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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re N.D., et al., Persons Coming Under the  
Juvenile Court Law.

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Plaintiff and Respondent,

v.

VENUS D.S.,

Defendant and Appellant.

F063144

(Super. Ct. Nos. JD126589,  
JD126590, JD126591)

**OPINION**

**THE COURT\***

APPEAL from orders of the Superior Court of Kern County. Jon E. Stuebbe,  
Judge.

Hana B. Balfour, under appointment by the Court of Appeal, for Defendant and  
Appellant.

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\* Before Wiseman, Acting P.J., Levy, J. and Gomes, J.

Theresa A. Goldner, County Counsel, and Kelley D. Scott, Deputy County Counsel, for Plaintiff and Respondent.

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Venus D.S. (mother) challenges the juvenile court's dispositional orders removing her daughters N.D. and C.D.,<sup>1</sup> and son C.S., from her care. We find no error and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Mother has a long history of domestic violence with her husband, Theodore, who is C.S.'s father. Mother and Theodore had been dating off and on since 1998, and married in February 2010. In August 2000, Theodore was convicted of domestic violence against mother. Mother filed for child custody and visitation, and sought domestic violence/temporary restraining orders, but she dropped the matter the following month. In March 2002, mother spent nine days in the hospital after Theodore ruptured her spleen by hitting her with a vacuum cleaner. He was convicted of domestic violence in April 2002 and sentenced to two years in prison. The Kern County Department of Human Services (Department) investigated a referral regarding the incident. Mother told the Department that she had no plan of returning to the home she shared with Theodore or a relationship with him. She obtained a three-year restraining order against him in May 2002. In March 2006, Theodore threatened to kill mother.

In September 2007, three-year mutual restraining orders were granted, but at the parties' request, the orders were removed in January 2009, before their expiration. In May 2009, Theodore threatened to shoot mother and the rest of his family, including his stepfather and his mother, after he and mother got into a verbal argument at his stepfather's home. Mother told police who were investigating the threat that she feared for her safety, as well as the safety of others in the home, and believed Theodore had

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<sup>1</sup> N. and C.D.'s presumed father is Johnny D. He was in prison during these proceedings and waived reunification services.

recently used drugs. She said he had been displaying aggressive behavior towards her over the past few weeks. Theodore was out on bail for a prior firearms possession arrest and had access to guns.

In December 2009, police arrested Theodore for battery of a hospital employee after he broke a bone in the employee's left hand and sprained two of her fingers while the employee was assisting others in restraining Theodore, who had become combative while a hospital patient. In February 2010, a few days before Theodore and mother married, Theodore's girlfriend reported to police that he punched her in the face three times with a closed fist after accusing her of cheating on him.

In May 2010, mother made a domestic violence report to police. She said Theodore punched her numerous times on the left side of her face with his right fist, causing an orbital floor fracture to the left side of her face and a concussion. The fight occurred in her car, which Theodore had been driving with her in the back seat. Mother was treated for her injuries at the hospital. She did not tell hospital staff that Theodore had hit her as she wanted the incident to be over and did not want to deal with the reporting process. In June 2010, Theodore was convicted of battery with serious bodily injury. In October 2010, mother applied for dissolution of marriage and sought domestic violence/temporary restraining and move out orders, but the application was dropped in November 2010 when neither party appeared.

On May 20, 2011,<sup>2</sup> a social worker investigated a referral the Department received alleging that 16-year-old N. was depressed and upset because mother was in an abusive relationship with Theodore. While mother admitted to the social worker she had been hospitalized in the past due to domestic violence by Theodore, she claimed their relationship was no longer violent. Mother said that the two communicated better, Theodore had completed 52 weeks of batterer's intervention counseling in 2002 and

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<sup>2</sup> Unless otherwise stated, all subsequent dates are to the year 2011.

again in 2004, and she had attended four weeks of group counseling in February. Mother and Theodore had separated in the fall of 2010, but reconciled the first week of April. The girls had reservations about the reconciliation because of the history of violence, but C.S. was excited since Theodore is his father. Mother felt it was appropriate for Theodore to discipline the children, even though they had reservations about him being in the home. Mother admitted that she and Theodore get into arguments in which they yell at each other and that sometimes Theodore hits the wall. Mother pointed out a large hole in the living room wall and explained that Theodore kicked the wall during a recent argument. Mother confirmed that she had requested restraining orders against Theodore several times since 2000. She did not follow through with the restraining order she requested in October 2010 because she did not think it was necessary, as Theodore had left her alone after the filing.

The social worker interviewed N. When the social worker asked N. why someone might be concerned about her, N. responded because of the fighting between mother and Theodore, which included yelling, threats and property damage, such as the hole in the wall. Recently, N. came home and noticed a knife stuck in the dining room wall, which N. believed Theodore had thrown. In another recent incident, mother and Theodore were arguing in their bedroom; N. heard yelling and banging in the room. She later went into the bedroom to find a spoon stuck in the wall, which mother told her Theodore had thrown. N. said that when they fight, Theodore tells mother not to make him beat her. Just a week before, N. witnessed Theodore get angry at mother for failing to tell him that she had received her paycheck and threaten to stab her if she ever failed to tell him when she was paid. Earlier that week, mother took away N.'s computer and cell phone because Theodore was angry and wanted the electronics removed. Mother complied because she did not want Theodore to cause a problem for N. N. became angry as mother was allowing Theodore to cause so much tension in the house; she told mother she was leaving and mother could call the police because she would rather be removed than live

with them. Theodore caught N. before she could make it to the mailbox and dragged her back into the house by her clothes.

N. was very fearful that mother would be injured during an argument with Theodore. While she was not aware of recent physical violence, she knew it had happened in the past and was scared it would happen again. When N. told mother she was scared of Theodore, mother responded that she did not know how to get out of the situation. N. cried and asked how she was supposed to know how to get out, as she was just “a kid.” N. was so upset about the fighting that she had considered hurting herself to get mother’s attention and let her know how much pain she was feeling. N. denied having a current plan to hurt herself. N. said she has trouble sleeping and regularly has nightmares that she has hurt herself or that Theodore has hurt either her or mother.

The social worker also spoke with Theodore, who denied any violence in the home. He admitted there was past violence and knew the children had been affected by it. Theodore said he completed 52 weeks of batterer’s intervention on two occasions and had learned to identify when he is becoming angry and to leave the situation.

On May 23, a social worker spoke separately with 13-year-old C.D., who had been diagnosed with bipolar disorder and seizures for which she had been prescribed medication, and 11-year-old C.S., who had been diagnosed with depressive disorder and oppositional defiance disorder. C.D. had told a school counselor about the fighting in her home. C.D. said that Theodore gets mad and hits the walls; he also threw a spoon in the bedroom wall and a knife in the dining room wall. According to C.D., everything goes bad when Theodore is around. C.D. said that mother and Theodore repeatedly break up and get back together again. While C.D. denied seeing any recent physical violence, she knew that mother had been hurt by a vacuum when she was little and a few years before, mother’s tooth went through her lip when Theodore hit her, which made C.D. feel like her “heart had been ripped apart.”

C.D. said that mother and Theodore mostly argue at night about “stupid stuff,” and Theodore thinks mother is cheating on him. While Theodore had not hurt her yet, he had hurt mother and N. N. was hurt when Theodore made N. come back to the house after she tried to run away. Within the last few months, C.D. had heard Theodore tell mother that if she talked to him “like that again, I’m going to stab you.”

C.D. said that when her parents argue, she and N. go into their own bedroom and listen for threats or fighting. She does not sleep well and wakes up at night because she is worried they will start arguing. She “remembers bad things for a long time.” One day, she had to leave school because she could not stop crying. C.D. felt like she needed to “give myself a seizure to make them stop,” which she could do by stopping her seizure medication. C.D. thought this would make her family members focus on her rather than on their fights. C.D. thought she was suffering from stress, as she had had a headache for a couple of weeks which would not go away. C.D. had spoken with mother about Theodore; mother was sorry that she was scared but mother was nervous that there would be a bigger fight if she told him to leave. C.D. believes mother is scared of Theodore. C.D. was fearful that Theodore would hurt her or her mother if he found out about some of her statements.

C.S. told the social worker that his parents argue and his father gets “rowdy,” loud and has hit a wall. When his parents argue, C.S. gets “hyped up,” mad, tense and upset. He clenches his fists, but denied hitting anything. To calm himself down, he plays basketball or kicks rocks. C.S. said his parents had three arguments in the past month; they did not argue the month before. His parents fight for “stupid” reasons and he gets frustrated when their arguing wakes him up at night when he has school the next day. He denied having trouble sleeping otherwise. While his parents do not hit each other, it has happened in the past and he is worried it may happen again. C.S. had heard Theodore threaten mother, but not recently. He felt safe with his parents.

A social worker also met with mother and Theodore. In his interview, Theodore denied current violence in the relationship and believed the children were saying things to manipulate the situation, as N. was upset because she could not see her boyfriend as much as she wanted. Theodore said he and mother had been together for 13 years, living together nine of those years. He was incarcerated in state prison for 13 months in 2002. Theodore said he had learned his lesson about putting his hands on mother. He served his time and felt it had been an uphill battle since then. He referred to the 2002 incident as a mistake, but claimed they had moved past it and it was time for everyone else to do the same. While Theodore admitted threatening mother in the past, he claimed he had not done so since before he went to prison. Theodore admitted the two used to argue due to control issues in the relationship, but said they had moved beyond jealousy. He did not believe the children were afraid in the home, but admitted they act tentatively because of exposure to past domestic violence. Theodore admitted having kicked the wall in the living room, but said he did so because mother was standing in his way when he wanted to leave. Theodore did not think the children should be scared when they see property damage such as this, since he tells them they do not need to be scared.

In her interview, mother claimed there had not been physical violence in their relationship in years. She denied both that Theodore had threatened her in any way since he had been back in the home or that a knife had been stuck in the wall. Mother admitted Theodore recently threw a spoon that stuck in the wall, but said “he didn’t throw it AT me.” Mother knew the children had been “affected in all ways” by the domestic violence. They had told her about their fear and how they are scared for her. Mother completed a danger assessment, which is used to assess the risk of homicide in a relationship, which listed her at being at an increased risk. Mother, however, did not believe Theodore was capable of killing her. Mother claimed she was not fearful for her or the children’s safety, and while she had been scared in the past, she was not scared now and intended to work on the marriage.

On May 25, the Department took the children into protective custody. C.D. and C.S., who had been taken to the children's center, became tense and upset after learning that a social worker was on the phone with Theodore. C.D. was concerned about mother. When the social worker assured her mother would be fine, C.D. insisted she would be fine only if the children were at home. During the telephone conversation with Theodore, he demanded the children be returned to his home that afternoon. When the social worker told him about the court hearing the following week, Theodore said that he was going to find out where the social worker lived, as he knew how to use the internet, adding that he was not threatening her. He refused to give the phone to mother so the social worker could talk to her. Theodore ended the conversation by stating, "I'll be coming looking for you. Understand that." The social worker reported the threats to the Kern County Sheriff's Department. A social worker spoke with mother by telephone later that day. Mother said that their problems were in the past and asked why they did not do something in 2002. Mother confirmed that Theodore was with her, as he "is my husband, the father of my children."

On May 27, the Department filed a petition alleging the children came within the provisions of Welfare and Institutions Code section 300, subdivision (b)<sup>3</sup> (failure to protect) based on the failure or inability of mother, and in C.S.'s case mother and Theodore, to protect the children from domestic violence, and subdivision (c), as the children had suffered, or were at risk of suffering, serious emotional damage, as a result of the domestic violence.

The juvenile court ordered the children detained on May 31. After the hearing, mother told a social worker that Theodore did not threaten the other social worker and was only saying that he would find out what he could do about the children being taken. C.D.'s eighth grade graduation was the following day. A social worker told mother that a

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<sup>3</sup> All undesignated statutory references are to the Welfare and Institutions Code.

ticket to the graduation was available for her, but C.D. preferred that Theodore not attend. Mother and Theodore, however, obtained more tickets from the school and attended the graduation together, along with other family members.

On June 8, maternal grandmother Barbara G. called the Department and reported that mother was in the hospital with “acute appendicitis.” Barbara claimed that Theodore was out of the home, as mother told him to leave, and after mother spoke with a church bishop, she realized she lost the children because of Theodore. Barbara said that mother filed for divorce before this happened, but he would not sign the paperwork. Theodore and mother had gotten into a “big fight” in the last few days, and mother had to take an ambulance to the hospital because he refused to take her. Barbara denied the hospitalization had anything to do with domestic violence. The following day the social worker spoke with mother, who was in the hospital. Mother admitted having an argument with Theodore, but denied the argument had anything to do with her being hospitalized. Mother said he was no longer living in the home.

On June 17, both N. and C.D. told the social worker, when asked, that they would rather visit Theodore separately from mother. The children’s caretaker told the social worker N. disclosed she had witnessed Theodore punch mother in the face with a closed fist, causing a nosebleed. Mother yelled “I hate you! I hate you!” As mother tried to call 911, Theodore pulled the phone away. When N. went with mother to the hospital, mother told her not to disclose the information to the hospital staff. The caretaker did not know when the incident occurred.

The children visited with mother and Barbara on June 17. Mother was very attentive to the children and deterred them from discussing case matters. The children were affectionate with both mother and Barbara. Mother’s phone kept ringing during the visits. Eventually she answered the phone; a male voice could be heard on the other end saying “It’s Theo.” He said he was concerned about the beginning and ending times of visits. Mother appeared annoyed and hung up the phone.

Another violent incident occurred between mother and Theodore on June 22, in which Theodore became angry because he was no longer allowed to visit the girls and believed mother and N. were “building a case against him.” When mother tried to leave the home, Theodore slammed the door, catching her head between the door and the frame, cutting her ear and bruising her jaw line. She also suffered a broken pinky. Mother was able to get out of the house and find an officer, who took a report. By the time officers arrived at the house, Theodore was gone. Mother said that she went to a domestic violence organization and obtained a restraining order. Since then, mother did not stay at the house; she had driven by and he did not appear to be living there. A records check revealed that a case had been submitted to the district attorney’s office on June 27 regarding the June 22 incident, requesting charges of infliction of corporal injury to a spouse under Penal Code section 273.5, subdivision (a).

On June 22, Theodore left a phone message for the social worker, in which he stated that he would not be able to make the next hearing date “due to a conflict of interest with other matters going on.” He said he would call back to explain further. He did not leave a return phone number.

At the July 17 jurisdictional hearing, mother submitted on the social worker’s reports. Her attorney argued the evidence did not support jurisdiction under section 300, subdivision (c). Theodore was not present at the hearing, but his attorney also submitted on the evidence and report. The juvenile court found the allegations of the petition true and that the children came within the provisions of section 300, subdivisions (b) and (c).

Mother began participating in services. On July 19, she enrolled in a parent training and child neglect class. She was expected to begin counseling on July 25, and had also enrolled in a 25-week class on domestic violence as a victim and failure to protect. She visited the children regularly and the visits went well. Theodore had not visited C.S. since the June 22 incident, and the Department had been unable to locate him. Mother told a social worker that her cousin had located Theodore at a park, where

she was able to serve him with a restraining order. Mother believed Theodore was living in Texas. A check of the Kern County Superior court website, however, did not show a current restraining order against Theodore. Mother told the social worker she wanted the children returned to her.

In reports prepared for the dispositional hearing, the Department recommended that the children be removed from mother's custody and she and Theodore be provided family reunification services. While mother was concerned that the proposed counseling services were not available because they were not scheduled to start until August, mother was reminded that she was offered the opportunity to go to a safe house and begin domestic violence counseling at the beginning of the case, but she refused because she said she was not afraid of Theodore.

In the reports, the social worker explained that mother and Theodore had become mired in a cycle of violence which ultimately led to serious physical violence. While it appeared that Theodore was out of the home, given the violent incident on June 22, the social worker thought it was imperative that mother show her commitment to protecting herself before consideration could be given to returning the children to her care. The social worker did not believe that family maintenance services were appropriate at that time and instead reunification services should be provided so the family could benefit from counseling that would help them reestablish family norms and roles free of violence, threats and intimidation. The social worker had serious concerns about mother's failure to recognize how the chronic domestic violence in the home resulted in emotional trauma to the children, noting that for over 10 years she repeatedly ignored and disrespected her children's emotional and physical well-being by allowing them to be exposed to chronic domestic violence.

A contested dispositional hearing was held on August 19. County Counsel submitted on the reports. Mother testified that she had attended three sessions of the 25-week domestic violence class. She had attended four of 13 parenting and neglect classes,

and was also going to “ALANON” and regularly meeting with an official from her church.

She was attempting to serve a restraining order on Theodore. She had difficulty locating him because she did not know where he was staying, although she knew where he would hang out. Her nephew finally was able to serve him on July 23 and “[w]e” went to court on July 28. The paperwork, however, was not completed right, as the domestic violence agency who was doing the paperwork for her forgot to check one of the boxes, so they had to start over from the beginning and re-issue the papers. Since then, they had not been able to locate Theodore. The next court date was set for August 26. According to mother, there was a “rumor” that he was not in California, but had gone to either Arizona or Texas.

Mother had been visiting the children regularly. The children were in tears at almost every visit, and were angry and depressed. Mother believed they were “emotionally stressed out” and wanted to come home. Mother had never seen them like this. Mother acknowledged responsibility for the children being taken into protective custody, but believed the children were suffering somewhat by being detained.

Mother’s attorney requested family maintenance services for mother, arguing that by submitting on the subdivision (b) allegation of domestic violence, mother had acknowledged the impact on the children and potential danger to them. Mother’s attorney further argued that mother had made efforts in trying to protect the children by seeking out and attending counseling and trying to get a restraining order. Given the circumstances of the case, including that it appeared father was no longer in the state, the older ages of the children, mother’s active efforts, and mother’s testimony that detention was having an emotional impact on the children, the attorney argued the children could be returned to mother safely while she completed her counseling, with the provision of family maintenance and court supervision.

The court granted the children's request to address the court. N. felt they should be able to go home. N. said that mother had always taken care of and provided for them. N. was more depressed in the foster care system; her symptoms worsened when she read things in the court reports that she did not even know had occurred. She claimed her depression was not caused by domestic violence, but rather because she was out of school due to her "sickness." N. said mother was a "very good mom" and she just thought she needed help getting out of the situation. C.D. agreed with N. C.D. said she had been under stress because of "all of this." She really loved mother and would do anything for her. C.S. declined to address the court.

The children's attorney told the court that while her clients obviously wanted to go home and she recognized they were experiencing stress being out of the home, she was concerned about mother's past problems with domestic violence, which were not isolated incidents. Noting that there was no concrete evidence that Theodore was out of the state, the attorney was fearful that if the children were returned home, he could resurface at any time, placing mother in a position where there could be more domestic violence. The attorney asked the court to order family reunification services. County counsel informed the court the Department was asking for reunification, as the domestic violence had been going on for 10 years, mother had let Theodore back into the home despite obtaining restraining orders and mother needed to complete counseling for the children to be safe.

The court rejected mother's request for return of the children with family maintenance services. In doing so, the court explained that while it had been leaning toward allowing the children to return home because of their ages, given mother's long history of obtaining restraining orders and then going back into the same situation, it could not be confident that this time mother was "for real." Accordingly, the court (1) adjudged the children dependents under section 300, subdivisions (b) and (c), (2) placed them in the care, custody and control of the Department, (3) found by clear and convincing evidence there was a substantial danger to the children's physical health,

safety, protection, or physical or emotional well-being, if not removed from mother and no reasonable means to protect them without removal, and (4) found by clear and convincing evidence the children were suffering severe, emotional damage as indicated by extreme anxiety, depression, withdrawal or untoward aggressive behavior toward themselves and others, and there were no reasonable means to protect the children's emotional health without removal. The court ordered the children removed from mother's physical custody, and ordered C.S. removed from Theodore's physical custody. The court ordered family reunification services for mother and Theodore.

### **DISCUSSION**

Mother challenges the dispositional order removing the children from her care, claiming it lacked sufficient evidence. We disagree.

Generally speaking, the juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. Removal orders are overturned only where no substantial evidence exists to support them. (*In re Steve W.* (1990) 217 Cal.App.3d 10, 22-23.) Under this test, the reviewing court is not permitted to reweigh evidence and substitute its judgment for that of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 319.) Nevertheless, substantial evidence is not any evidence. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394 (*Savannah M.*)) Although substantial evidence may consist of inferences, those inferences must be products of logic and reason and must be based on the evidence. (*Ibid.*; *In re James R.* (2009) 176 Cal.App.4th 129, 135 (*James R.*)) Inferences that are the result of mere speculation or conjecture cannot support a finding. (*Savannah M.*, *supra*, at pp. 1393-1394; *James R.*, *supra*, at p. 135.) The ultimate test is whether a reasonable trier of fact would make the challenged ruling considering the whole record. (*Savannah M.*, *supra*, 131 Cal.App.4th at p. 1394.)

Here, the juvenile court ordered removal under two different subdivisions, section 361, subdivisions (c)(1) and (c)(3). Under subdivision (c)(1), the juvenile court may

order removal if it finds by clear and convincing evidence that: (1) there is substantial risk of harm to the child if returned home; and (2) there are no reasonable means for protecting the child's physical welfare without removal. (§ 361, subd. (c)(1); see, e.g., *In re Isayah C.* (2004) 118 Cal.App.4th 684, 695; *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288 (*Jasmine G.*); *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.) Under section 361, subdivision (c)(3), the juvenile court may order removal if it finds by clear and convincing evidence that: (1) the child "is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others"; and (2) there are no reasonable means for protecting the child's emotional health without removal.

The court must determine whether reasonable efforts were made to prevent or eliminate the need for the child's removal and, if removal is necessary, must state the factual basis for the removal order. (§ 361, subd. (d).) "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of [section 361, subdivision (c)(1)] is on averting harm to the child." (*Diamond H., supra*, 82 Cal.App.4th at p. 1136.)

In challenging the removal order, mother discusses only the first ground for removal, namely the juvenile court's findings under subdivision (c)(1). With respect to the first prong under subdivision (c)(1), she argues there is not a substantial risk of harm to the children if they are returned to her custody since her view of the circumstances had changed substantially since she recognized the harm the domestic violence caused the children, she was engaging in services, Theodore was no longer involved with the family as he had moved out of state, and the children were no longer afraid to return home.

Mother, however, ignores the alternate ground for removal under subdivision (c)(3) and fails to challenge the juvenile court's finding under the first prong of that subdivision that the children were suffering severe emotional damage. That finding is

supported by substantial evidence. N. expressed a desire to commit suicide as a way to cope with the chronic domestic violence, feared for mother's safety, felt anxious and angry about the fighting, had trouble sleeping, and regularly had nightmares about either hurting herself or being hurt by mother or Theodore. C.D. expressed a desire to intentionally induce a seizure to deflect attention from the chronic domestic violence, feared for mother's safety, felt anxious and angry about the fighting, and suffered headaches from the stress of coping with the domestic violence. Finally, C.S. feared for mother's safety, regularly burst into tears, had problems controlling his anger, and would get "hyped up," mad, tense, upset and clench his fists when his parents fought.

Since there is sufficient evidence to support the first prong under subdivision (c)(3), we turn to the second prong of subdivision (c)(3). While mother does not address her argument to subdivision (c)(3), she does argue the court's finding that there are no reasonable means by which the children may be protected without removing them from her physical custody is not supported by substantial evidence. Specifically, mother asserts there were alternatives to removal, such as supervision by the Department and court to ensure she followed through with services and maintained boundaries with Theodore. She also asserts the court did not explain on the record why such supervision would be insufficient to protect the children from risk in her home.

The second prong of the statute calls for consideration of alternatives. "Section 361 requires that there be 'no reasonable means' of preventing removal." (*Jasmine G.*, *supra*, 82 Cal.App.4th at p. 293.) As reflected in the case law, a range of less drastic alternatives may be available in a given case. One example is a return to parental custody "under stringent conditions of supervision by the welfare department . . ." (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60 (*Jeannette S.*)) In such cases, "unannounced visits and public health nursing services [are] potential methods of supervising an in-home placement." (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.)

The evidence is sufficient to support the juvenile court's finding that there were no reasonable means to protect the children's emotional health without removing them from mother's custody. While at the time of disposition mother had begun to address the issues that led to dependency jurisdiction, as she had started taking classes in parenting and domestic violence, and was attempting to secure a restraining order against Theodore, she had not completed those classes or obtained the restraining order. Mother and Theodore had an 11-year history of domestic violence. That history chronicled a cycle that would begin with Theodore attacking mother, mother applying for a restraining order, mother then either not following through on the order or not enforcing the ones she obtained, and eventually her taking him back into the home. As far back as 2002, when her spleen was ruptured, mother claimed she had no plan of resuming her relationship with Theodore, yet she continued to allow him back into the family. Although the girls had expressed their fear of Theodore, mother was either unable or unwilling to protect them from him by breaking off the relationship.

While the juvenile court had considered returning the children to mother with court and Department supervision, it ultimately decided not to do so based on this history, finding mother needed additional time to learn from the classes she was taking and to ensure she could deal with Theodore should he reappear. It was reasonable for the juvenile court to conclude under these circumstances that until mother more fully addressed the issues that led her to continue to expose the children to domestic violence, the children's emotional health could not be protected without removing them from her custody.

The cases mother relies on do not compel a different result. In *In re Basilio T.* (1992) 4 Cal.App.4th 155, the appellate court found insufficient evidence to remove minors from the home when the department relied upon several incidents of parents fighting with each other, without evidence of physical harm to the children. The court determined that since this was not an extreme case of parental abuse or neglect and the

minors were not physically harmed, they could have been returned to the parents under strict supervision. (*Id.* at pp. 170-172.) In *Jeannette S.*, *supra*, 94 Cal.App.3d 52, the minor was removed from her mother's home after being found a dependent based on the home's filthy condition; on appeal, we found removal to be improper in part because the minor could have been returned home under "stringent conditions of supervision by the welfare department," with a warning that if the mother let the house get filthy or failed to keep the minor clean, she would lose custody of the child. (*Id.* at p. 60.)

The situation here, however, involved more than several incidents of parental fighting and more than a filthy home. Instead, it involved a significant history of domestic violence, physical assaults of mother, multiple verbal arguments and the children living in fear that their mother will be hurt or killed during one of those arguments. Although the children did not suffer physical harm, they were emotionally harmed by the chronic domestic violence.

Mother argues it was speculative for the juvenile court to assume that she had not learned both from her past history with Theodore and the limited services in which she had participated. She asserts that the juvenile court could have ordered her to stay away from Theodore and that without a history of failure to comply with previous interventions, the court had no basis to conclude she would violate any such court order.

In making this argument, mother points us to *Savannah M.*, *supra*, 131 Cal.App.4th 1387. That reliance, however, is misplaced, as the facts in *Savannah M.* are quite different than those in the instant case. In *Savannah M.*, a family friend who occasionally babysat the parents' twin toddler daughters sexually molested one of them. The parents had no reason to suspect the friend was a sexual abuser and the parents immediately reported the abuse to law enforcement once they discovered it, leading to the abuser's arrest. The child protective agency argued that, given the parents' alcohol use and its possible effect on their judgment, they might allow another person like the family friend to care for their daughters in the future. (*Id.* at p. 1397.) The reviewing court

concluded that the argument was based on “mere speculation,” not on substantial evidence of risk of future harm, and reversed the orders for dependency jurisdiction under section 300, subdivision (b), and for removal from the parents’ custody. (*Id.* at pp. 1393, 1395-1397, 1399.)

In contrast here, mother has a proven history of being subjected to domestic violence, obtaining restraining orders in an attempt to separate herself and the children from Theodore, and then refusing to enforce the orders and allowing him back into their lives, only to have the cycle of violence continue. It is not speculative to find, based on this history and the fact that the cycle did not stop despite mother and Theodore both taking classes, that mother needed additional time to benefit from classes and counseling so that she could learn to protect herself and her children from domestic violence. If the children were placed with mother before she learned to stand her ground, mother could easily allow Theodore to return to their lives. While mother contends she would have abided by a court order to stay away from Theodore, the juvenile court reasonably could have concluded, based on mother’s history, that without the benefit of intensive counseling and training mother would have difficulty abiding by such an order.

In sum, we find substantial evidence to support the removal order and reject mother’s claim to the contrary.

### **DISPOSITION**

The juvenile court’s dispositional orders are affirmed.