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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re V.W., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOHN W.,

Defendant and Appellant.

D062077

(Super. Ct. No. EJ2960)

APPEAL from orders of the Superior Court of San Diego County, Gary M. Bubis,
Judge. Affirmed.

John W. appeals juvenile court jurisdictional and dispositional orders concerning his son V.W. John contends there was insufficient evidence to support the finding of jurisdiction. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On March 1, 2012, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of five-year-old V.W. under Welfare and Institutions Code section 300, subdivision (d),¹ alleging John had fondled V.W.'s penis and V.W.'s mother, Samantha W., had observed the fondling on one occasion.

Samantha said that on February 11, 2012, when John was visiting the home she shared with V.W., John became upset because V.W. did not want to hug him or visit with him. She and John argued, the argument escalated, and Samantha asked the apartment manager to call police. During an investigation of the domestic violence incident, V.W. said John had touched his penis on more than one occasion. Samantha said she believed John spent hours sitting in his car watching pornography on his computer, and when they were in a relationship together, he openly masturbated. She said she had never seen him doing anything inappropriate with V.W. and she did not think John would sexually abuse him.

The family had a failed voluntary contract with the Agency in 2007 and a prior dependency case in 2008 and 2009 because of domestic violence. At the conclusion of the past dependency case, V.W. was placed with Samantha, the parents shared custody and John had 10 hours each week of unsupervised visitation with V.W.

¹ Statutory references are to the Welfare and Institutions Code unless otherwise specified.

V.W. told the social worker he did not like John. He said John was mad because V.W. would not give John a hug and that he had not given John a hug because John had thrown away his "garbage."

John denied touching V.W. inappropriately. He said he spent the night at Samantha's house about once every three weeks to help her with V.W. and would take V.W. for overnight visits about twice each week.

V.W.'s teacher said she had not observed V.W. show any sexualized behavior at school. His daycare provider had asked Samantha not to allow John to pick up V.W. because John was so difficult to deal with, but Samantha said she had no one else to help her. Samantha's apartment manager said John often babysat V.W. The maternal grandmother (the grandmother) said she was not surprised by the allegations because Samantha had told her John may have molested his adult daughter.

At a forensic interview at the Chadwick Center at Rady's Children's Hospital, V.W. was cheerful and talkative. He answered many questions with, "I don't know." At first he denied having any private parts and denied any touching. He then identified the penis as "pee pee." When asked if he had been touched in a way he did not like, he said, "yes," on his "pee pee." He said the touching happened more than one time and John did the touching. He said he did not want to see John and did not like him.

At the jurisdictional and dispositional hearing on May 8, 2012, social worker Neda Rivera testified that when she asked V.W. if anyone had touched him on his body parts, he said "yes," and spontaneously said he would run and hide in a closet. She opined his statements were credible. Rivera said Samantha told her that V.W. had touched other

children inappropriately in karate class. Social worker Jessica Ludwig testified the grandmother said Samantha told her V.W. had recanted the sexual abuse allegations. The grandmother said she believed Samantha was lying about the recantation. Ludwig said V.W.'s therapist reported that at their first therapy session V.W. went over to the doll house and began doing sexual play, then said John had sexually abused him and he was afraid of John. The therapist believed he was credible in maintaining that he had been sexually abused and he was afraid of John. Social worker Melinda Eichenberg testified V.W.'s story was consistent that he had been sexually abused.

After considering the evidence and argument, the court found the allegations of the petition to be true. It declared V.W. a dependent child of the court, removed him from Samantha's custody, found it would be detrimental to place him with John, and ordered reunification services for the parents.

DISCUSSION

John contends there was not substantial evidence to support the jurisdictional findings. He argues V.W.'s statements were not reliable and the court erred when it found V.W. did not have a motive to lie.

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.) Determinations of credibility of witnesses and resolutions of conflicts in the evidence are for the trier of fact. (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227.) In reviewing the juvenile court's findings, the appellate court does not reweigh the evidence. (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860.) "[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.' [Citation.]" (*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.)

Section 300, subdivision (d), provides a child comes within the jurisdiction of the juvenile court if

"[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household"

Penal Code section 11165.1 includes within the definition of sexual abuse the "intentional touching of the genitals or intimate parts . . . or the clothing covering them, of a child . . . for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably construed to be normal caretaker responsibilities"

V.W. told the social workers and the forensic interviewer that John "plays with my 'pee pee.'" He demonstrated how John touched him by wiggling his fingers in front of his penis and said John was under his "pee pee" when he was playing with it. He said John would enter his bedroom and take off V.W.'s pants because John wanted to "play with my 'pee pee.'" V.W. said it happened more than once, and the last time was in the daytime in his bedroom and the television was off. V.W. said it felt good, but it made him sad because it hurt his feelings and he did not want to see John because he did not like him.

V.W. also said Samantha saw John do this one time and she "spanked [John's] butt for playing with [V.W.'s] 'pee pee'" and "grounded [John] for one week." The social workers reported that when V.W. began to speak about John touching him, his demeanor changed, he put his head down on a table and did not make eye contact. Rivera said he appeared sad and uncomfortable.

The social workers and the grandmother did not believe Samantha's reports that V.W. had recanted because Samantha had not been able to separate herself from John.

John misplaces 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. (*In re Lucero L.*, *supra*, at pp. 1231, 1246.) Examples of reliability include spontaneous statements, the precociousness of the child's knowledge and a lack of the child's motive to lie. (*In re Cindy L.* (1997) 17 Cal.4th 15, 34.) Here, the court considered V.W.'s statements to the social workers and to the forensic examiner. When Rivera asked V.W. if anyone had touched his body parts, he said "yes," and then spontaneously said he would run and hide in the closet. Social worker Ludwig testified V.W.'s therapist told her that during their first session, without any prompting, V.W. went to the doll house and began doing sexual play. He immediately said John had touched him and he was afraid of John. The therapist said that during each of their three therapy sessions together, V.W. was consistent in maintaining that John had sexually abused him. Also, Samantha said V.W. had sexually acted out during his karate class. V.W. made

consistent statements to the social workers, the forensic investigator and his therapist. He had no developmental delays and there was no challenge to his competency during the hearing. His statements were reliable and support the court's jurisdictional findings.

John's argument that V.W.'s previous dependency, the parents' history of domestic violence and V.W.'s dislike of him gave V.W. a motive to lie is without merit. The court considered the testimony of the witnesses and the evidence before it and made a finding that V.W. did not have a motive to lie. We do not reweigh the evidence considered by the court in this regard. Substantial evidence supports the court's finding under section 300, subdivision (d).

DISPOSITION

The orders are affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

McINTYRE, J.