.)

Section 355.1, subdivision (c) states,

"The presumption created by subdivision (a) constitutes a presumption affecting the burden of producing evidence."

Language in Count 1 of Braydon's petition tracks the language of section 355.1, subdivision (a). The petition as to Braydon states:

"On or about January 5, 2011 the child was discovered to have injuries consisting of a grade three liver laceration, an occipital skull fracture, and multiple bruises on the face, forehead, eyes, tongue, back, hip, and arm,<sup>[2]</sup> *which injuries are of such a nature as would ordinarily not be sustained except as a result of the unreasonable or neglectful acts or omissions of the parent/legal guardian/custodian of the child* and there is a substantial risk that the child will suffer serious physical harm or illness." (Italics added.)

Nicole asserts it is unclear whether the Agency intended to invoke the presumptions inherent in section 355.1 because it did not cite the statute in the pleadings, but points out that the highlighted passage uses the statutory language.

The petitions did not expressly invoke the presumptions of section 355.1, nor did the court refer to them. Employing the presumptions of section 355.1 was not necessary for the court to make the jurisdictional finding. Substantial evidence supports the court's finding that Braydon had the severe injuries listed in Count 1 of the petition and the injuries ordinarily would not be sustained except as a result of the unreasonable or neglectful acts or omissions of the parent. Substantial evidence also supports the true finding of Count 2 that Cody had exposed Braydon to excessive discipline/physical abuse and Nicole had failed and been unable to protect him. The parents' evidence was insufficient to refute the evidence brought to support the allegations of the petition.

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<sup>2</sup> At the hearing, the court struck the references in the petition to the tongue and forehead bruises.

The argument that no evidence was presented to show that Nicole was negligent is unfounded. As stated above, Nicole had information that should have caused her to be concerned that Cody was not able to provide safe care for the children in her absence. Despite Nicole's knowing of Cody's frustrations in caring for the boys and knowing the paternal grandmother was concerned, she left them alone with him.

*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036 is not helpful to the parents' cause. In *In re Esmeralda B.*, *supra*, at page 1041, this court reversed the juvenile court's jurisdictional and dispositional orders where there was no evidence that neglect or wrongdoing by the parents had caused the injury to the minor. The court held the juvenile court improperly relied on the presumption of section 355.1 because no professional evidence, as required by the statute, was presented as to the minor's injury. (*Id.* at pp. 1040-1041.) Here, the record does not show that the court relied on the presumption of section 355.1, and, moreover, there was competent professional evidence as to the cause of the injuries and evidence Nicole should have known of the substantial risk of harm to which she was subjecting the boys by leaving them alone with Cody.

D. *Jurisdiction Under Section 300, Subdivision (j)*

The parents next maintain there was not sufficient evidence to establish jurisdiction under section 300, subdivision (j) as to C.S. and Danica. Nicole argues there was no evidence she had neglected or failed to protect C.S. and Danica and no evidence they would be victimized. Her arguments are not well taken.

Section 300, subdivision (j) provides that a child comes within juvenile court jurisdiction when:

"The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child."

"The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j)." (*In re Maria R.* (2010) 185 Cal.App.4th 48, 64.)

Nicole failed to protect Braydon from Cody, resulting in him being severely injured. At the time of the hearing she continued to refuse to believe that Cody was responsible. C.S., during his forensic interview, indicated that Cody hit both Braydon, and him. The court could reasonably decide that C.S. and Danica were also at risk. The parents have not shown a lack of substantial evidence to support the findings under section 300, subdivision (j).

E. *Reliability of Forensic Interviews*

Cody's argument the forensic interviews were not reliable is unfounded. The court had discretion to evaluate the forensic interviews and determine the appropriate weight they should be given. It viewed the interviews, commented that the interviewer did a

good job questioning C.S. and Braydon and noted she was careful not to pose any leading questions or suggest answers to them. The interviewer testified at length before the court at which time the court had the opportunity to evaluate her and assess her credibility. Cody has not shown the interviews were not sufficiently reliable to provide proper support for the court's findings.

F. *Reliability of Dr. Davis's Reports and Expert Opinion*

Cody argues Dr. Davis's trustworthiness as an expert is questionable, as seen in *In re Hill* (2011) 198 Cal.App.4th 1008 (*In re Hill*), in which Dr. Davis testified for the prosecution. He argues she is an overzealous young doctor and presented with much less experience than Dr. Grogan and Dr. Barnes, who testified for the parents.

In *In re Hill*, this court held the petitioner in a petition for habeas corpus had not had effective assistance of counsel when his criminal defense counsel did not present an independent medical expert to challenge the expert testimony of Dr. Davis regarding the alleged molestation of a young victim. (*Id.* at pp. 1025-1030.) The fact that expert medical opinion may have disputed Dr. Davis's testimony during that criminal trial does not mean that she was not to be trusted in this case. Also, Dr. Kuelbs testified for the Agency and reached similar conclusions as those of Dr. Davis. Dr. Davis testified at length, at which time the court had the opportunity to judge her credibility. The court found Dr. Davis's testimony and reports most credible and reasonably relied on her opinion as she was the only medical expert who had actually examined Braydon after he was injured.

The total circumstances of the case, including the expert medical testimony and reports, together with the forensic examination, provide substantial evidence to support the jurisdictional orders.

### III: *Substantial Evidence to Support the Dispositional Orders*

Nicole, joined by Cody, maintains the court erred by removing the children from her care. She argues the court violated her rights to due process by conditioning their return on her "confession" that Cody was the cause of Braydon's injuries. She claims the court improperly shifted the burden of producing evidence to her, and there were reasonable alternatives to removing the children from her.

The court removed custody of the children from Nicole under section 361, subdivision (c)(1), which provides a child may not be removed from a parent's custody, unless the court finds by clear and convincing evidence:

"There 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 . . . physical custody."

The focus of the statute is to avert harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.) At disposition the juvenile court considers all relevant evidence that refers to the allegations of the petition, and it considers the conditions as they existed at the time of the hearing. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) The court is required to consider the parent's past conduct as well as present circumstances. (*In re Troy D.* (1989) 215 Cal.App.3d 889, 900.) "The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a

dispositional order in accordance with this discretion." (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

Substantial evidence supports the order removing the children from Nicole's custody. Because she could not accept the court's true finding that Cody was the cause of Braydon's severe injuries, but continued to insist C.S. was the one who had harmed him and remained with Cody, the court reasonably determined it would be detrimental to order the children placed with her. The court explicitly stated the terms of the reunification plan did not require Cody to confess. The court, however, did state the parents needed to take some responsibility and to make their home safe for the children.

The argument Nicole poses in her reply brief that the court's findings were based on her belief in Cody's innocence, rather than on her behavior, is not well taken. The court did not base its finding that Nicole was unable to protect the children on Nicole's thoughts or ideas. Instead, it based it on the fact that, although there had been earlier signs that Cody was not able to provide safe care, she placed the boys in harm's way by leaving them with him while she was at work. Also, despite the evidence pointing to Cody as the cause of Braydon's grave injuries, she continued to refuse to acknowledge that he could have hurt him. Nicole has not shown the court violated her rights to due process by requiring her to confess.

Nicole's arguments the court could have ordered the children placed with her while requiring her to live separately from Cody is not persuasive. Because Nicole remained supportive of Cody throughout the six-month period between the children's removal and

the conclusion of the hearing, it was reasonable for the court to conclude that the children would be at substantial risk in her custody.

#### IV: *C.S. and Braydon's Placement with the Paternal Grandparents*

Nicole, joined by Cody, argues the court abused its discretion by ordering C.S. and Braydon placed with the paternal grandparents in spite of Nicole's wishes they not live there and despite evidence the paternal grandparents would not facilitate her reunification efforts. She argues all three children should have been placed with the maternal grandparents.

When a court has made a decision such as a dependent child's placement, " ' ' a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary capricious, or patently absurd determination [citations]." ' ' ( *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) In making a decision on a child's placement the court must consider that child's best interests. (§ 361.3, subd. (a)(1).) Section 361.3, subdivision (a) states an initial factor to consider in determining whether placement with a relative is appropriate is "(1) [t]he best interest of the child, including special physical, psychological, educational, medical, or emotional needs." Other factors to consider include "[t]he nature and duration of the relationship between the child and the relative . . . " (§ 361.3, subd. (a)(6)), and the relative's ability to "provide legal permanence for the child if reunification fails" (§ 361.5, subd. (a)(7)(H)).

The court did not abuse its discretion. The paternal grandparents had been providing good care for C.S. and Braydon for six months, ever since they were removed from parental custody. Even before this time, the boys had often stayed with the paternal

grandparents while Nicole was at work, and Nicole had recently asked the parental grandmother for help in caring for the boys because Cody had become frustrated when they acted "wild" while she was away. The boys were safe and secure in the paternal grandparents' home. Nicole has not shown an abuse of discretion by the court ordering C.S. and Braydon placed with the paternal grandparents.

DISPOSITION

The orders are affirmed.

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HUFFMAN, J.

WE CONCUR:

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McCONNELL, P. J.

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AARON, J.