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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re B.W. et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

H.W. et al.,

Defendants and Appellants.

E057672

(Super.Ct.No. RIJ120566)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

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

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and
Appellant H.W.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,
for Plaintiff and Respondent.

I. INTRODUCTION

Defendants and appellants H.W. (Father) and M.W. (Mother) are the parents of two young boys, B.W. and L.W., who were adjudged dependents of the juvenile court. The parents appeal the dispositional orders, challenging the sufficiency of the evidence supporting the court's jurisdictional findings, its order removing the boys from parental custody at disposition, and its order requiring the parents to participate in counseling as part of their case plan. We conclude substantial evidence supports the jurisdictional findings and dispositional orders, and the juvenile court did not abuse its discretion in ordering the parents to participate in counseling. Accordingly, we affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Overview*

Plaintiff and respondent, Riverside County Department of Public Social Services (DPSS), took the boys into protective custody in May 2012, when B.W. was 23 months old and L.W. was four weeks old. Around 5:00 p.m. on April 30, Mother returned home from work with L.W., who had fallen asleep in his car seat. Father brought L.W. inside the house and noticed his breathing was not right. Mother called 911 and reported L.W. was lethargic, having trouble breathing, and his eyes were rolling back. L.W. went into cardiac arrest. Paramedics revived L.W. and took him to the hospital.

L.W. was later transported to Children's Hospital of Orange County (CHOC) where a CAT (computerized axial tomography) scan revealed he had at least two skull fractures, a subdural hematoma, and brain swelling. His attending physician, Dr. Jalili, a critical care pediatrician at CHOC, believed his skull fractures were recent and nonaccidental. L.W. was undergoing further testing and evaluation. Father had been a stay-at-home father since December 2010 and was the primary caretaker for the boys. Since his birth in early April 2012, L.W. had never been in the care of anyone other than Mother and Father.

The family had a prior DPSS history involving B.W. In October 2010, when B.W. was five months old, DPSS received an immediate response referral alleging the parents were physically abusing and generally neglecting B.W. B.W. had redness and bruising inside his right earlobe, and the parents had no explanation for the injury. A doctor who examined B.W. believed the bruising was likely caused by trauma. Mother told an investigating police officer that B.W. had similar bruising on his other ear one month earlier, and that the bruising went away in two or three days. Mother was unaware of any incident in which B.W. may have been dropped or bumped his ear. At the time, Mother worked during the day and Father worked at night and cared for B.W. during the day.

B.W. was diagnosed with a fractured clavicle when he was two weeks old. According to his pediatrician, fractured clavicles were common in large babies like B.W., and it was not unusual to miss them at birth. At B.W.'s two-month checkup, his clavicle was normal. Then, when B.W. was four months old, Mother took him to CHOC because

he was spitting up blood. At that time, the pediatrician noticed the bruising on B.W.'s left ear, which Mother could not explain. One month later, in October 2010, when B.W. was five months old, DPSS received the immediate response referral based on the bruising on B.W.'s right ear. The juvenile court ordered B.W. detained, but dismissed the dependency petition for B.W. because it found insufficient evidence to exercise jurisdiction.¹

Around 5:30 p.m. on April 30, 2012, Corona Police Officer Jason Viefhaus responded to a "baby not breathing call" at the parents' home. When he arrived, a paramedic was performing cardiopulmonary resuscitation on L.W. The officer reported the parents were not crying or hysterical as he expected from his experiences with parents and their newborns, and when the paramedics announced they had located L.W.'s pulse, the parents let out a sigh and hugged each other. As L.W. was being wheeled on the gurney from the house to the ambulance, the parents appeared calm and "somewhat emotionless."

Officer Viefhaus stayed with Father for around 15 minutes after the paramedics left the house with L.W. and Mother and asked Father what had happened. Father explained that L.W. was napping in his car seat on the couch, while Mother was in the back room with B.W. Father heard L.W. wake up, and picked him up to take him to Mother so he could be fed. At that point, he noticed L.W.'s lip quiver and his eyes roll

¹ Based on B.W.'s October 2010 detention, the parents filed a civil suit against the County of Riverside, and the civil suit was still pending when the present dependency proceedings began.

back, and he told Mother to call 911. Father said L.W. was a “fussy” baby because he had colic. Around 6:00 p.m., Officer Juarez came to the house to relieve Officer Viefhaus. While Officer Juarez was with Father, Father called his attorney, then refused to speak further with the officer. Father handed the telephone to the officer and the attorney told the officer to leave. Father then gave the officer a key to his house, told him to lock the house when he left, then drove away in his car with B.W., who appeared to be okay.

During the night on May 1-2, L.W. began having seizures, and a second CAT scan revealed he had additional brain swelling. According to Dr. Jalili, Mother had no explanation for L.W.’s injuries, and he had not seen Father at CHOC on May 1, but he later saw Father going in and out of L.W.’s room.

B. The Initial Investigation

On May 1, social worker Pamela Acra and two police detectives went into L.W.’s room at CHOC and introduced themselves to the parents. Father’s attorney was present and advised he was representing both parents in the absence of Mother’s attorney. Father’s attorney agreed to allow the social worker to interview each parent separately. Acra then interviewed each parent separately, in the presence of the attorney.

According to Father, Mother had a normal vaginal delivery of L.W. and they hired a birthing coach, Emily Moothart, to assist her during the delivery. B.W. and L.W. were large babies; each weighed over nine pounds at birth, and B.W.’s clavicle was broken during his delivery because he was so large. The doctor who delivered B.W. had to

manipulate him to get him out of the birth canal. When Mother was six months pregnant with L.W., she began seeing a chiropractor for hip pain.

L.W. had a well-baby checkup three days after he was released from the hospital, two days after he was born, and the results were normal. But Mother and Father both said L.W. was not breast-feeding well, cried a lot, and a few days after his well-baby checkup they noticed that he favored the left side of his neck and would keep his head tilted to the left. On April 16, when he was two weeks old, his pediatrician, Dr. Bendra, diagnosed him with colic and digestive issues and advised Mother to cut back on milk products. Mother used an over-the-counter medication to treat L.W.'s colic, and it appeared to be helping.

Before his two-week checkup with Dr. Bendra on April 16, Mother noticed L.W. was arching his back and was difficult to soothe. In addition, Mother's chiropractor, Ann Lundquist, treated L.W. on at least four occasions by massaging his neck, and the treatments appeared to be helping. Mother kept track of L.W.'s feedings and doctor's appointments on her cell phone. Dr. Lundquist confirmed she was trained to work with infants; she was massaging L.W.'s neck to allow him to breast-feed better; and she did not notice any evidence of injury to L.W.'s skull when she treated him.

Father said L.W. was feeding and sleeping better until the week before the 911 call. That week, L.W. was crying more often and sleeping for no more than 20 to 30 minutes at a time. The parents increased his food intake to help him sleep. The day before the 911 call, Father noticed L.W. was fussy and not acting like himself, was harder

to soothe and calm, and was sleeping for only minutes at a time. Mother noticed L.W. was having trouble sleeping around 48 hours before the 911 call. According to Mother, L.W. normally slept for several hours at a time, but he was beginning to sleep for only 20 to 30 minutes before he would awaken and need to be soothed.

Shortly before she spoke to Acra on May 1, Mother told an investigating police detective that L.W. was a healthy baby, his growth and progression were “off the charts,” she noticed nothing wrong with him on April 30, before the 911 call, and he normally cried before feeding time but that was the only time he normally cried.

Mother also told Acra she left her house for work at 12:00 p.m. on May 1, took L.W. with her, and arrived home at 5:00 p.m. According to Father, Mother called him during the day, saying L.W. had a “hard day” and cried a lot. After Mother returned home and Father brought L.W. into the house in his car seat, Mother went into the bedroom to pump breast milk. L.W. was crying, so Father tried to soothe him by putting him on his chest, but that did not work. L.W. would not feed from his bottle and was screaming. Father said his cry became a whimper, his bottom lip began to quiver, his skin color became darker, and his breathing became slower and slower. The parents then called 911.

The parents denied knowing of any trauma L.W. may have suffered that could have caused his skull fractures. Father said that if L.W. suffered any trauma, it must have occurred at the time of his birth or during the chiropractic treatments. Mother also could not explain L.W.’s injuries. Both parents asked whether any underlying medical

condition could explain B.W.'s former injuries and L.W.'s current injuries. The parents denied using drugs or engaging in domestic violence.

When interviewed by the social worker on May 1, the paternal grandfather said he believed L.W.'s injuries may have been caused at the time of his birth because of his large size. A paternal aunt, Amanda B., said she noticed L.W. was born with two bald spots on each side of his head, and doctors said Mother's pelvic bone had moved during her pregnancy. The paternal grandmother said the doctors at St. Joseph's Hospital, where both boys were born, said the bald spots on L.W.'s head were caused by his head rubbing on Mother's pelvic bone. The parents wanted the paternal grandparents to care for the boys in the event DPSS detained them.

On May 2, DPSS filed a petition alleging L.W. came within the jurisdiction of the juvenile court under subdivisions (a), (b), and (e) of section 300 of the Welfare and Institutions Code,² and the court had jurisdiction over B.W. under subdivisions (b) and (j). An amended petition was filed on May 7, and a second amended petition was filed on November 29, during the jurisdictional hearing. The amended petitions changed the factual allegations regarding the nature and extent of L.W.'s skull fractures and other injuries, but asserted the same statutory bases for jurisdiction.

The boys were taken into protective custody on May 3. At the detention hearing on May 8, the court found DPSS made a prima facie jurisdictional showing, and set a

² All further statutory references are to the Welfare and Institutions Code and all references to subdivisions are to subdivisions of section 300 unless otherwise indicated.

jurisdictional hearing on the first amended petitions. B.W. was placed with the paternal grandparents on May 29, and L.W. was placed with them on June 4, following his release from CHOC and temporary stay in a foster home for medically fragile children.

On May 5, the social worker spoke with the maternal grandfather, who said L.W. had not been a “normal baby” since he was born because he always cried like something was wrong, not like a normal baby. Three other people had told the maternal grandfather that the doctor who delivered L.W., Dr. Donna Baick, was rough and pulled on his head during the delivery, causing L.W.’s skull fractures. The maternal grandfather believed the doctors at CHOC were wrong, and that L.W.’s injuries were not recent or nonaccidental but happened at the time of his birth. He said Mother and Father were “the best parents ever.”

Mother and the maternal grandfather operated a property management firm, and Mother was the firm’s financial manager. On April 30, Mother came to the office with L.W., and during the time they were in the office only the maternal grandfather, the maternal grandmother, Mother, and one other person held L.W. L.W. was never outside Mother’s presence during the office visit. For her part, the maternal grandmother said she had never seen the parents angry, and they were loving and devoted parents.

On May 16, the social worker spoke with Mother’s doula or birthing coach, Emily Moothart, who was present during L.W.’s birth at St. Joseph’s Hospital and described the delivery as a “normal” birth. Because B.W. suffered a broken clavicle at birth, Moothart understood Mother was concerned that L.W. would also suffer broken bones, but

Moothart did not understand how the doctor who delivered L.W. could have fractured his skull. L.W. began breast-feeding right after he was born, and Mother was helping him “latch[] on.” A week later, L.W. was having difficulty breast-feeding, but Moothart believed the difficulties were normal for a breast-fed child.

On May 17, the social worker spoke with Candice Beaver, a maternal aunt, who was also in the delivery room when L.W. was born, along with Moothart and Father. Beaver did not believe the birth was a “normal delivery.” She was surprised at how hard the delivery doctor pulled on L.W.’s head during delivery. L.W. was face down, the doctor had one hand on the back of L.W.’s head and the other under his jaw, and appeared to be making a “jerking motion up and down,” in removing L.W. from the birth canal. Beaver was certain that this caused L.W.’s skull fractures, but this was the only birth she had ever witnessed. L.W. slept well the first few days of his life, but after that he had difficulty breast-feeding and always seemed uncomfortable.

On May 18, Dr. Baick called the social worker. Dr. Baick’s notes indicated Mother had a second degree tear during L.W.’s birth, but no special procedures or tools were used for the delivery, and it was a normal delivery. Dr. Baick explained that a baby’s head is designed to move through the birthing canal; there are two areas on the top of a baby’s head called fontanel, where the skull bones have not yet grown together and which allow the head to move through the narrow birth canal. It was therefore highly unlikely that a baby’s skull would be fractured during birth.

On May 23, the social worker interviewed Dr. Michael Muhonen, a pediatric neurosurgeon at CHOC. Dr. Muhonen opined that L.W.'s injuries were caused by severe, blunt force trauma, and included a left frontal fracture, bilateral parietal fractures, a subdural hematoma, swelling to the brain, petechial hemorrhages, and other injuries.

In May, the parents told the social worker the situation with L.W. had been very hard on them and their family, and they believed they could benefit from counseling to help them deal with the situation. Father said the boys meant everything to him and he just wanted them to come home. The parents were consistently at L.W.'s bedside at CHOC. By September 2012, both parents completed a parenting program.

C. The Jurisdictional/Dispositional Hearing

At a lengthy, combined hearing on jurisdiction and disposition conducted over a period of six weeks and concluding on November 30, 2012, the primary question the juvenile court had to determine was whether L.W.'s skull fractures were caused by blunt force trauma and were either nonaccidentally or negligently inflicted by one or both parents, as DPSS alleged, or whether L.W.'s injuries occurred at the time of his birth, as the parents claimed. It was undisputed that L.W. had a subdural hematoma and brain swelling, and was in the sole care of the parents when he went into cardiac arrest. Numerous witnesses testified, including medical experts.

At the conclusion of the hearings, the court found by a preponderance of the evidence that L.W. was described in section 300, subdivisions (a), (b), and (e), B.W. came within section 300, subdivisions (b) and (j), and adjudged the boys dependents.

The court also found by found clear and convincing evidence that the removal of the boys from the parents' physical custody was necessary. (§§ 361.5, subd. (a), 361, subd. (c)(1).) DPSS was ordered to provide reunification services to the parents, and the court authorized the parents to have overnight and weekend visits with the boys at the paternal grandparents' home. The parents appeal the dispositional orders.

D. The Expert Medical Evidence

The medical testimony was lengthy and complex. Its key points are summarized here, followed by the juvenile court's factual findings.

1. Dr. Ronald Gabriel's Testimony

Mother retained Dr. Gabriel, a forensic neurologist with subspecialty experience in identifying whether head trauma is acute, that is, of recent origin, and whether it is accidental or nonaccidental. Dr. Gabriel opined it was "highly probable" that L.W. suffered intracranial bleeding or cephalohematoma at the time of his birth, meaning he had bleeding under his skull and above his brain that caused him to convulse and go into cardiac arrest at four weeks of age, resulting in reduced oxygen blood to his brain, or hypoxia ischemia, and a severe brain injury.

Dr. Gabriel believed L.W.'s birth was not "normal" because the doctor pulled on his head during his delivery; it was an "unusually difficult delivery." L.W. was an "abnormally large" baby and the mother was relatively modest in size. According to Dr. Gabriel and radiology literature, intracranial bleeding occurs in "up to 50 percent" of all "normal" vaginal deliveries.

In addition to his traumatic birth, other factors indicated it was “highly probable” L.W. suffered intracranial bleeding at birth: the nurses’ notes indicated he was failing to latch and breast-feed; he was fussy and difficult to calm; he had a bump on the top of his head, indicating blood underneath the scalp; and his head circumference measurement was in the 50th percentile at birth but increased dramatically the next day, and to the 90th percentile 15 days later.

L.W. also had signs of a neurological abnormality in the basal ganglia, a group of nuclei in the deep part of his brain governing motor activity: his head abnormally deviated to the left, “with the chin splayed to the right,” and he had “Clark’s sign,” meaning his head was positioned forward and his hands were retroflexed. L.W. also had exocranial bleeding, or bleeding above the skull.

Dr. Gabriel ruled out blunt force trauma as the cause of L.W.’s cardiac arrest. In his opinion, there was “[n]ot a shred of evidence” to support that theory. Though he agreed it was possible that blunt force trauma to an infant could result in a subdural hematoma, convulsions, cardiac arrest, and seizures on the same day, he did not believe L.W. had any skull fractures, and the doctors at CHOC had misread his x-rays. He based that opinion on his consultation with Dr. James Collins, a professor of radiology at UCLA medical school, whom he believed was the most eminent radiologist in the country.

Even if L.W. had skull fractures, Dr. Gabriel believed they likely occurred at birth rather than at the age of four weeks, based on the factors which indicated that L.W. had

intracranial bleeding at birth. Dr. Gabriel did not believe the doctors at CHOC, who concluded that nonaccidental, blunt force trauma caused L.W.'s skull fractures, had reviewed L.W.'s birth records or other prior medical records.

Dr. Gabriel acknowledged that four radiologists at CHOC believed L.W. had skull fractures. He also agreed that L.W.'s head circumference actually decreased from April 16 to May 1; his birth records indicated that six of eight attempts to breast-feed him were successful; he was able to latch; and his weight gain was normal during his first four weeks of life. Dr. Gabriel was also not 100 percent certain L.W. had Clark's sign. And Dr. Bindra's records from L.W.'s two week checkup on April 16 did not indicate his head was swollen.

2. Dr. James Collins's Testimony

The parents also retained Dr. Collins, a general radiologist who taught radiology at UCLA's medical school for many years and upon whose expertise and opinion Dr. Gabriel relied in concluding L.W. did not have any skull fractures. Based on his review of the x-ray films, MRI's, CAT scans, and other images of L.W.'s skull taken at CHOC, Dr. Collins opined L.W. had no skull fractures, including parietal fractures. The parietal part of the skull is on the sides of the head, just above the ears.

The images he reviewed showed the "normal plates" of L.W.'s skull, with variations called anomalies or anomalous structures, and "suture lines" or areas between the plates of the skull which *could* be mistaken as fractures. In L.W.'s case, Dr. Collins believed the doctors at CHOC had mistaken a smooth edge along one of the plate

divisions of L.W.'s skull as a fracture. An ultrasound may have shown depressions or fractures in the skull, but no ultrasound was performed. In order to discern a fracture from a plate division, Dr. Collins explained, “[y]ou have to know your densities,” because skull bone is more dense and less lucent than the areas between the plates of the skull.

Dr. Collins was board certified in general radiology but not in pediatric radiology. He did not “routinely” review MRI’s of infant skulls, but he claimed he “kn[e]w his anatomy” and he was “proficient enough to look at a skull, whether it be [infant] or adult.” He said infants were only small adults, and he could identify abnormalities in any skull. When asked what qualified him to render any opinions about what the MRI’s of L.W.’s skull showed, he responded: “Only the knowledge of the anatomy, that’s all.” He would normally ask for a second opinion when reading an infant MRI, but he did not ask for a second opinion in L.W.’s case because he “found the material [he] needed to see.”

3. Dr. William Holmes’s Testimony

Dr. Holmes was the attending radiologist at CHOC, was board certified in pediatric radiology, and his focus at CHOC was on pediatric radiology. He reviewed radiological images of infant skulls on a daily basis, and he had training in identifying accidental and nonaccidental skull fractures in infants. His basic medical training included learning to identify the skull from the connective tissues between the plates of the skull, known as sutures.

On May 1, 2012, Dr. Holmes reviewed radiological images of L.W.'s skull and brain, including x-rays, MRI's, and CAT scans, and concluded he had two skull fractures, namely, left and right parietal skull fractures. In the images, Dr. Holmes saw "all the signs" of fractures, which usually widen, then taper and become more narrow, while sutures tend to be symmetric and "maintain[] the same distance" between the plates of the skull. In addition to widening in the fracture lines, L.W. had overlying soft tissue swelling, an intracranial hemorrhage, and a subdural hematoma, a layer of blood along the surface of the brain.

Dr. Holmes agreed it is difficult to date skull fractures, but when accompanied by soft tissue swelling they are usually a few weeks old "at most." Soft tissue swelling usually begins in the first few days after the fracture occurs, peaks in roughly seven to 10 days, then begins to dissipate. Based on radiology literature, Dr. Holmes believed that intracranial bleeding occurred in as many as 25 percent of normal vaginal deliveries, and he had also seen cases in which "rebleeding" occurred when the infant was a month or so old. Rebleeding was uncommon, however, and only occurred when there was a larger fluid collection on the brain.

Dr. Holmes saw no signs that L.W.'s intracranial bleeding was a "rebleed." He agreed L.W.'s skull fractures could have occurred on April 30, the day before the images were taken, or as long as several weeks earlier. But based on L.W.'s soft tissue swelling and the intracranial bleeding, it was unlikely his skull fractures occurred at birth. The area of his scalp where the soft tissue swelling was present was three times thicker than

the rest of his scalp. Thus, Dr. Holmes testified four weeks was “*probably out of the . . . accepted time frame*” in which L.W.’s skull fractures could have occurred. (Italics added.)

4. Dr. Ying Peng’s Testimony

Dr. Peng was pediatric neurologist working at CHOC, and L.W. had been his patient since May 1. L.W. had progressively worsening hypotonic symptoms, meaning he had little resistance to passive motion, and poor muscle tone at seven months of age. This made Dr. Peng suspect L.W. had a genetic metabolic condition which affected his brain’s ability to regulate his respiratory and cardiac functions and which could have caused him to stop breathing. With his brain injury, Dr. Peng expected L.W. to be spastic, but he was not spastic and instead had poor muscle tone, which was contradicted by his hypoxic-ischemic brain injury. At three months of age, he still had feeding issues, which also indicated he could have a metabolic condition. L.W. was undergoing further genetic testing.

5. Dr. Daphne Wong’s Testimony

Dr. Wong was the medical director of the SCAN (Suspected Child Abuse and Neglect) team at CHOC, and was board certified in general pediatrics and child abuse pediatrics. The SCAN team is a multidisciplinary team comprised of social workers and medical professionals who evaluate whether a child’s injuries resulted from child abuse. Dr. Wong concluded L.W. had two, nondepressed skull fractures which were acute and

caused by nonaccidental blunt force trauma; the fractures were not four weeks old and did not occur at birth.

Dr. Wong believed L.W. suffered at least two blunt force traumas to his head because he had two skull fractures on either side of his head which could not have been inflicted by a single blow. A simple drop from someone's arms would not have caused his injuries.

Dr. Wong did not believe L.W. had intracranial bleeding at birth because his medical records indicated he was having no serious problems during his two-day stay in the hospital following his birth. If L.W. had intracranial bleeding at birth, he would have had neurological symptoms. But L.W. was growing and developing normally, and he was not having "severe" feeding problems before he went into cardiac arrest on April 30. Dr. Wong pointed to Mother's statements that L.W. was feeding normally until two days prior to his May 1 admission to CHOC, and he was "doing fine" when she took him to work on April 30.

The half-centimeter increase in head circumference noted by his pediatrician, Dr. Bindra, on April 16, was probably a mismeasurement. His head tilt to the left, or torticollis, was a muscular issue, not a neurological issue, because his hands were not inverted. There was also no evidence L.W. had any seizure activity before April 30. His crying and fussiness were consistent with colic.

E. The Juvenile Court's Findings

In making its jurisdictional findings, the court said that the case “truly does hang on Dr. Holmes,” and found his testimony credible and persuasive. In contrast, the court found Dr. Gabriel not credible, and less credible than Dr. Holmes to opine whether L.W. had skull fractures. The court found Dr. Collins credible, but also less qualified than Dr. Holmes to opine whether L.W. had skull fractures. The court specifically credited Dr. Holmes’s conclusion that L.W. had two distinct skull fractures, accompanied by a subdural hematoma, “which told him those were relatively newer fractures,” and did not occur at the time of L.W.’s birth four weeks earlier.

The court also found Dr. Wong’s testimony credible, noting her investigation was “not perfect” but her “key findings” were verified by physicians with higher training than hers, specifically Dr. Holmes. The court found Dr. Peng’s testimony helpful, but observed she did not negate the findings of any of the other doctors at CHOC. Though the court found it was likely that L.W. had an underlying metabolic problem, that did not explain his two skull fractures.

Other witnesses included Acra, Mother, Moothart, and Beaver. The court found Acra and Mother both credible, but noted that Mother’s descriptions of L.W. having trouble feeding and sleeping “cannot culminate in and of themselves to a skull fracture. That’s the problem.” The court also found credible the testimony of Beaver and Moothart that L.W.’s birth was traumatic, but noted their testimony did not add much to the medical findings. Father did not testify.

III. DISCUSSION

A. *The Motion to Dismiss the Parents' Appeals is Denied*

DPSS moves to dismiss the parents' appeals from the court's November 30, 2012, dispositional orders as moot, on the ground this court can grant no effective relief to the parents because the boys have since been returned to their care and custody, and the juvenile court terminated its dependency jurisdiction. We conclude the appeals are not moot and deny the motion.

1. Relevant Background

On December 14, 2012, two weeks after it issued its November 30 dispositional orders, the court ordered DPSS to allow the parents two unmonitored weekend visits with the boys, and further ordered that the boys be returned to the parents following the visits, on the condition the parents continued with their case plan and made the children available to DPSS upon request. On May 30, 2013, the boys were still in the care and custody of the parents, and the court terminated its jurisdiction, finding the conditions justifying its initial assumption of jurisdiction no longer existed and were unlikely to recur.³

2. Analysis

When an appeal has become moot, it is the duty of the appellate court to dismiss the appeal. (*In re Ruby T.* (1986) 181 Cal.App.3d 1201, 1204.) “As a general rule, an

³ We take judicial notice of the court's December 14, 2012, and May 30, 2013, postdispositional orders. (Evid. Code, §§ 452, subd. (d), 459.)

order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but ‘must be decided on a case-by-case basis.’ [Citations.]” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.)

An issue is moot if the appellate court can grant the appellant no effective relief from the alleged error. (*Consol. Etc. Corp. v. United A. Etc. Workers* (1946) 27 Cal.2d 859, 862-863; *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10.) But “[a]n issue is not moot if the purported error infects the outcome of subsequent proceedings.” [Citation.]” (*In re C.C.*, *supra*, 172 Cal.App.4th at p. 1488.)

The parents argue their appeals are not moot because this court can grant effective relief from the court’s allegedly erroneous jurisdictional findings and dispositional orders. They claim the orders could have severe and unfair consequences to them in future family law and dependency proceedings. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716 [court’s jurisdictional findings as to Father not moot].) Father also argues the challenged findings and orders could adversely affect the parents’ professional licensing and employment prospects, through their publication in the California Child Abuse Central Index, or CCACI, maintained by the office of the California Attorney General.

We agree the parents’ appeals are not moot. We therefore proceed to consider the parents’ claims on appeal.

B. *Substantial Evidence Supports the Jurisdictional Findings*

In the second amended petition, DPSS alleged L.W. was described in subdivisions (a), (b), and (e), and D.W. was described in subdivisions (b) and (j). The court sustained jurisdictional allegations for the boys on each alleged ground.⁴

Jurisdictional findings must be made based on at least “a preponderance of evidence” (§ 355, subd. (a); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248) and DPSS has the burden of proof (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1078). On appeal, we review the juvenile court’s jurisdictional findings for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) Substantial evidence “means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value.” (*Ibid.*)

⁴ The petition alleged and the court found it had jurisdiction over L.W. under subdivisions (a), (b), and (e) based on the following allegation, denoted in the petition as the “a-1,” “b-1,” and “e-1” allegation: “While in the care and custody of the parents, [L.W.] sustained significant injuries including a left parietal fracture, a right parietal fracture, swelling to the brain, soft tissue swelling to the top of the head, and a subdural hematoma, and results from a medical examination indicate that the injuries are non-accidental and the result of blunt force trauma. Further, the mother and father are unable to provide an explanation as to how said injuries were sustained.” The court also found true a “b-2” allegation, alleging the court had jurisdiction over the boys under subdivision (b) because: “The parents have a history with Riverside County Children’s Services Division for allegations related to physical abuse as to the child, [B.W.]. The child suffered suspicious bruising to both ears and the parents were unable to provide an explanation as to how the injuries were sustained.” Finally, in a “j-1” allegation, the petition alleged and the court found it had jurisdiction over B.W. under subdivision (j) because his sibling, L.W., had been “abused and/or neglected” “as defined” in subdivisions (a), (b), and (e), and B.W. was “therefore . . . at risk of similar harm.”

In determining whether substantial evidence supports a jurisdictional finding, we resolve all conflicts in the evidence and draw all reasonable inferences from the evidence in favor of the prevailing party. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) “‘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.]” (*Id* at p. 1394.)⁵

When, as here, a dependency petition alleges more than one subdivision of section 300 as a basis for the court to assume jurisdiction, we may affirm the court’s assumption of jurisdiction if substantial evidence supports any of the alleged statutory grounds. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) Thus, if substantial evidence supports jurisdiction under one subdivision of section 300, it is unnecessary to determine whether substantial evidence supports jurisdiction under any other subdivision. (*Ibid.*)

Still, we may and generally will exercise our discretion to determine whether substantial evidence supports other statutory grounds for assuming jurisdiction, when the underlying jurisdictional finding “(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could

⁵ We further observe: “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.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) “The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence. [Citation.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

have other consequences for [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; *In re D.P.* (2014) 225 Cal.App.4th 898, 902.)

The parents challenge the sufficiency of the evidence supporting each of the court’s jurisdictional findings for L.W. and D.W. They argue they are “non-offending” parents who did nothing to harm L.W. or D.W., the court’s assumption of jurisdiction on any ground could have far reaching, negative implications for them in future dependency and family law proceedings, and could also adversely affect their professional licensing and employment prospects. Given the parents’ concerns about the consequences of the court’s jurisdictional findings, we exercise our discretion to review the sufficiency of the evidence supporting the jurisdictional findings under each asserted statutory ground, that is, over L.W. under subdivisions (a), (b), and (e) and over D.W. under subdivisions (b) and (j).

1. Jurisdiction Over L.W. Was Proper Under Subdivisions (a) and (e)

Jurisdiction under subdivision (a) is present when the child has suffered or is at substantial risk of suffering “*serious physical harm* inflicted nonaccidentally upon the child *by the child’s parent or guardian.*” (Subd. (a), italics added.)⁶ The parents argue

⁶ For purposes of subdivision (a): “[A] court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.”

there is no evidence that either of them nonaccidentally (i.e., intentionally) inflicted L.W.'s skull fractures. We disagree.

Substantial evidence supports the court's assumption of jurisdiction over L.W. under subdivision (a). Dr. Holmes testified that L.W. had two bilateral skull fractures, accompanied by a subdural hematoma, brain swelling, and soft tissue swelling on the top of his head. Based in part on the soft tissue swelling, Dr. Holmes did not believe L.W.'s skull fractures occurred at the time of his birth; they likely occurred only one to several days before his May 1 admission to CHOC. By the parents' own admission, L.W. had never been left in the care of anyone other than one or both parents since he was discharged from the hospital two days after his birth. Based on the severity of L.W.'s head injuries, the court also could have reasonably concluded that L.W. was at substantial risk of suffering similar, serious physical harm by one or both parents, absent its assumption of jurisdiction.

Jurisdiction over L.W. under subdivision (e) was proper for essentially the same reasons it was proper under subdivision (a). Subdivision (e) jurisdiction is present when “[t]he child is under the age of five years and has suffered *severe physical abuse by a parent, or by any person known by the parent*, if the parent knew or reasonably should have known that the person was physically abusing the child.” (Subd. (e), italics added.) For purposes of subdivision (e), “severe physical abuse” includes, among other things, “any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent, physical disfigurement” (*Ibid.*) L.W. was only

four weeks old—well under five years of age—and his skull fractures—which substantial evidence shows were intentionally inflicted by either or both parents—constituted severe physical abuse. (*Ibid.*)

2. Jurisdiction Over Both Boys Was Proper Under Subdivision (b)

Jurisdiction under subdivision (b) obtains when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . .” (Subd. (b).) Three elements must be present for the court to assume jurisdiction under subdivision (b): ““(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the [child], or a ‘substantial risk’ of such harm or illness.” [Citations.]” (*In re B.T.* (2011) 193 Cal.App.4th 685, 692.) ““The third element . . . effectively requires a showing that *at the time of the jurisdictional hearing* the child is at substantial risk of physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citations.]” (*Ibid.*)

Substantial evidence showed L.W.’s bilateral skull fractures were negligently, if not intentionally, inflicted by either or both parents. Dr. Wong believed L.W. suffered at least two blunt force traumas or impacts to his head because he had two skull fractures on either side of his head, which could not have been inflicted by a single blow. A simple drop from someone’s arms would not have caused his injuries. Though this indicated the fractures were intentionally inflicted, they could have been negligently inflicted. Given

L.W.'s bilateral skull fractures, and the similar though less serious prior injuries to B.W.'s ears, the court could have reasonably concluded that both boys were at substantial risk of suffering similar physical harm in the future, through the negligence, if not intentional acts, of either or both parents.

3. Jurisdiction Over B.W. Was Proper Under Subdivision (j)

Finally, substantial evidence supports the court's assumption of jurisdiction over B.W. under subdivision (j). Subdivision (j) jurisdiction is present when two conditions are met: (1) the child's sibling has been abused or neglected under subdivisions (a), (b), and (e) (among other subdivisions not relevant here), and (2) there is a substantial risk the child will be abused or neglected as defined in those subdivisions. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 566.) In determining whether there is substantial risk the child will be abused or neglected as defined in the relevant 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" (Subd. (j).)

Jurisdiction was proper for B.W. under subdivision (j), for essentially the same reasons it was proper under subdivision (b). As discussed, substantial evidence shows L.W.'s bilateral head injuries were either negligently or intentionally inflicted by one or both parents. The boys were less than two years apart in age, and B.W. suffered injuries to both his ears when he was only four and five months old. Given B.W.'s young age—

less than three years old at the time of the jurisdictional hearing—the court could have reasonably concluded that B.W. was at risk of suffering harm similar to the harm L.W. suffered, whether through intentional abuse or neglect.

4. The Parents' Additional Arguments

In re Roberto C. (2012) 209 Cal.App.4th 1241 (*Roberto C.*) does not assist the parents. There, nine-month-old Roberto fell unconscious while in the care of his babysitter and was taken to the hospital, where doctors determined he had bilateral retinal hemorrhages, a posterior subdural hematoma, acute and chronic subdural hematomas, and bruising on his ear, but he had no other bruises, broken bones, or any ostensible signs of injury. (*Id.* at pp. 1243-1245, fn. 2.) He had been in the babysitter's care every weekday for three weeks, including when he fell unconscious. Other than a single incident of vomiting, the babysitter claimed Roberto had never been ill. She noticed a bruise only once, when he hit his head on a walker while in her care, but the bruise was small and the mother sought medical attention for it. (*Id.* at p. 1245.)

The Department of Children and Family Service (DCFS) petitioned for juvenile court jurisdiction under subdivisions (a), (b), and (e), alleging Roberto's injuries were due to acts by his parents, their failure to obtain necessary medical treatment for him, and their failure to protect him from abuse. (*Roberto C.*, *supra*, 209 Cal.App.4th at pp. 1244-1245, fn. 2.) According to a pediatrician, Roberto's injuries resulted from blunt force trauma, nonaccidentally inflicted. His subdural hemorrhages could have occurred three to seven days before he fell unconscious (when he was in the care of either the parents or

the babysitter), but she could not estimate when his other injuries occurred. (*Id.* at p. 1246.)

The juvenile court found insufficient evidence to support jurisdiction under subdivision (a), (b), or (e), and dismissed the petition. (*Roberto C., supra*, 209 Cal.App.4th at pp. 1243, 1255.) The juvenile court found no evidence linking the parents to Roberto's injuries, and was apparently not persuaded, by a preponderance of the evidence, that either parent intentionally inflicted the injuries (subds. (a), (e)) or knew or should have known someone else was injuring him (subd. (b)). (*Roberto C., supra*, at p. 1254.) The juvenile court specifically questioned "the credibility of the DCFS investigator, and the babysitter, concerning the injuries and the knowledge they attributed to the parents." (*Ibid.*)

The *Roberto C.* court affirmed, finding substantial evidence supported the juvenile court's findings. (*Roberto C., supra*, 209 Cal.App.4th at p. 1254.) The court reasoned it was "clear that someone caused serious injury to Roberto," but he had no broken bones or large, visible bruises. (*Ibid.*) Thus, substantial evidence supported the juvenile court's finding that there was no basis to conclude that either parent was injuring Roberto, or knew or should have known Roberto was being abused by the babysitter, the other parent, or anyone else. (*Ibid.*)

The parents argue *Roberto C.* is controlling because, like nine-month-old Roberto, four-week-old L.W. had no visible signs of injury, particularly to his head. Further, the

parents had never left L.W. in the care of anyone other than each other, even for a short time. Thus, they argue, they had no reason to believe anyone would have harmed him.

But *Roberto C.* is inapposite because there the juvenile court was not persuaded that either parent had inflicted Roberto's injuries, or knew or should have known that anyone, including the babysitter, was injuring him. Substantial evidence supported that factual inference, even though Roberto's injuries were clearly nonaccidentally inflicted by someone. Here, in contrast, the juvenile court *was persuaded* that either or both parents either intentionally or negligently inflicted L.W.'s injuries, and substantial evidence supports those findings, which are directly contrary to the findings the juvenile court made in *Roberto C.* As discussed, Dr. Holmes opined that L.W.'s injuries resulted from nonaccidentally inflicted, blunt force trauma, were unlikely to have occurred at the time of his birth, and more likely occurred more recently. Thus here, substantial evidence supports the juvenile court's finding that either or both parents either willfully inflicted L.W.'s head injuries (subds. (a), (e)), or negligently inflicted those injuries (subd. (b)), and B.W. was at risk of similar harm (subds. (b), (j)).

In re A.S. (2011) 202 Cal.App.4th 237 is instructive. There, eight-month-old A.S. began to choke and fell limp while in the care of her grandfather. Tests showed A.S. had a right subdural hematoma of "'mixed density, acute or acute and chronic,' and bilateral retinal hemorrhages 'most consistent with subacute.'" (*Id.* at p. 240.) The parents claimed A.S. was healthy when they left her with her grandfather and great-aunt the previous day, and the grandfather denied dropping A.S. or that she had fallen. None of

the caretakers had an explanation for how A.S.'s injuries occurred. An expert opined that A.S.'s injuries were consistent with being shaken or slammed to a soft surface and could have occurred as long as a week before A.S. fell limp. (*Id.* at pp. 240-241.) The juvenile court found sufficient evidence to assume jurisdiction under subdivision (b). (*In re A.S.*, *supra*, at pp. 240, 242.)

In affirming the judgment, the A.S. court found substantial evidence supported an inference that A.S.'s injuries were intentionally inflicted, and that jurisdiction was proper under subdivision (b), even though the identity of the perpetrator was not conclusively established. (*In re A.S.*, *supra*, 202 Cal.App.4th at pp. 245-246.) Given that the overriding purpose of dependency proceedings is to protect children, not identify criminal perpetrators, the court reasoned that the evidence supported a reasonable inference that one of the caretakers—the parents, the grandfather, or the great-aunt—must have inflicted A.S.'s injuries, and the parents knew or should have known the identity of the perpetrator but failed to protect A.S. A.S. was at a substantial risk of serious physical harm in the parents' care as a result of their "failure or inability to adequately protect" her. (*Id.* at p. 246.)

Similarly here, substantial evidence shows L.W. suffered serious physical harm, even severe physical abuse, at the hands of either or both parents, while in the exclusive care of the parents. (Subds. (a), (e).) The evidence also supports a reasonable inference that either or both parents negligently inflicted L.W.'s injuries (subd. (b)) and both L.W. and B.W. were at a substantial risk of suffering similar physical harm in care of the

parents (subds. (b), (j); see also *In re E.H.* (2003) 108 Cal.App.4th 659, 669-670

[substantial evidence supported the juvenile court’s assumption of jurisdiction under subdivision (b), because the parents knew or should have known that a member of the mother’s extended family, in whose care the parents’ had left their four-year-old child, was injuring the child, and despite that knowledge the parents failed to take steps to protect the child]).⁷

C. Substantial Evidence Supports the Order Removing the Boys from the Parents’ Care

The parents also challenge the sufficiency of the evidence supporting the order removing the boys from their care at the November 30, 2012, dispositional hearing.

(§ 361, subd. (c)(1).) “After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing,

⁷ DPSS did not plead or rely on section 355.1 to prove jurisdiction, and it was not required to do so. The statute applies when competent professional evidence shows the child suffered an injury of a type that would not ordinarily be sustained absent the unreasonable or neglectful acts or omission of a parent or other person who has care of the child. (*In re A.S.*, *supra*, 202 Cal.App.4th at p. 242.) Such evidence is prima facie evidence that the child is described in subdivision (a), (b), or (d) (§ 355.1, subd. (a)) and raises a rebuttal presumption affecting the production of evidence (*In re A.S.*, *supra*, at p. 242; § 355.1, subd. (c)). Specifically, “[s]ection 355.1, subdivision (a) ‘shifts to the parents the obligation of raising an issue *as to the actual cause of the injury* or the fitness of the home.’ [Citation.] If the parents raise rebuttal evidence, the Agency maintains the burden of proving the alleged facts.” (*In re A.S.*, *supra*, at pp. 242-243.) The parents presented expert medical evidence that L.W.’s skull fractures occurred at the time of his birth, even though they were not required to do so because DPSS was not relying on section 355.1 to raise a rebuttal presumption of jurisdiction and shift the burden to the parents to produce evidence of the actual cause of L.W.’s injuries. DPSS does not dispute that it had the burden of proving jurisdiction by a preponderance of the evidence.

the court must decide where the child will live while under the court's supervision.

[Citation.]" (*In re N.M.* (2011) 197 Cal.App.4th 159, 169.)

Under section 361, subdivision (c), a child may not be removed from the physical custody of the parent within whom the child resided at the time the petition was initiated unless the juvenile court finds by clear and convincing evidence that one of several circumstances exist. (§ 361, subd. (c)(1)-(c)(5).) Here, the court found "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being" of the boys if they were returned to the parents' physical custody, and there were "no reasonable means by which [their] physical health can be protected" without removing them. (§ 361, subd. (c)(1).)

An order removing a child from parental custody is proper if it is based on proof of parental inability to provide proper care for the child and a potential detriment to the child if the child remains with the parent. (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 169.) "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*Id.* at pp. 169-170; *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

We review the removal order for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654; see also *In re J.I.* (2003) 108 Cal.App.4th 903, 911 [substantial evidence standard applies in reviewing judgment or order required to be based on clear and convincing evidence].) Here, substantial evidence supports the court's finding that

the parents were described in section 361, subdivision (c)(1): there was a substantial danger to the boys' physical health and safety if they were *immediately* returned to the parents' care at the time of the November 30, 2012, dispositional hearing.

First, the same evidence that supports the court's jurisdictional finding that L.W.'s injuries resulted from blunt force trauma, nonaccidentally inflicted by at least one of the parents, supports the removal order. The nature of L.W.'s head injuries—bilateral skull fractures—indicated that the bruising on both of B.W.'s ears in 2010, when B.W. was four and five months old, were *likewise* nonaccidentally inflicted by at least one parent. This showed the safety of both boys was at risk if they were immediately returned to the parents' physical custody.

Additionally, at the time of the November 30, 2012, dispositional hearing, the juvenile court reasonably concluded that additional time was needed to allow the parents to have overnight, supervised visits with the boys, and for DPSS to “globally” assess the parents' progress and make a recommendation whether it was safe to return the boys to the parents. At the dispositional hearing, DPSS recommended that the boys be returned to the parents' care following three successful overnight weekend visits at the paternal grandparents' home. The court set a hearing on December 14 to determine whether the overnight visits had been successful and to assess whether the parents had made sufficient progress in their case plans. The parents signed a waiver allowing their privately-retained therapist to speak with the social worker so that DPSS could assess whether the parents had made progress in counseling.

As the juvenile court pointed out, through no fault of the parents the jurisdictional hearing had taken many weeks to complete, but two additional weeks were needed to allow the overnight, supervised visits to take place and for DPSS to assess the parents' progress and recommend whether it was safe to return the boys to the parents. Given the seriousness of L.W.'s injuries, the need for the parents to successfully complete overnight, supervised visits, and the need for DPSS to assess the progress the parents had made since the boys were taken into protective custody seven months earlier, the juvenile court reasonably ordered the boys removed from the parents' custody at the November 30, 2012, dispositional hearing.

D. The Juvenile Court Did Not Abuse Its Discretion in Ordering the Parents to Submit to Psychological Counseling as Part of Their Reunification/Family Maintenance Case Plan

Lastly, the parents claim the juvenile court abused its discretion in requiring them to participate in psychological counseling, pay for their own counseling sessions, and sign a release allowing DPSS access to their counseling records for the purpose of evaluating their progress, if any, in counseling. We find no abuse of discretion.

1. Relevant Background

The parents' initial reunification services case plan required them to participate in psychological counseling. It directed each parent to "participate in individual and family counseling as recommended by the Court and demonstrate insight into the issues that may [have] brought the family to the attention of [DPSS]."

Around June 2012, DPSS referred Mother to a therapist, who told her she could not be treated because her therapy sessions would not be funded unless she checked a box on a form indicating she suffered from a mental health symptom such as depression or suicidal ideation. Mother denied she suffered from any mental health problems, including depression. By July 2012, Father's therapist was also requiring him to select a mental health symptom or diagnosis, suggested he select "anxiety disorder," and advised him "not to worry" because "the disorder would go away when the court case goes away."

The parents believed their therapists were unethically requiring them to select a false mental health diagnoses as a condition of receiving therapy through DPSS. Thus, in July 2012, the parents filed a motion asking the court to "consider [the] credibility and competency of [their required] counseling services." (Capitalization omitted.) At a July 20 hearing, the court ordered DPSS to refer the parents to a new counseling agency. Ultimately, the parents hired their own therapist and paid for their own therapy sessions, and at the jurisdictional/dispositional hearing in November 2012, the court acknowledged the parents had completed the counseling component of their reunification services case plan.

At the dispositional hearing on November 30, the parents agreed to sign a waiver authorizing their privately-retained therapist to discuss their progress in therapy with the social worker. On the same date, the court approved and adopted a family maintenance

plan which did not include a counseling component, and refused to order the parents to undergo a psychological evaluation which DPSS was recommending.

2. Analysis

Subject to exceptions not relevant here, when a child has been removed from parental custody at a dispositional hearing, the juvenile court must order reunification services for the parents in order to facilitate their reunification with the child. (§ 361.5, subd. (a); *In re Nolan W.* (2009) 45 Cal.4th 1217, 1228.) Reunification services “implement[] the law’s strong preference for maintaining the family relationship if at all possible. [Citation.]’ [Citation.]” (*In re Nolan W., supra*, at p. 1228.)

Orders approving reunification service plans must be “reasonable” and must be designed to eliminate the conditions that led to the child’s dependency. (Former § 362, subd. (c); *In re Nolan W., supra*, 45 Cal.4th at p. 1229.) More specifically, a reunification service plan ““““must be appropriate for each family and be based on the unique facts relating to that family.”” [Citation.]’ [Citation.]” (*In re Nolan W., supra*, at p. 1229, citing *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) The juvenile court has broad discretion to order reunification services that will best serve and protect the interests of the child, because the “overarching goal” of dependency proceedings is to safeguard the interests of the child. (*In re Nolan W., supra*, at pp. 1228-1229.)

Under former section 362, subdivision (c), the court may order a parent to undergo counseling as part of a reunification services plan. The statute provides that the court may “direct any and all reasonable orders to the parents or guardians of the child . . . as

the court deems necessary and proper *That order may include a direction to participate in a counseling or education program* The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person describe by Section 300.” (Former § 362, subd. (c), italics added; *In re Nolan W.*, *supra*, 45 Cal.4th at pp. 1228-1229.)

Here, the psychological counseling component of the parents’ initial case plan was reasonable and designed to eliminate the conditions that led to the boys’ dependency. It simply required the parents to “participate in individual and family counseling as recommended by the Court and demonstrate insight into the issues that may [have] brought the family to the attention of [DPSS].” In May 2012, the parents agreed they would benefit from counseling, because the entire situation with L.W. had been hard on them and their family. Thus here, the court did not abuse its discretion in ordering the parents to participate in counseling as a condition of their case plan—which it did on July 20, 2012, when it ordered DPSS to refer the parents to another counseling agency.

In re Basilio T. (1992) 4 Cal.App.4th 155, 172-173 is distinguishable, because it involved an order requiring the parents to participate in substance abuse counseling and drug testing, even though there was no evidence either parent had a substance abuse problem. Here, in contrast, substantial evidence presented at the combined jurisdictional/dispositional hearing showed both parents needed to acquire insight into how to handle infant children and protect them from serious physical injury and harm,

and to “eliminate those conditions” that led to the boys’ dependency. (Former § 362, subd. (c).)

Finally, the court *did not* order the parents to pay for their own counseling, contrary to Father’s argument, which Mother joins. On their own accord, the parents hired their own therapist, paid for their own counseling sessions, and agreed to allow DPSS access to their counseling records. As the court pointed out near the end of the jurisdictional/dispositional hearing, when it granted the parents’ request for liberalized visitation with the boys, the parents had already completed the counseling component of their case plan and had not “complained” about paying for their own counseling services. Apparently, the parents elected to hire their own therapists after the court ordered DPSS to refer them to a new counseling agency. The record does not indicate that the new counseling agency was requiring the parents to select false mental health diagnoses as a condition of receiving DPSS-provided counseling services.

IV. DISPOSITION

The motion to dismiss the parents’ appeals is denied, and the juvenile court’s November 30, 2012, jurisdiction and disposition orders are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.