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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re C.U., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

H.M.,

Defendant and Appellant.

D060536

(Super. Ct. No. SJ12518C)

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

H.M. appeals juvenile court jurisdictional and dispositional orders declaring her son, C.U., a dependent of the court and removing custody from her. She contends substantial evidence does not support a finding of jurisdiction under Welfare and

Institutions Code<sup>1</sup> section 300, subdivision (i), and the court erred by removing custody because there was not substantial evidence presented to show C.U. was at substantial risk in her care, and there were reasonable alternatives to removal. We affirm the orders.

#### FACTUAL AND PROCEDURAL BACKGROUND

Six-year-old C.U. and his older half sisters, Karla M. and Sarahi M., came to the United States from Mexico with their mother, H.M., and her husband, Samuel M., who is an attorney in Mexico. Samuel was in the process of addressing United States legal residency status for the family.

In March 2011, there were allegations that Samuel had sexually abused Karla and Sarahi. H.M. did not believe the allegations, and Samuel denied them. The San Diego County Health and Human Services Agency (the Agency) petitioned under section 300, subdivision (d), regarding Karla and Sarahi, and under section 300, subdivision (j), as to C.U., and the court ordered the children detained in protective custody. Only C.U. is the subject of this appeal.

During her first interview with the social worker, Karla said Samuel did not hit the children, but during a forensic interview she said H.M. hit C.U. all the time. C.U. said H.M. and Samuel hit him on his buttocks with a belt, and sometimes it hurt so much he could not sit down. But he also said he was not afraid of Samuel. Karla and Sarahi said Samuel manipulated H.M. so that she did everything he told her to do. They said Samuel told them he would decide who would stay in the United States and who would have to

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

return to Mexico, and he threatened to take them to Tijuana and leave them at the border, where they would have to beg for money. H.M. said Samuel said this only so the children would study and take advantage of the opportunities they had in the United States.

Later, when the social worker asked C.U. if anything bad had ever happened to him, he said no. Then, in July 2011, C.U. told an investigator that Samuel was mean and had punished him several times by putting him into a dark closet for many hours. He said H.M. sometimes was at home when this happened. C.U. said he was afraid of a doll that made noises in the closet. He said if H.M. came home and saw he was in the closet, she would cook dinner quickly so Samuel would let him out. Karla agreed that Samuel had put C.U. in a closet for as long as three hours at a time. She and Sarahi said Samuel often hit C.U. on his head with his bare knuckles and hit him with a belt. She said one time C.U. came crying to her after Samuel hit him in the head and she felt a bump there. When asked if he would feel safe with Samuel, C.U. at first said no because Samuel hit him, but then said it would be fine because Samuel was also good.

The Agency filed an amended petition on C.U.'s behalf under section 300, subdivision (i), alleging that on numerous occasions Samuel had hit C.U. on the head with his bare knuckles and had repeatedly forced him to stay in a dark closet for up to three hours, and H.M. was aware of these acts of abuse. The court found the allegation true under section 300, subdivision (i), and dismissed the allegation under section 300, subdivision (j).

At the disposition hearing, both Karla and Sarahi testified that although they had earlier said they did not want to live with their father, Carlos M., they now wanted to live with him.<sup>2</sup>

The social worker testified about the difficulties the children had had in their foster home. C.U. wet the bed and had tantrums after returning from visits with H.M. and he had disagreements with Karla and Sarahi. She said H.M. had expressed concerns about the children's hygiene and cleanliness at the foster home. The social worker said after C.U. began therapy, the problems lessened.

After considering the evidence and argument by counsel, the court declared C.U. a dependent of the court under section 300, subdivision (i), removed custody from H.M. and ordered him placed in foster care.

## DISCUSSION

### I

H.M. contends there was not substantial evidence presented to support jurisdiction under section 300, subdivision (i). She asserts the actions alleged were not sufficient to support a finding of cruelty, and there were numerous contradictions in the evidence.

#### *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-

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<sup>2</sup> C.U. has a different father than Karla and Sarahi. His father lives in Mexico and had not been located by the time of the hearing.

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 Luwanna 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.)

Determinations of credibility of witnesses and resolutions of conflicts in the evidence are for the trier of fact. (*In re Tanis H., supra*, 59 Cal.App.4th at pp. 1226-1227.) The appellate court does not reweigh the evidence. (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860.)

Section 300, subdivision (i), provides a child comes within the jurisdiction of the juvenile court if the court finds true:

"[t]he child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty."

### *Application*

The circumstances concerning C.U. fulfill the requirements of the statute. The evidence showed C.U. had been subjected to acts of cruelty by Samuel, and H.M. had failed to protect him when she knew or should have known of Samuel's cruel acts.

Section 300, subdivision (i), does not define the word "cruelty," but in *In re D.C.* (2011) 195 Cal.App.4th 1010, the reviewing court provided definitions from dictionary sources, including "inhumane treatment;" "cruel behavior or attitudes;" and "[behavior] which causes physical or mental harm to another, whether intentionally or not." (*Id.* at p. 1016.) The court noted Black's Law Dictionary defines "cruelty" as "[t]he intentional and malicious infliction of physical or mental suffering upon living creatures, particularly human beings; or, as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment; inhumanity; outrage." (*Ibid*, quoting Black's Law Dict. (6th ed. 1990) p. 377, col. 1.) The court stated according to examples found in case law, acts of cruelty are "intentional acts that directly and needlessly inflict extreme pain or distress." (*In re D.C., supra*, at p. 1017.) It noted "[w]hether the acts are acts of cruelty is a separate factual determination that the juvenile court makes based upon the common meaning of the phrase and the totality of the child's circumstances." (*Ibid.*)

Substantial evidence supports jurisdiction under section 300, subdivision (i). Samuel needlessly inflicted extreme distress on C.U. C.U. told about being put in a dark closet for hours at a time as punishment for small infractions. He said he was afraid of the dark, of ghosts and of a doll in the closet that he had heard at night making noises. C.U. said he had nightmares and a dream of a spirit trying to grab him. He said if he tried to leave the closet, he would be made to stay in longer. Karla and Sarahi corroborated C.U.'s reports of being left in the closet for long periods, and there was evidence that H.M. knew about the abuse but did not protect C.U. from Samuel's cruel acts.

There also were reports that Samuel hit C.U. on the head with his bare knuckles. Sarahi said this happened every day. Although C.U. also said that when Samuel hit him it was a joke and did not hurt, Karla said on one occasion he had come crying to her after being hit, saying his head hurt. She said she felt a bump there. C.U. also said Samuel frightened the children by telling them he would take them to Tijuana and leave them at the border, and Samuel and H.M. hit him with a belt. The fact that C.U. also made contradictory statements does not necessarily mean his reports of abuse should not be believed. Children frequently recant their accounts of abuse. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1148.)

H.M.'s reliance on *In re Rebekah R.* (1994) 27 Cal.App.4th 1638, *In re Barry W.* (1993) 21 Cal.App.4th 358 and *In re D.C.*, *supra*, 195 Cal.App.4th at page 1010, is misplaced. The fact that in those cases, the children suffered cruel acts that were more horrific and severe than those inflicted on C.U. does not mean there was insufficient evidence to support assuming jurisdiction over C.U. under section 300, subdivision (i).

The evidence of Samuel's punishments of C.U. and H.M's failure to protect him constitute substantial evidence that supports the court's finding of jurisdiction.

## II

H.M. contends the court erred by removing C.U. from her custody because substantial evidence does not support a finding he was at risk of harm in her care or that the court considered reasonable alternatives to removal. She complains that C.U. was clean, happy and healthy when he lived with her, but in foster care he was not well cared for and sometimes cried and had tantrums. She argues there were reasonable alternatives to removal.

### *Legal Authority*

Section 361, subdivision (c)(1), 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 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.)

*Application*

Substantial evidence supports the order removing C.U. from H.M.'s custody. Her argument there were reasonable alternatives which would prevent the need for removal is not persuasive. H.M. refused to believe that her husband had molested her daughters, acquiesced in his abusive disciplinary techniques and argued that she was a protective mother. Karla and Sarahi said Samuel manipulated and controlled H.M., and the social worker reported that when H.M. told her she would choose her children over her husband, she was holding his hand. Also, although C.U. had difficulties in the foster home, after he began therapy, the problems lessened. Substantial evidence supports the order removing C.U. from H.M.'s custody.

DISPOSITION

The orders are affirmed.

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NARES, J.

WE CONCUR:

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BENKE, Acting P. J.

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AARON, J.