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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re J.L. et al., Persons Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.V.,

Defendant and Appellant.

E054431

(Super.Ct.Nos. J238821 &  
J238822)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J.  
Schneider, Jr., Judge. Affirmed.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Jean-Rene Basle, County Counsel, and Adam E. Ebright, Deputy County Counsel,  
for Plaintiff and Respondent.

At a contested jurisdiction/disposition hearing, the juvenile court declared M.V's (Father) twins, J.L. and A.L., dependents of the court after finding the allegations pursuant to Welfare and Institutions Code<sup>1</sup> section 300, subdivision (d) to be true. Father appeals, contending there was insufficient evidence to support the court's findings. We affirm.

## I. PROCEDURAL BACKGROUND AND FACTS

On May 9, 2011, the San Bernardino County Children and Family Services (CFS) initiated dependency proceedings pursuant to section 300, subdivisions (b) and (g), on behalf of twins J.L. and A.L., born in 2002,<sup>2</sup> who were living with L.L. (Mother). According to the petition, the twins' residence was "unsanitary due to rotten food, animal feces, and dirty laundry all over the home." Mother was arrested for being under the influence of a controlled substance and was unable to make arrangement for the twins' care. The twins had been living with her since 2006, when the family law court awarded custody to her with unsupervised visitation to Father. Father was alleged to have a history of substance abuse, domestic violence, and sexual abuse.

Following Mother's arrest, Father was contacted and came to the sheriff's station. Father explained that he did not have custody of the children due Mother's false

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<sup>1</sup> All further references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> Although CFS named two older children in the detention report, R.L. and G.L., Father is not their biological father and they, along with Mother, are not parties to this appeal. Accordingly, we will discuss the children and Mother only to the extent necessary.

allegations of domestic violence. He also denied Mother's sexual abuse allegations; however, his prior child welfare history included a substantiated referral for sexual abuse and three inconclusive sexual abuse referrals, and his criminal history included arrests for being under the influence of alcohol or drugs and possession of a controlled substance. At the May 10, 2011, detention hearing the court found a prima facie case that the twins came under section 300, detained them in the home of their paternal brother and sister-in-law, and ordered weekly supervised visitation.

In the jurisdiction/disposition report filed on May 31, 2011, CFS recommended that the court sustain the allegations in the petition, that Father be found to be a presumed father of the twins, and that both parents be offered reunification services. According to the report, on March 28, 2010, Father sought to modify the family law court's order to add his name to the twins' birth certificates, change custody to equal time for both parents, require Mother to submit to drug/alcohol testing, and place the twins back into public school.

Regarding the drug allegations, Father admitted he had an alcohol and drug problem in the late 1990's until 2001, when he "quit using." He denied having a history of domestic violence. Regarding sexual abuse allegations, they first surfaced in 2001 when the twins' older half sisters were removed from Mother because she had left them with a babysitter and did not return. At that time, the half sisters, R.L. and G.L., reported Father had "touched his penis to their vagina[s]" more than once, with the last occurrence being in May or June of that year. The half sisters were placed in protective custody. According to the police narrative, the half sisters and Father were never interviewed by

the social worker, nor had Father been contacted, yet the allegation was substantiated. Father told the current social worker that he was in the process of filing for a grievance hearing to have the allegation expunged. He continually fought to exercise his parental rights and get Mother to comply with court-ordered visits.

The jurisdiction/disposition report also notes that on November 15, 2004, allegations of sexual abuse of the children (J.L., A.L. and R.L.) resurfaced. R.L. stated that she could not remember a lot of things. A.L. disclosed there was a “ghost” in Father’s home that made J.L.’s “butt bleed.” Father maintained he was innocent but complied with all services and visits. An investigation was initiated; however, neither the sheriff’s department nor CFS was able to substantiate the allegations. Father was consistently cooperative and “more than reasonable” when confronted by CFS. Although the social worker opined the then current sexual abuse allegations were untrue, she recommended that the section 300, subdivision (b) allegation be found true based on Father’s prior substantiated sexual abuse allegation, his history of substance of abuse, and the reports of domestic violence.

In the addendum report filed July 7, 2011, CFS continued to recommend that the allegations in the section 300 petitions be found true and that Father be found to be the presumed father of the twins. CFS attached a police report dated August 29, 2001, wherein R.L. reported that Father had put his penis in her “we we” four times and in her “butt” five times. She also disclosed that Father had penetrated her vagina with his fingers. Later, when interviewed at the Children’s Assessment Center, R.L. denied being touched by Father but claimed being touched by another child, A.M., who lived nearby.

Throughout the interview, R.L. would disclose and then recant statements, which the interviewer described as “highly suggestive of recantation associated with molest victims, and due to her young age she is unable to report consistently.” The interviewer also noted that G.L., who had denied being inappropriately touched, was unusually aggressive and defensive for a child her age. R.L. underwent a forensic medical examination, which revealed a deep notch near the base of her hymen that was nonspecific as to whether it was caused by sexual abuse or some other mechanism. G.L.’s examination was normal and there was no evidence of sexual abuse.

The social worker interviewed R.L. and G.L. regarding the 2001 allegations. G.L. denied being inappropriately touched by defendant, but R.L. stated she did not remember and could not say for sure if it ever happened. She added, “[Father] is no[t] a sexual abuser, he is a hard core alcoholic, and a worm, but he should be allowed to be around his kids.” The twins were interviewed. A.L. denied being inappropriately touched by Father, and when asked about “ghosts” touching her, she explained that someone had talked about ghosts being in the old house. J.L. was upset with Father because father did not want him living with his aunt and cousins. Thus, when J.L. was asked if Father had ever touched him inappropriately, he stated, “I don’t know, I think so. He’s weird. I don’t want to be with him.” Later, when interviewed at the Children’s Assessment Center, J.L. recanted and denied being inappropriately touched. The social worker opined it was unlikely that Father sexually abused his own children, but he “may have, possibly when he was under the influence, inappropriately touched the child [R.L.]” Thus, the social worker believed “the allegation of sexual abuse remains true . . . .”

On August 11, 2011, CFS filed an amended petition deleting the allegation that Father had a history of domestic violence and adding an allegation under section 300, subdivision (d), that Father had sexually abused the twins' half sister, R.L., which placed them at greater risk of sexual abuse. An addendum report was filed that same day. CFS recommended that the court find all of the allegations, except section 300, subd. (b)4, true and offer reunification services to Father. Having obtained the prior police reports and the Children's Assessment Center interviews, CFS noted in its addendum report that R.L. had reported she had been sexually abused several times by Father and by a red-haired boy named A.M.<sup>3</sup> At the end of the interview, R.L. denied Father touching her inappropriately. However, the report noted that in R.L.'s forensic interview of 2001, she was "very precise in her description of [A.M.]" and reported that he had touched her "[i]n his house and in the woods . . . ." R.L. also stated that if she told, she would "never be able to sleep and the grown-ups [would] be mad at [her] and take [her] away and put [her] in the attic and shut the light off." The social worker noted it was clear that R.L. had been coached not to say certain things during the interview, but in the end she disclosed the sexual abuse to four different individuals, including three deputies. Regarding Father, R.L. was reluctant to talk because she had been convinced that if she told anyone, her mother would be killed and her siblings would be taken away. Mother reported that after she learned of the sexual abuse, she noticed R.L. and G.L. began wetting their pants and defecating in inappropriate locations. The social worker

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<sup>3</sup> A.M. was taken into custody by CFS in December 2001. In April 2002, he revealed that he was sexually abused by his biological father.

concluded that although R.L. recanted her disclosures about Father several times, her clear and consistent descriptions of the abuse to separate deputies suggests that she was likely sexually abused by both A.M. and Father.

The contested jurisdiction/disposition hearing began on August 22, 2011, and ended on August 24. At the contested jurisdiction hearing, Father denied ever sexually abusing any children. According to him, in 2000 and 2001, Mother used drugs with “unsavory people.” These people included a woman referred to as “Psycho Terry,” who had a son named A.M.; Mother and the children would stay with Terry. Father testified he was unaware until 2005 that he had a substantiated sexual abuse allegation against him. He believed Mother had reasserted the allegation in 2005 when he told her that he was going to take action to have his name added to the twins’ birth certificates. At that time, he was served with a restraining order. He claimed he was not aware the sheriff’s department was looking for him in 2001 to question him about R.L.’s claims.

In 2005, Father started having contact with a social worker. He complied with all referrals for counseling and was granted visitation with the twins. He claimed the last time he used alcohol was on February 8, 2007, and the last time he used any illicit substance was in 2001. He was never arrested for or charged with any sex-related crimes. As part of the present dependency action, Father is in counseling, has tested negative for drugs, and has completed a parenting class. He testified that he “participate[s] in everything that they have asked [him] to do and then some.”

In response to Father’s testimony, the social worker listened to the tapes of the interviews with R.L. and pointed out that the child identified A.M. and Father as her

abusers. While the child may have recanted some of her disclosures about Father, the social worker found it significant that she “never recants the idea that [Father] asked her to keep a secret.” G.L. also told R.L. and one of the deputies, “We know who the bad guy is . . . John.”<sup>4</sup> Regarding the sheriff’s department’s failure to contact Father in 2001 for questioning, the social worker noted that law enforcement believed Father was “evading them at that time.”

Prior to the conclusion of the social worker’s testimony, the court adjourned for the day. Before dismissing the parties, the court provided them with its tentative decision: “These reports done and the investigation and reports that were appended—the August reports with regard to the police investigation seem to be very credible to this Court. I have heard no testimony that [impugns] or what the veracity of the allegations were of [R.L.] regarding the sexual abuse committed upon her by [Father] in 2001. It’s all very nice and well that he may have turned the corner, and that nothing was found in 2005, 2006, and maybe nothing now. [¶] I don’t know what the circumstances of life he was living ten years ago, but clearly I have heard no evidence to compel the Court to find by a preponderance of the evidence that the [section 300, subdivision] (d) allegation is anything but truthful. [¶] . . . [¶] . . . This is not a criminal trial. I am not strapped with beyond a reasonable doubt. I am obligated to find by a preponderance of the evidence, and I am finding that now, and I would want to hear evidence that somehow would impact upon me.”

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<sup>4</sup> M.V. is sometimes referred to as “John.”

The next day, the social worker opined: “The two things that lead me to believe that there is risk to the children . . . of possible sexual abuse in the future, are, number one, the fact that I believe that [R.L.] was sexually abused by [Father] in 2001 based on her statements and the other things that I have; two, teenagers who are now reporting that [Father] has been seen intoxicated by [R.L.] and smelling of alcohol within the last year and within the last two years. [G.L.] stated that she has seen him drinking alcohol in her mother’s home.”

In closing argument, CFS asked that the court amend the section 300, subdivision (d)5 allegation to strike the words ““was found to have,”” so it reads, ““The father . . . sexually abused—”” and then find the allegations in the petition to be true. Father argued that CFS had not met its burden of proving the section 300, subdivision (d) allegation, noting the timing of the allegations coincided with Mother’s efforts to seek custody. Further, Father argued that the 2001 investigation was faulty and CFS, more recently, should have contacted therapists and conducted a more thorough followup.

After listening to the testimony and reviewing the reports, the trial court dismissed the section 300, subdivision (b)4 and (g)6 allegations, found true the (b)1 through (b)3 allegations, and found true the (d)5 allegation as amended to now read: ““The father . . . sexual[ly] abused the child [R.L.] thereby placing his children [A.L.] and [J.L.] at greater risk of sexual abuse.”” Father appeals, challenging the court’s finding as to the section 300, subdivision (d)5 allegation.

## II. SUFFICIENCY OF EVIDENCE

Father contends there was insufficient evidence to support the section 300, subdivision (d) allegation that he sexually abused the twins' half sister, R.L., because R.L.'s incriminating statements amounted to inadmissible hearsay. We disagree.

The applicable legal principles are well settled. Under the facts of this case, a juvenile court has no authority to assume jurisdiction over a child unless the circumstances, at the time of the hearing, show by a preponderance of the evidence that the child is at substantial risk of serious physical harm (§ 300, subd. (b)) or sexual abuse (§ 300, subd. (d)) in the future. (§ 355; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1394, 1396.) On appeal, we review the record to determine whether there is any substantial evidence to support the juvenile court's jurisdictional findings. We resolve all conflicts and draw all reasonable inferences in favor of the court's findings. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022; *In re David M.* (2005) 134 Cal.App.4th 822, 828.)

We must be mindful, however, that substantial evidence is not synonymous with any evidence, and a decision that is supported by a mere scintilla of evidence should not be affirmed on appeal. (*In re David M., supra*, 134 Cal.App.4th at p. 828.) And, although substantial evidence may consist of inferences, ““such inferences must be a ‘product of logic and reason’ . . . [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].” [Citation.] “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” [Citation.]’ [Citation.]” (*Ibid.*)

Statements of children who are the subjects of dependency proceedings, including those who may be “truth incompetent” because of very young age, are admissible via a social worker’s report and will support a finding of jurisdiction so long as they bear sufficient indicia of reliability. (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1246-1247 (*Lucero L.*.) However, “[e]ven without special indicia of reliability, the minor’s hearsay statements, if corroborated by other evidence, would be sufficient to support a jurisdictional finding.” (*Id.* at p. 1247.) Indicia of reliability are based on the “time, content and circumstances” of the child’s statement. (*In re Cindy L.* (1997) 17 Cal.4th 15, 29.) These indicia include, but are not limited to: spontaneity and consistency, the mental state of the declarant, the use of terminology unexpected of a child of similar age, and a lack of a motive to fabricate. (*Id.* at pp. 29-30.) Further, “any factor bearing on reliability may be considered.” (*Lucero L., supra*, at p. 1250.)

Conceding that *Lucero L.* permits a child’s hearsay in dependency cases, Father argues that the circumstances in *Lucero L.* are distinguishable. In *Lucero L.*, the three-year-old minor used words and gestures to describe how her father touched her; she told the social worker, her foster mother, the police officer, and her stepsister about the touching; moreover, there was evidence that minor’s father molested her stepsister. (*Lucero L., supra*, 22 Cal.4th at pp. 1232-1236.) Father contrasts the *Lucero L.* case with this case, pointing out that R.L.’s statements not only changed over time but were “internally inconsistent” during her forensic interview. Father notes that R.L. also described sexual abuse by a neighbor boy, A.M., who was removed from his mother’s custody due to her drug use and the discovery that his father was sexually abusing him,

and R.L.'s physical examination revealed nonspecific findings. According to Father, R.L.'s description of A.M.'s abuse in great detail, along with Mother's animosity for Father, suggest that R.L.'s claim of sexual abuse was "the product of the blur between [R.L.'s] fantasy and a reality in which she was actually abused by [A.M.]" Thus, Father argues that "the indicia of reliability found in *Lucero L.*, could not be found and [R.L.'s] out-of-court hearsay statements should never have been used."

In response, CFS argues that R.L.'s statements meet the *Lucero L.* test for reliability for the following reasons: First, according to the 2001 sheriff's department report, R.L. and G.L.'s discussion about Father putting his hand down R.L.'s pants "was spontaneous and did not appear to be for the officer's benefit . . . ." Second, although R.L. disclosed the abuse and then recanted it in her interview at the Children's Assessment Center, the social worker opined that such internal inconsistency did not mean the statements were unreliable but instead was "highly suggestive of recantation associated with molest victims, and due to her young age, she is unable to report consistently." CFS emphasizes the fact that the social worker placed great weight on R.L.'s "clear and consistent descriptions of the abuse." The third factor was R.L.'s description of things that happened to her which were outside of a normal child's experience, i.e., "digging" to describe digital penetration and having her pajamas on without underwear. And finally, while Mother may have had a motive to make up the accusations, R.L. did not. Despite being coached to cover up the abuse, once she was taken into custody, R.L. overcame her fears and disclosed what had happened to her.

Based on these reasons, CFS argues that R.L.’s statements were reliable and sufficient to support the court’s true finding.

Given CFS’s burden of proving the allegation by a preponderance of the evidence, the standard of review on appeal, and the record before this court, we agree with CFS and conclude that the juvenile court could find true the allegation under section 300, subdivision (d), that Father sexually abused R.L.

### III. DISPOSITION

The disposition order is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MILLER

J.

CODRINGTON

J.