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

In re LACEY H., a Person Coming Under the  
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MARILYN H.,

Defendant and Appellant.

F064600

(Super. Ct. No. 10CEJ300044)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Brian Arax,  
Judge.

Pamela Rae Tripp, under appointment by the Court of Appeal, for Defendant and  
Appellant.

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

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel, for Plaintiff and Respondent.

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Marilyn H. (mother) appeals from jurisdictional findings and the consequent dispositional order that removed her 12-year-old daughter, Lacey H., from the physical custody of mother and Lacey's father, and gave mother reunification services. Mother contends the juvenile court erred in finding jurisdiction pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (d).<sup>1</sup> Mother also contends the order temporarily removing Lacey from her custody is not supported by evidence that removal was necessary to avoid a substantial danger to Lacey's physical health or emotional well-being and there were no reasonable means to protect her physical or emotional health without removing Lacey from her custody. (§ 361, subd. (c)(1).) As we shall explain, we disagree with mother's contentions and will affirm the juvenile court's orders.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *The Prior Dependency*

Mother, father, and their adopted daughter Lacey, came to the Department's attention in February 2010, when the Department received a crisis referral that father had sexually abused then ten-year-old Lacey. On January 7, 2010, Lacey told mother father had molested her. Father's conduct consisted of grabbing her breast under her shirt and bra, making humping gestures to her and asking her to make love to him. Mother did not immediately call law enforcement to report the molestation; instead, she waited until February 16, 2010, to make a report. Mother said she did not call law enforcement right away because father had been paying the rent. She finally called the police because father stopped paying rent and left to live with his mother in another town. Mother told police she was going to take father his heart medication and Lacey would be going with

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

her. Lacey told police father started touching her underneath her shirt in September 2009.

Mother later told social workers she did not report the molestation sooner because she did not know she was supposed to contact law enforcement. Father moved out of the home a week after Lacey's disclosures to mother. Mother thought she was protecting Lacey by making father move out. Mother thought it was appropriate to take Lacey to see father because she would be present with Lacey at all times. Father denied the abuse occurred.

The Department filed a petition on Lacey's behalf. At the April 19, 2010 jurisdictional hearing, the juvenile court found true allegations under section 300, subdivision (d) that father had sexually abused Lacey and mother failed to protect her from the abuse. Mother and father were provided reunification services. Father, however, failed to participate and his services were terminated on December 6, 2010. Mother completed reunification services and dependency was dismissed on March 21, 2011.

In dismissing dependency, the juvenile court adopted a custody and visitation order prepared by a court mediator following a mediation involving mother and a social worker. The juvenile court granted mother sole legal and physical custody of Lacey. Visitation was addressed in paragraph 3.02 of the order, which stated, in pertinent part: "The mother has the discretion to allow the child to visit her father in a supervised setting. The father shall have supervised visits. A third party mutually agreed upon by the parties shall supervise the visits. Supervised visitation shall occur once per week for a maximum of 1 hour per visit. Specific times of and days for the visits supervised by a third party shall be mutually agreed upon between the parties and the supervising party 2 days in advance." Paragraph 1.06 of the order gave the parents the right to "supplement or revise the terms and conditions of this custody arrangement as the needs of the child change[.]" but "[s]uch changes shall be in writing, dated and signed by both parents and

notarized.” The order stated that mother and father, while still married, were separated and a dissolution action had been filed in Fresno County.

At the March 21, 2011 hearing, mother’s attorney asked that mother be allowed to supervise visits, as mother was concerned about father’s ability to pay for supervision. Mother’s attorney explained that father, who was in Florida, was very ill, and mother was concerned about Lacey’s ability to see him should he be near death. Mother did not have the finances to take Lacey to Florida to see him. Lacey’s attorney had no objections to mother supervising visits, since it sounded like father would have difficulty exercising visitation given his health concerns, location in Florida and the financial issues. The court directed the parties to paragraph 1.06, and stated that given the circumstances, it was best to have the order remain as third party supervision mutually agreed on by the parents and if circumstances become such that mother wants to supervise, “which given the facts of the case, I probably would not encourage,” the parents can revise the terms pursuant to paragraph 1.06.

#### *The Current Dependency*

On October 25, 2011, the Department received a referral alleging that Lacey told the reporting party she was not taking her medications and was able to fool “them,” and when the reporting party asked who she was attempting to fool, Lacey stated her mom and dad. The reporting party noted that father was not supposed to be in the home. A police officer and social worker went to the family’s home to investigate. Mother answered the door and invited them in; with mother’s permission, the officer and social worker spoke with Lacey in private. Lacey admitted she was not honest with mother about taking her medication, but denied she had not been honest with father. Lacey denied having face-to-face contact with father, as he was in Florida, but said she had been in constant contact with him over the telephone. Lacey claimed she was confused when she told the reporting party that she was keeping a secret from both mother and father.

Mother also denied that Lacey had face-to-face contact with father, and said that only she and Lacey were living in the home. When the officer and social worker discussed with mother the court orders regarding visitation between Lacey and father, she responded the custody order had a clause that allowed her to adjust the terms of custody if she and father agreed. Becoming suspicious, the officer looked through the apartment and found father in one of the bedrooms.

Lacey then admitted to the social worker that father had been residing in the home since July 2011. During summer vacation, she and mother flew to Florida, where father was living, and the three of them drove back to California. Lacey told the officer they had decided to say father was not there so they would not get into trouble. Lacey said she was concerned the abuse might happen again, but they told her it happened before because of medication father was taking. Since his return to the home, father had not touched her inappropriately. While father on occasion hugged her and kissed her on the cheek, Lacey said this did not make her feel uncomfortable. She had never been left alone with father; Lacey said she went with mother wherever mother went. Lacey explained that she and mother had a code phrase she could use when she wanted to communicate to mother that something was wrong.

Mother and father told the social worker they were under the impression there was no problem with father being in the home. Mother allowed him back because she was concerned for him, as he recently had undergone open heart surgery. Mother told the officer father was “only visiting.” She explained that father returned to California following his heart surgery and lived with his mother in another town. About three weeks before, they decided he could start visiting Lacey. The plan was to have father stay there two to three weeks at a time. Father, however, said that mother discussed his moving into the apartment about a month before and they agreed to take it slowly and see how it went. He said he had been staying there since his arrival. Mother said Lacey had never been left alone with father, and mentioned the code word she and Lacey had.

Father said he declined the services that were offered in the prior case because he did not need parenting since he was an experienced parent, he had raised his other children to adulthood and he received his counseling through the Bible. Mother claimed there were more recent additional custody orders which gave her the right to supervise visits, but she was unable to locate them. The social worker noted mother never followed through with the divorce from father. Father said he would leave the home. Lacey was removed from the home and placed in foster care.

At a Department meeting on October 27, 2011, mother stated that Lacey had an intelligence quotient of around 84, was a grade behind and received special services in school. Lacey had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), for which she received medication, and Asperger's Syndrome, which was indicated by poor social skills and the inability to read cues concerning possible danger and risk. Lacey was emotionally younger than her years, was easily manipulated or bullied, and rarely socialized with neighborhood children as they could take advantage of her. The decision was reached to file a petition on Lacey's behalf.

The Department filed a petition that day, which it amended on October 28, 2011. The amended petition alleged that Lacey came within the provisions of section 300, subdivisions (b) and (d). With respect to subdivision (b), in count b-1, the amended petition alleged mother failed to protect Lacey from abuse and neglect when she allowed father to move in with them in July 2011, despite having received reunification services and possessing a court order which stated father was to have third party supervised visits with Lacey. Count b-1 further alleged mother placed Lacey at substantial risk of abuse or neglect based on Lacey's previous removal from her parents due to substantiated sexual abuse allegations, father's failure to complete reunification services and reunify with Lacey, and mother's failure to use good judgment. In count b-2, the amended petition alleged father placed Lacey at substantial risk of abuse and neglect as, despite the court

order requiring third party supervised visits, he moved in with Lacey and mother in July 2011.

With respect to subdivision (d), the amended petition alleged in count d-1 that Lacey was at substantial risk of sexual abuse as mother allowed father to reside in the home in July 2011, despite a failure to protect allegation being found true against mother in the prior dependency case, Lacey being adjudged a dependent in that case and removed from mother's care due to sexual abuse by father, and mother's receipt of reunification services. Count d-2 alleged that Lacey was at substantial risk of sexual abuse by father as he moved into the home despite it having been found true in the prior dependency that he sexually abused Lacey, Lacey being removed from his care due to his sexual abuse, Lacey being judged a dependent, and father's receipt of reunification services.

Lacey was detained and mother given reasonable visits to be supervised by the Department or an approved agency, while father was denied visits.

#### *The Jurisdictional Hearing*

In an addendum report prepared for the jurisdictional hearing, a social worker described a conversation she had with Lacey at her foster home on January 17, 2012. Lacey said visits with mother were going well; mother told her how much she missed her and wanted her to return home, and that father loved her and would love her regardless of what happened. Lacey said she wanted to return home with mother and "probably" father. She knew people were trying to protect her from father as he had done "some sexual things to me," and after father "got in trouble" for what he did to her, he left for Florida. She described how she reunified with father. Mother purchased plane tickets to go see him in Florida. Lacey said she was nervous and anxious because she did not know what he would do to her, as she had not seen him since she told mother about the molestations. Lacey stated father "knows what he did and he knows he got in trouble for it. He knows he is sorry for what he did to me. I trust him and my mom does too." Once

they arrived in Florida, the three of them stayed in a hotel until it was time to return home. She knew father was moving in with them because he brought his clothes and medications with him. Lacey said that “sometimes” mother left her at home with father while she went out to run some errands, but she mostly stayed in her room during those times. Lacey did not mind staying home alone with father, as she knew “he won’t do it again because he learned his lesson and he knows he is not supposed to do it again.” When asked what she meant by “do it again,” Lacey stated “you know that sexual thing he did to me before.”

At the January 27, 2012 jurisdictional hearing, the juvenile court took judicial notice of the reporter’s transcript of the March 21, 2011 exit mediation hearing in the prior dependency case, as well as the final judgment, the juvenile custody order, and the mediation agreement. The Department submitted on the jurisdictional and addendum reports. The amended petition was amended further to correct dates of the prior dependency.

Mother offered into evidence father’s surgery records that showed he was admitted to a Florida hospital on March 17, 2011, and released on March 24, 2011. Mother’s attorney argued mother had not violated the court’s custody and visitation orders, as the court at the March 21, 2011 exit hearing told her those orders could be revised. Mother’s attorney further argued Lacey was not in jeopardy, as the prior molestation was a one-time period of aberrant behavior, and mother was supervising Lacey and instituted things that would keep her safe, such as the code word. Father’s attorney argued the custody order gave mother discretion to change custody and visitation, which is what occurred when the Department intervened in the present case. Father’s attorney further argued the Department failed to establish a current risk of harm.

The court granted County counsel’s request to take judicial notice of the March 15, 2010 jurisdiction report in the original dependency case. County counsel argued this was not a one-time occurrence, as Lacey reported on-going molestation over a

period of time. With respect to amending the custody order, County counsel noted the order required changes to be in writing, signed and notarized, and no such document had been produced, and none of the parties represented that the arrangement was changed because Lacey's needs warranted it. County counsel further argued there was evidence that mother was not protective, and the parties' own actions show they knew there was a risk.

The juvenile court found the allegations in the first amended petition true, and that Lacey was described in section 300, subdivisions (b) and (d). In so finding, the juvenile court gave a detailed ruling which included factual findings. The court found that the underlying case originated in February 2010 with allegations that father had sexually abused and molested Lacey, the ensuing case lasted the next 14 months, and during most of that period, Lacey was removed from mother. The case came to a final resolution on March 21, 2011, when dependency was terminated. The March 2011 hearing occurred after an exit mediation, at which visitation with father would have been discussed. In addition, visitation was aired out fully at the March 2011 hearing, when mother's counsel, in mother's presence, requested she be allowed to be a third party supervisor since father was grievously ill and Lacey may need to see him before he passed away. The juvenile court found the court in the prior case did not grant mother's request to change the visitation orders, but instead pointed to paragraph 1.06 and stated that if something changed dramatically, the custodial relationship could be changed legally. The juvenile court further found that the visitation order, which provided for once a week, one hour visitation with third party supervision, was legally binding and must be followed until Lacey turned 18.

The juvenile court found that not three months later, mother flew to Florida, placed Lacey in father's presence supervised only by herself, and moved him back to their home, against court orders and the mediated agreement, leaving Lacey unsupervised with father. While the agreement allowed the parents to revise the terms and conditions

of custody, there was no evidence the custody order was ever legally changed. Instead, the parents took the law into their own hands in violation of court orders. The juvenile court found the agreement did not give mother discretion to do whatever she wished and ignore the 14 months of dependency court supervision. Although mother had sole physical custody, it was limited by the visitation order. The juvenile court found current risk of harm in the violation of the court orders, the previous taking of jurisdiction over Lacey and limitation of her contact with father, mother's representations that she did not understand father could not move in, and father's failure to participate in services to address the issue. Moreover, the court noted Lacey, who was only 12 years old, was incapable of protecting herself and may not have the same mental sophistication as other children her age.

#### *Dispositional Hearing*

In a report prepared for the dispositional hearing, the Department recommended mother be given family reunification services but father be denied services pursuant to section 361.5, subdivision (b)(10). Mother and father had been married for over 20 years and in addition to Lacey, they had one biological adult son.

Mother believed her only error was not reading the custody order carefully. She told a social worker, however that she was willing to do whatever it took to regain custody of Lacey. Father denied ever sexually abusing Lacey and said he would do anything the court ordered so Lacey could return home. The social worker thought both parents appeared to be in disbelief about the sexual abuse. Mother said she went to Florida to get father because she felt unsafe residing in an apartment complex where registered sex offenders also resided, while father said he returned home to protect his family from sexual predators. Lacey wanted to return home with mother and father, and if she did, father would not abuse her again as "he knows what he did to her was wrong and learned his lesson."

Lacey was diagnosed with Asperger's syndrome and ADHD in October 2010. Her social development and immaturity corresponded to the symptoms of Asperger's. Lacey's interactions with others appeared to be that of a child younger than 12; her developmental delays were evidenced by her inability to remember a timeline, her ADHD behaviors, and her participation in "RSP" special education classes in school. Lacey was in the sixth grade and was struggling academically. Lacey was participating in weekly individual therapy sessions with a therapist.

The Department recommended Lacey remain in out-of-home care until mother made significant progress towards ameliorating the circumstances that brought Lacey to the court's attention. While it was stated in the report that mother continued to live with father, the report also listed separate addresses in different cities for mother and father. The Department noted that mother did not believe father was a threat to Lacey, she failed to protect Lacey as evidenced by her going to Florida to pick up father and bring him to live with her and Lacey even though she knew about the sexual abuse allegations, Lacey continued to state the sexual abuse happened, and Lacey felt anxious when mother took her to Florida to pick up father. The Department did not believe it was in Lacey's best interest to return Lacey to mother's care, as mother did not have insight into how she re-traumatized Lacey by allowing father back into the home.

A family reunification services initial review panel determined that father met the criteria for denial of services pursuant to section 361.5, subdivision (b)(10). In discussing whether services would benefit Lacey, the panel noted that while Lacey said she cared for father, she had not forgotten what he had done to her and said she felt more at ease with him because mother trusted him.

A contested dispositional hearing began on March 19, 2012. Lacey testified that she wanted to go home with mother and father. She loved them both and trusted them. She was not worried that the inappropriate touching would happen again since she trusted

father, and she thought he had learned his lesson and believed what he did was “very wrong.” The Department submitted on its reports and Lacey’s testimony.

The social worker who had been the case manager since January 2012 testified that to her knowledge, mother was not employed and father financially supported her. Mother told the social worker father no longer lived with her. Department personnel had explained to mother and father that the Department could not consider placing Lacey with mother if father was in the home. The Department was not considering placing Lacey with mother in the immediate future or proceeding with family maintenance services. If reunification services were provided, the decision of when to return Lacey to mother would be made with the input of Lacey’s therapist. Whether Lacey could be returned to mother in the next six months depended on mother’s progress. Mother told the social worker father was no longer living in Fresno County and he left because he was getting in the way of her obtaining custody of Lacey. While mother had never directly stated that the abuse happened, the social worker believed mother had “some type of reservation” as she said she had a code word for Lacey to use and never left Lacey alone with father.

After the parties’ closing arguments regarding whether father should be given reunification services, an issue arose concerning the applicability of section 361.5, subdivision (b)(10) to father’s situation and whether section 361.2 applied to him. In order to give the parties an opportunity to research these issues and to see if a settlement could be reached, the court continued the hearing.

At the continued hearing on March 26, 2012, father withdrew his contest and submitted on the Department’s report. The court found Lacey to be a person described under section 300, subdivision (b) and made her a dependent, found all reasonable efforts had been made to prevent removal, committed Lacey to the Department’s custody and care, and removed Lacey from mother’s custody pursuant to section 361, subdivision (c)(1). The court ordered reunification services for mother, denied services for father,

and gave the Department discretion for unsupervised liberal visitation between mother and Lacey.

## DISCUSSION

### *Jurisdictional Findings*

The juvenile court asserted jurisdiction over Lacey under section 300, subdivisions (b) and (d). Mother argues insufficient evidence exists to support findings under these subdivisions primarily because Lacey was not at substantial risk of harm while in mother's care. We disagree.

Before asserting jurisdiction over a minor, the juvenile court must find that the child comes within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185 (*Veronica G.*)) The burden is on the Department to ““prove by a preponderance of the evidence that the child . . . comes under the juvenile court's jurisdiction.”” (*Ibid.*, quoting *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) “On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value.” (*Veronica G.*, *supra*, at p. 185.) Issues of fact and credibility are questions for the trier of fact, and we may not reweigh the evidence. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) “If there is any substantial evidence, contradicted or uncontradicted, which will support the judgment, we must affirm.” (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

A juvenile court may adjudge a child to be a dependent under subdivision (b) if “[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, . . . or by the willful or negligent failure of the

child's parent to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, . . .” (§ 300, subd. (b).) A jurisdictional finding under section 300, subdivision (b) consists of three elements: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) The third element “effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.)

Similarly, jurisdiction is proper under section 300, subdivision (d) if “[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused . . . by his or her parent . . . or the parent . . . has failed to adequately protect the child from sexual abuse when the parent . . . knew or reasonably should have known that the child was in danger of sexual abuse” (§ 300, subd. (d).) “[A] child comes within subdivisions (b) and (d) of section 300, if he or she has been harmed or abused *or* is at risk of being harmed or abused.” (*In re Carlos T.* (2009) 174 Cal.App.4th 795, 803.)

The allegations under each subdivision were based on the same conduct, i.e. that father's presence in the home placed Lacey at substantial risk of sexual abuse. The juvenile court found substantial risk of abuse based on a number of factual findings, all of which are supported by the record. Dependency was taken over Lacey in 2010 after allegations that father sexually abused Lacey were found true. Mother received reunification services, while father declined to participate in them. Lacey was returned to mother's custody and dependency dismissed. The mediated custody agreement issued when dependency terminated in March 2011 gave mother sole legal and physical custody of Lacey and limited father's visitation to third party supervised visits one hour per week. Just three months later, mother took Lacey to Florida, placed her in father's presence supervised only by herself, and moved him back to their home in California. Mother then

left Lacey unsupervised with father. While the custody agreement allowed the parents to revise the terms and conditions of custody as Lacey's needs changed by placing the change in a writing which was signed by both parents and notarized, there is no evidence that the agreement was so revised.

The juvenile court's finding of current risk of harm is supported by the evidence. Father had sexually abused Lacey over a four month period. He did not receive treatment to address this issue and Lacey's contact with him was limited when dependency was terminated. At the outset of the original dependency proceeding, mother did not understand the seriousness of the problem or the threat father was to Lacey, as mother delayed in reporting the abuse to law enforcement and wanted to take Lacey with her to see father after he moved out of the home. At the outset of this case, after having received reunification services in the prior case, mother continued to not understand the seriousness of the problem or the threat father posed. She lied to police about father's presence in the home and apparently instructed Lacey to also lie. When father was discovered in the home, mother lied about the length of time he had been there and said he was only visiting. Although mother claimed she never left father alone with Lacey, Lacey stated that she was sometimes alone with father. While mother knew that Lacey had low intelligence, was emotionally immature, and was easily manipulated and taken advantage of, she allowed father to move back into the home, placing Lacey in jeopardy of being manipulated and further victimized.

Mother asserts that she did not violate the custody order because the court at the March 2011 hearing gave her permission to monitor father's visits and agreed that the parents could supplement or revise the terms or conditions of custody. We do not agree with mother's reading of the record. The court, as shown in the reporter's transcript of the March 21, 2011 hearing, expressly stated that it was "best" that "the Court's order to remain having a third party mutually agreed upon by the parents. However, if the circumstances are such that mother wants to supervise, which given the facts of this case,

I probably would not encourage, but – or recommend, but the parents can – can revise the terms pursuant to 1.06.” Thus, the court left the third party supervised visitation order in place.

Mother asserts she modified the terms of custody. The evidence, however, supports the juvenile court’s finding that she did not. Mother’s conduct when police and the social worker came to investigate father’s presence in the home belied her claim that she had legally modified the custody terms, as she lied about his presence there, when he was discovered she claimed he was visiting, and while she claimed she had a more recent custody order, she never produced a written document evidencing a change in custody.

Mother contends Lacey was not at substantial risk of harm because the reunification services in the prior case rehabilitated her and she put a safety plan into place, which consisted of supervising Lacey “almost all the time” and developing the code word Lacey could use to signal if there was trouble. Mother claims the plan’s effectiveness is shown by the fact father did not molest Lacey.<sup>2</sup> But mother could not

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<sup>2</sup> The Department contends mother should be barred by the disentitlement doctrine from relying on the fact that Lacey was not molested to prove the absence of risk of harm. “A reviewing court has the inherent power to dismiss an appeal by any party who has refused to comply with trial court orders. [Citation.] The disentitlement doctrine is based on the equitable notion that a party to an action cannot seek the assistance of a court while the party ‘stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]’ [Citation.] A formal judgment of contempt, however, is not a prerequisite to exercising our power to dismiss; rather, we may dismiss an appeal where there has been willful disobedience or obstructive tactics.” (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 244.) The principle that a court may refuse to assist a party who fails to comply with a court order has been applied in dependency proceedings. (*In re C.C.* (2003) 111 Cal.App.4th 76, 85 [mother’s refusal to participate in psychological evaluation frustrated court’s ability to evaluate whether mental disability rendered her incapable of using reunification services]; *Guardianship of Melissa W.* (2002) 96 Cal.App.4th 1293, 1299 [grandparents and counsel “thwarted the very judgment of which they now seek review” by causing minor to be removed to Bahamas in violation of court order]; *In re Kamelia S.* (2000) 82 Cal.App.4th 1224, 1227 [father could not appeal order placing his daughter in foster care after he abducted her].)

supervise Lacey and father all of the time. That molestation did not occur during this time period does not mean that it could not occur in the future. Moreover, mother's development of a code word system of warning shows that she believed Lacey could be molested in the future. While mother claims Lacey was not afraid of father, she ignores Lacey's statement to the police that she was concerned the abuse might happen again and was anxious about seeing father in Florida. The juvenile court reasonably could conclude that Lacey was in fact scared of father and feared that the molestation could resume. Moreover, the evidence supports the conclusion that mother did not learn from the prior dependency case, as she continued to place Lacey in father's presence without appropriate supervision.

Comparing this case to *In re James R.* (2009) 176 Cal.App.4th 129 (*James R.*), mother contends there was no evidence of a substantial risk of harm at the time of the jurisdictional hearing. In *James R.*, the mother had a negative reaction to taking prescription ibuprofen and drinking beer, as well as a history of mental instability. There was no evidence, however, that she abused illegal drugs or was regularly intoxicated and unable to care for her children. (*James R.*, *supra*, 176 Cal.App.4th at pp. 136-137.) Furthermore, the evidence indicated the father was able to protect and supervise the children, and no evidence he might leave them alone with mother while she drank. Because the risk of harm to the children was speculative, the appellate court reversed the jurisdictional findings under section 300, subdivision (b). In reaching this decision, the court noted evidence of a specific, defined risk of harm was required to support a finding that a child is at substantial risk of harm. (*James R.*, *supra*, 176 Cal.App.4th at pp. 136-137.)

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Although there is evidence here that mother violated previous custody and visitation orders, there is no evidence before us that she has violated *the order from which she has appealed*. (Cf. *Guardianship of Melissa W.*, *supra*, 96 Cal.App.4th at p. 1299.) The disentitlement doctrine therefore does not apply under the facts of this case.

Here, there was a specific defined risk of harm to Lacey. Father had molested Lacey before, yet had not received treatment, placing her at substantial risk of further abuse if she was left in his custody unsupervised. Unlike the father in *James R.*, mother did not adequately protect Lacey from father, as she allowed father to move back into the home and permitted father unfettered access to Lacey.

Mother's reliance on *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738 (*Blanca P.*), is also misplaced, as is her invocation of the "confession dilemma." In *Blanca P.*, the juvenile court refused to return four siblings to their parents based on allegations that father had sexually abused one of the children. No court ever examined whether the allegations were supported by evidence, and a psychologist determined it was unlikely that father had molested the child. (*Id.* at pp. 1741-1742.) Yet, the juvenile court concluded that it would be detrimental to return the children to their parents, relying in part on the parents' refusal to acknowledge that sexual molestation had occurred. (*Id.* at p. 1752.) The appellate court directed the juvenile court to hold a new hearing on the molestation allegations. (*Id.* at p. 1759.)

Here, in contrast, the juvenile court took evidence on all of the counts. We have already concluded that substantial evidence supported the resulting jurisdictional findings. Mother has not demonstrated that the juvenile court's findings were predicated on unsupported allegations. *Blanca P.* is therefore inapposite.

In sum, there was sufficient evidence that Lacey was at substantial risk of further abuse to support the juvenile court's jurisdictional findings under subdivisions (b) and (d).

#### *Dispositional Order*

Mother next contends the juvenile court abused its discretion in removing Lacey from her custody because (1) there was insufficient evidence of a substantial danger to Lacey's physical health, safety, or well-being if returned home, and (2) the evidence does not show that less drastic measures would have been sufficient for her protection. (§ 361,

subd. (c)(1).) Specifically, she argues the evidence showed she had successfully completed reunification services in the prior dependency, she was cooperating with the current case plan, and the source of harm to Lacey had been eliminated, as father had left the home. She contends that because father no longer lives with her and Lacey, he presents no risk. She further contends the court did not consider alternatives to removal and a reasonable alternative would have been returning Lacey with mother's continued participation in services.

When a parent challenges a dispositional finding, the question is whether substantial evidence supports the finding. (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581 [although trial court makes findings by the elevated standard of clear and convincing evidence, substantial evidence test remains the standard of review on appeal].) In resolving this question, we view the evidence in the light most favorable to the trial court's determination, drawing all reasonable inferences in favor of the determination and affirm the order even if there is other evidence supporting a contrary conclusion. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

As relevant here, before the court may order a child physically removed from his or her parent, it must find by clear and convincing evidence that the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1).) A removal order is proper if it is based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. (*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.) The parent's level of denial is an appropriate factor to consider when determining the risk to the child if placed with that

parent. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 [denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision].) The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*In re Diamond H.*, *supra*, 82 Cal.App.4th at p. 1136; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 536, citing *In re B.G.* (1974) 11 Cal. 3d 679, 699.)

On these facts, we conclude substantial evidence supports the juvenile court's removal order given the history of sexual abuse and its deleterious effect on Lacey. In so concluding, we reject mother's argument that all risk of harm was removed when father moved out of the home, since the evidence shows the risk of harm to Lacey lies in mother's willingness to remain in a relationship with father at Lacey's expense. Despite knowing that father had molested Lacey, that the court in the prior dependency had given her sole custody of Lacey with extremely limited visitation for father, and that Lacey was concerned about re-abuse, mother exposed Lacey to father by taking her to Florida and moving him back to California to live with them. Mother's history of failing to protect Lacey, coupled with evidence of her continuing lack of judgment, constituted sufficient evidence upon which the juvenile court could conclude Lacey would be at substantial risk of harm if returned to mother's custody.

In light of this evidence, the record supports the juvenile court's finding that reasonable alternatives to removal did not exist. As mother points out, she had participated in services in the prior dependency. Mother, however, apparently had not gained insight into her problems – instead of focusing on protecting Lacey from harm, she was focused on reconciling with father. Given mother's history of allowing father back into the home, the juvenile court reasonably concluded returning Lacey to mother's care would have been insufficient to protect her and removal was necessary to provide mother time to benefit from intensive services to enable her to understand the dangers sexual abuse presented to Lacey and the importance of protecting her from it. While

mother points to other evidence she asserts shows Lacey would not be at risk of harm if returned to her care, she ignores the evidence that shows such a risk exists.

In sum, we find substantial evidence supports the juvenile court's removal order. As a result, we uphold the order temporarily removing Lacey from mother's custody.

**DISPOSITION**

The juvenile court's jurisdictional and dispositional orders are affirmed.