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

In re I.A. et al., Persons Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICE AGENCY,

Plaintiff and Respondent,

v.

C.S. et al.,

Defendants and Appellants.

F069042 & F069131

(Super. Ct. Nos. 516824, 516825,
516826)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Connex A. Thompson, under appointment by the Court of Appeal, for Defendant
and Appellant C.S.

Hassan Gorguinpour, under appointment by the Court of Appeal, for Defendant
and Appellant O.M.

John P. Doering, County Counsel, Carrie M. Stephens and Maria Elena Ratliff,
Deputy County Counsel, for Plaintiff and Respondent.

C.S. (mother)¹ and O.M. (father) (collectively, parents) separately appealed from a judgment declaring mother's daughters, I.A.1 (born May 2000) and I.A.2 (born August 2001), and mother and father's daughter, A.S. (born October 2008), (collectively, children), dependents of the juvenile court under Welfare and Institutions Code section 300, subdivision (b),² and removing them from parental custody under section 361, subdivision (c)(1). We ordered the two appeals consolidated on October 17, 2014. The parents contend the court erred in declining to consider the issue of the appropriateness of the children's placement with I.A.1 and I.A.2's paternal grandmother, and failing to exercise its independent judgment to determine whether the placement was appropriate under section 361.3. Mother also contends insufficient evidence supports the court's dispositional finding that the Stanislaus County Community Services Agency (agency) made reasonable efforts to prevent the children's removal from her custody. We conclude that reversal of the disposition order and remand is necessary for the limited purpose of assessing the appropriateness of the children's placement in accordance with section 361.3. In all other respects, the judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

M.P. (grandmother) is the paternal grandmother of I.A.1 and I.A.2; their biological father is deceased. In December 2012, grandmother was granted temporary guardianship of I.A.1 and I.A.2 and their half-sister A.S. Grandmother sought the guardianship because she believed the children were being exposed to domestic violence between mother and father.

At a hearing on September 30, 2013, mother testified that father had moved out and she did not intend to let him back in the home. Following this testimony, the

¹ In this opinion, certain persons are identified by initials, abbreviated names and/or by status in accordance with our Supreme Court's policy regarding protective nondisclosure. No disrespect is intended.

² Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

superior court terminated grandmother's guardianship and ordered the children to be returned to mother's home by October 5, 2013.

On October 1, 2013, the agency received a referral alleging the children did not want to be returned to mother's care because they were afraid of father and because mother failed to protect them. According to the referral, father was mentally and verbally abusive towards the children, there was significant domestic violence between mother and father, and I.A.1 stated she would kill herself if she had to return to mother's care.

An emergency social worker went to grandmother's home to make contact with the children on October 1, 2013. The social worker first spoke with grandmother. Grandmother described the children's strong, negative reaction when told about the order terminating her guardianship. Grandmother reported she immediately scheduled an appointment for the children to speak with their counselor. Grandmother was especially worried about I.A.1, who had a long history of depression. Grandmother told the social worker she would like to continue caring for the children, noting that, since they had been living in her home, they had been doing well in school, participating in school activities, and thriving in counseling.

The social worker next spoke with 13-year-old I.A.1, who looked visibly upset during their conversation. I.A.1 told the social worker that when she learned she had to return to mother's home, "I felt like this was my last day of paradise and lost it." I.A.1 showed the social worker a video she and I.A.2 had recorded to show their reaction to the news. On the video, the children were crying uncontrollably and I.A.1 stated she wanted to kill herself. I.A.1 told the social worker she was afraid of what father might do to her and her sisters. I.A.1 reported she had seen father punch mother in the face and leave bruises on her. There was also a hole in mother's bedroom door due to an incident where father chased mother with a knife and she was barely able to shut and lock the door on him. Father was mean to I.A.1 and called her names for seeing a counselor for her

depression. I.A.1 was afraid to return to mother's home because she knew no one there would protect them from father.

Twelve-year-old I.A.2 told the social worker that she saw bruises on mother and cuts on mother's lip, at least once during their visits, and when I.A.2 lived in the home, she would see father inflict bruises on mother's face and body. After seeing father hit mother for so many years, I.A.2 had become scared of him. During one fight, I.A.2 heard mother tell the responding law enforcement officers that she did not want to send father to jail. I.A.2 felt mother preferred father over her own children. Since hearing the news she was to return to mother's home, I.A.2 could not sleep and was having stomach aches. Although mother told I.A.2 at their last visit that father had left the home, I.A.2 did not believe mother because mother was driving father's car and was talking about father throughout the visit. I.A.2 was scared to return to mother's home and felt like her life was over when she found out they had to go back. I.A.2 wished to stay with grandmother.

Finally, the social worker made contact with four-year-old A.S., who reported that she felt safe in grandmother's home. When asked if she felt safe at mother's home, "[A.S.] froze, appeared startled and began shaking her head from side to side to indicate she did not feel safe." After that point, A.S. stopped answering questions.

When the social worker attempted to make contact with mother at home on October 1, 2013, no one answered the door. No one answered the door again when the social worker returned on October 2. The social worker spoke with a neighbor who reported that he last saw mother and father both at home on September 30. The neighbor further reported that he often heard yelling, screaming, and things being thrown around the home, and he could hear the man hitting the woman.

On October 2, 2013, the social worker learned that father had been on felony probation since October 2009, for making criminal threats (Pen. Code, § 422), and was required to notify Sacramento County Probation within 48 hours if his address changed.

The address father had on file with Sacramento County Probation was not the same address that he reported to the Stanislaus County's StanWorks program. The address father reported to StanWorks was the common address with mother and records indicated mother and father both received StanWorks benefits at that address.

Mother made telephone contact with the social worker on October 2, 2013, and complained the social worker was harassing her. When the social worker told mother they needed to meet in person, mother said her husband, whom she identified as father, needed to be in the home when child protective services (CPS) came over. Mother confirmed that father was living in the home and stated he was out of town until October 4. Mother agreed to meet the social worker on October 3.

On October 3, 2013, the social worker obtained a protective custody warrant and went to mother's home to serve the warrant on mother. At that time, mother denied the referral allegations and reported that the judge who terminated grandmother's guardianship had agreed with her that there was no reason the children should be out of her home. Mother told the social worker father was not home and had moved out the day before. When the social worker asked mother about her previous statements that father was returning home on October 4, mother called the social worker a liar and denied that she had ever said father was living in the home. Mother claimed she did not know where father was or how to reach him.

On October 4, 2013, during a three-way phone call initiated by mother, father told a different social worker he was currently in Nevada.

The agency's investigation established that the family had 14 CPS referrals, including four substantiated reports of general neglect and emotional abuse. The referrals indicated a long history of domestic abuse between mother and father with father as the perpetrator. In an emergency response investigation in December 2011, the parents agreed to participate in services to address a substantiated allegation of general neglect and emotional abuse pertaining to domestic violence. However, the parents failed to

follow up with the referral. The parents again expressed interest in participating in services in September 2012. On September 14, 2012, they signed a written agreement indicating they would not use drugs around the children, would not expose the children to domestic violence, would use appropriate discipline with the children, and mother agreed to enter counseling.

On October 7, 2013, the agency filed a dependency petition on behalf of the children under section 300, subdivision (b) (failure to protect) and subdivision (c) (serious emotional damage). On October 8, the court ordered the children detained in suitable placement pending further hearing. The children remained in grandmother's care after the detention hearing.

After being continued several times, the contested jurisdiction/disposition hearing commenced on January 16, 2014. In their testimony, mother and father denied the specific allegations of domestic violence and claimed there had never been any domestic violence (either physical or verbal) in their relationship. They also confirmed they had never engaged in, or seen a need to engage in, domestic violence counseling despite past and current referrals by the agency. Mother and father both completed a six-week positive parenting class in September 2013, and received certificates for the class.

Mother testified that father currently lived with her and she planned to continue the relationship. Mother maintained they were separated at the time of the hearing on September 30, 2013, when grandmother's guardianship was terminated. According to mother, father moved out of the home at the beginning of September 2013 and did not move back in until November 2013. Although father did stop by the home on September 30 to pick her up for the hearing, he did not stay at the home after the hearing. Mother denied that she told the social worker that father would be back in the home on October 4.

When grandmother became the guardian of all three of mother's children in December 2012, mother did not consent to the guardianship and denied that there was

domestic violence in the home. It was not mother's understanding that the court terminated grandmother's guardianship based on mother's testimony that father was no longer in the home. Rather, mother believed the guardianship was terminated because grandmother did not have enough evidence to prove her case.

From the time grandmother became the children's guardian in December 2012 until the dependency proceedings were initiated in October 2013, mother did not have any visits with the children, though she did see them a few times during brief, chance encounters. When the court asked mother about why she did not visit the children for almost a year during grandmother's guardianship, mother indicated she was entitled to supervised visits but claimed the visits never took place because grandmother never signed up with the visitation agency. Mother later acknowledged she never went to court to ask the judge to enforce the visitation order and testified she could not afford to pay for the supervised visits.

Mother did not have a safety plan for herself and the children in case there was an incident of domestic violence in the home she shared with father nor did she believe a safety plan was necessary. But mother did think the children needed some type of emotional counseling, "[t]o understand why they would lie like that" and "make up such a story" about the domestic violence they claimed to have witnessed. According to mother, I.A.1 and I.A.2 did not generally tell the truth and they started having trouble with lying around the same time mother started her relationship with father. Mother did not believe the reports of the children's negative reaction to being ordered to be return to mother's care, explaining "they never acted like that in front of me or shared any kinds of emotions like that with me."

When asked if she felt there were any services she needed to parent her children safely in the home with father, mother responded, "I just want classes to help me understand my children, as in what type of discipline I can use for them, what kind of programs I can use to help them express themselves in different ways besides just not

being in different activities” and “we need some type of counseling so that way there can be understanding between me and my children.” Mother also felt father needed to be involved in family counseling because he was “part of the family.”

Mother insisted that father was “a very good parent.” She never heard him make disparaging remarks to the children. Mother felt father was currently safe to be around the children and did not need domestic violence counseling to be in the home with them. Mother testified that the children would not be in any danger if they were returned to her home that day and she would prefer that they lived with her while she was participating in services. Despite I.A.1 and I.A.2’s position that they were not comfortable with father in the home, mother was not willing to terminate her relationship with father and have him move out of the home so that the children could come home to her.

Father testified that he moved to Reno, Nevada around the beginning of September 2013, because he could not stand living in the home without his daughter. His plan was to find employment, start a new life, and eventually have A.S. come live with him. Father initially testified that he moved back to attend the court hearing on September 30, and had been living with mother ever since. He later changed his testimony and claimed he returned to Reno on October 2, and then came back to live with mother on October 7. Although they were living in the same house, father claimed they considered themselves broken up and did not resume their relationship until December.

Father understood that I.A.1 and I.A.2 were alleging that he was violent towards mother and feared returning to mother’s home while he was there, but he was not willing to leave the home in order for the children to be with their mother. Father was also unwilling to participate in domestic violence counseling, despite the recommendation following his recent clinical assessment, during which he expressed a lack of knowledge of the negative effects of domestic violence on children. Father claimed he did in fact understand the negative effects of domestic violence at the time of the assessment but answered incorrectly because the clinician was asking him so many questions.

Several other witnesses, including relatives of father and mother, essentially testified they had never seen or heard any evidence of domestic violence between mother and father.

At the conclusion of the combined jurisdiction/disposition hearing, the juvenile court found that the children were persons described by section 300, subdivision (b).³ The court explained that it did not “really find either one of the parents too terribly credible” and that it believed “there has been a long history of domestic violence in the home.” It was “clear” to the court that father did not “understand the impacts of domestic violence” and that both father and mother were “in denial about the impact.” The court found it “very telling” that mother did not “even bother to visit the children” during grandmother’s guardianship but instead chose father over the children. The court believed the children did not feel safe in mother’s home and observed “the parents need to get out of denial and realize the damage that they have done to their children by subjecting them to ongoing domestic violence over a long period of time.” The court noted it also had evidence from the children’s therapist indicating they were suffering and would continue to suffer until the cycle of domestic violence ended.

The juvenile court then proceeded to rule, in relevant part, as follows:

“The Court will adjudge the children dependent children of this court, and the Court finds pursuant to [section] 361[, subdivision] (c) ... that there is or would be a substantial risk of detriment to the children if they were to be returned home to the care of the parents at this particular time, and there are no reasonable means by which they can be protected without removal from their parents’ physical custody.

“And I do believe that [father] has anger management issues.

“I don’t believe that the parents have been wholly truthful in a lot of ways. This whole thing about the separation that allegedly occurred at the

³ The juvenile court dismissed the allegations of emotional damage under section 300, subdivision (c).

end of September and October, I don't believe that for a minute. Even [father's nonminor daughter] testified that the parents remained together.

“And when the girls are worried about their mother's safety, there's something serious going on in the home that leads this Court to believe that this Court needs to be involved and supervise this case.

“The children shall be placed in suitable placement under the supervision of the Agency.

“Reasonable efforts have been made to prevent or eliminate the need for removal.”

DISCUSSION

I. Relative Placement

During the combined jurisdiction/disposition hearing, counsel for the parents attempted to ask grandmother questions about her mental health, arguing that it was relevant to the parents' concerns that the children's placement with grandmother was not appropriate. The court foreclosed this line of questioning by concluding that the issue of whether placement with grandmother was appropriate was not properly before the court absent a motion by the parents alleging the department abused its discretion in making its placement decision.

The parents now contend the juvenile court erred by declining to hear testimony on the issue of whether placement with grandmother was appropriate based on the court's erroneous belief it could not properly consider the issue absent a motion alleging the agency abused its discretion. The parents argue the juvenile court, as a matter of law, had a duty to exercise its independent judgment to determine the suitability of placement with grandmother under section 361.3. We agree application of the statute was triggered in this case and remand is necessary to ensure compliance with the mandatory procedures set forth in section 361.3.

A. Legal Background

The juvenile court may take jurisdiction of a child and adjudge him or her a dependent of the court in specified situations, including the parent's failure or inability to protect or supervise the child. (§ 300, subd. (b).) A peace officer, probation officer, or social worker who has reason to believe a child falls within one of the specified situations and is in immediate danger as a result, may remove the child from the home. (§§ 305, 306.)

A petition to have the child declared a dependent child must be filed within 48 hours (§ 313, subd. (a)) and a detention hearing must be held by the juvenile court no later than the next judicial day. (§ 315.) At that hearing, the agency bears the burden of showing that the child comes within section 300, continuance in the parent's or guardian's home is contrary to the child's welfare, and specified conditions exist. (§ 319, subd. (b).) If the child is ordered detained, the court must order that reunification services be provided to the parents as soon as possible if appropriate. (§§ 319, subd. (e), 361.5, subd. (a).) If the child cannot be returned to the parent's physical custody, the court "shall determine if there is a relative who is able and willing to care for the child" and may order that the child be placed in that relative's home. (§ 319, subs. (d)(2) & (f).) A relative includes, *inter alia*, a grandparent, a great-great grandparent, or a great-great aunt or uncle. (§ 319, subd. (f).)

A jurisdiction hearing must then be held within 15 judicial days of the detention order to determine whether the allegations in the dependency petition are true. (§§ 334, 355, subd. (a).) If the court finds the allegations true and adjudges the child a dependent child of the juvenile court, it must hold a disposition hearing to determine whether the child may remain with one or both parents or must be removed from the parent's custody pursuant to section 361, subdivision (c). (§ 358, subd. (a); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.) A dependent child may only be taken from the parents' custody if the court finds true one of the statutory grounds upon clear and convincing

evidence. (§ 361, subd. (c).) If the court determines the child must be removed, it must also find a temporary caretaker who will meet the child’s physical and psychological needs while cooperating in reunification efforts. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1064; *In re Baby Girl D.* (1989) 208 Cal.App.3d 1489, 1493, superseded by statute on other grounds as stated in *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032 (*Cesar V.*.)

In locating a temporary caretaker, the court must give preferential consideration to a request for temporary placement made by a relative of the child. (§ 361.3, subd. (a); *In re Sarah S.* (1996) 43 Cal.App.4th 274, 284.) This preference applies only to “an adult who is a grandparent, aunt, uncle, or sibling.” (§ 361.3, subd. (c)(2); *In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1184 (*Rodger H.*.) Preferential consideration means “the relative seeking placement shall be the first placement to be considered and investigated.” (§ 361.3, subd. (c)(1).) It does not serve as an evidentiary presumption in favor of one of the specified relatives. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.)

To implement the relative placement preference, section 361.3 sets forth procedures for the social worker and the court to follow. The social worker initially shall contact the relatives given preferential consideration, i.e., an adult who is a grandparent, aunt, uncle or sibling, to determine if they desire the child to be placed with them. (§ 361.3, subs. (a), (c)(1) & (c)(2).) The social worker thereafter shall assess relatives desiring placement according to a nonexclusive list of factors in determining whether placement with a requesting relative is appropriate. (§ 361.3, subs. (a), (c)(2).)⁴ The

⁴ The listed factors are as follows: “(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs. [¶] (2) The wishes of the parent, the relative, and child, if appropriate. [¶] (3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement. [¶] (4) Placement of siblings and half siblings in the same home, if that placement is found to be in the best interest of each of the children as provided in Section 16002. [¶] (5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect. [¶] (6) The nature and duration of the relationship between the child

social worker shall document these efforts in the social study prepared for the court's disposition (§ 358.1). (§ 361.3, subd. (a).)

“When section 361.3 applies to a relative placement request, the juvenile court must exercise its independent judgment rather than merely review [the agency's] placement decision for an abuse of discretion. The statute itself directs both the ‘county social worker and court’ to consider the propriety of relative placement. (§ 361.3, subd. (a).) The cases, too, discuss the relative placement preference in the context of an independent determination by the juvenile court. ‘The statute expresse[s] a command that relatives be assessed and considered favorably, subject to the juvenile court’s consideration of the suitability of the relative’s home and the best interests of the child.’ (*In re Stephanie M.* (1994) 7 Cal.4th 295, 320, italics omitted.)” (*Cesar V.*, *supra*, 91 Cal.App.4th at p. 1033.)

B. Analysis

In this case, the children were already residing with a relative (i.e. grandmother) when the agency initiated its investigation into the children’s negative reaction to the superior court’s September 30, 2013 order terminating grandmother’s temporary guardianship and ordering them to return to mother’s home by October 5. Consequently, the effect of the protective custody order the social worker obtained on Thursday, October 3, was not to remove the children from mother’s home but to prevent their return pending the detention hearing, which was duly held the following Tuesday on October 8, the day after the dependency petition was filed.

and the relative, and the relative’s desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful. [¶] (7) The ability of the relative to do the following: [¶] (A) Provide a safe, secure, and stable environment for the child. [¶] (B) Exercise proper and effective care and control of the child. [¶] (C) Provide a home and the necessities of life for the child. [¶] (D) Protect the child from his or her parents. [¶] (E) Facilitate court-ordered reunification efforts with the parents. [¶] (F) Facilitate visitation with the child’s other relatives. [¶] (G) Facilitate implementation of all elements of the case plan. [¶] (H) Provide legal permanence for the child if reunification fails. [¶] ... [¶] (I) Arrange for appropriate and safe child care, as necessary. [¶] (8) The safety of the relative’s home....” (§ 361.3, subd. (a).)

On October 25, 2013, the agency filed its report for the jurisdiction/disposition hearing, which was originally set for October 30. The “delivered service log” (unnecessary capitalization omitted) appended to the report reflects that, on October 1, grandmother told the social worker that she would like to continue caring for the children in her home. We agree with mother that grandmother’s expression of her desire for the children to remain placed with her constituted a sufficient request for placement to trigger the investigation and evaluation requirements of section 361.3.

The agency does not directly dispute that grandmother’s request for placement triggered the agency’s duty to complete a section 361.3 assessment but suggests it sufficiently complied with the relative placement preference embodied by the statute by allowing the children to remain with a relative who had previously been appointed their guardian in separate proceedings. While relevant to the question of the suitability of the placement, the fact grandmother had recently served as the children’s guardian did not, under any authority of which we are aware, relieve the agency of its duty to complete a section 361.3 assessment of grandmother’s placement request for the court to consider and thereafter exercise its independent judgment to determine whether placement with grandmother was appropriate.

The jurisdiction/disposition report fails to establish that the agency conducted a sufficient section 361.3 assessment. The report does not contain the required documentation of the social worker’s efforts to assess grandmother’s placement request under the enumerated factors. (See § 361.3, subd. (a); see also § 358.1[“Each social study ... made by a social worker ... required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects: [¶] ... [¶] (h) The appropriateness of any relative placement pursuant to Section 361.3”].) In the section of the report addressing the agency’s consideration of potential relative placements, the report simply notes that the children had been living at grandmother’s home for a period of time and that the placement specialist sent letters to a

number of other relatives on October 24, 2013, none of whom had applied for placement by the date of the report (i.e., October 25).

The jurisdiction/disposition hearing originally set for October 30, 2013, was continued to January 16, 2014. In the interim, the agency did not file any addendum reports addressing the issue of relative placement or reflecting whether any other relatives, besides grandmother, had sought placement of the children or if further efforts had been made to evaluate the appropriateness of placement with grandmother in accordance with the provisions of section 361.3.

In cross-examining grandmother, counsel for the parents attempted to ask questions about her mental health. As noted above, the juvenile court foreclosed this line of questioning by declining to consider the issue, concluding it was not properly before the court absent a motion by the parents charging an abuse of discretion by the agency in its placement decision. The parents' attorneys disagreed with this view and argued they should be permitted to present evidence on the issue of the appropriateness of placing the children with grandmother. Father's counsel noted that the parents had concerns that grandmother was "not an appropriate caretaker" and that the agency had failed to disclose the fact that, in 2009, grandmother had been hospitalized for two days "for mental health issues," a subject upon which counsel had attempted to examine grandmother. Father's counsel noted that the information about grandmother omitted from the agency's report was the type of information the agency would be expected to consider when "doing a background check of a caretaker/relative."

Although the parents' attorneys did not specifically reference section 361.3, their arguments implicitly invoked the agency and court's duty under the statute to evaluate whether placement with grandmother was appropriate. The juvenile court's decision to exclude evidence on the issue was based on an erroneous legal assumption that the court should not, in the court's words, "involve itself in placement issues unless there is something filed by the parents that the Agency has abused its discretion with regard to

placement.” Contrary to this assumption, the court had both “the power and the duty to make an independent placement decision under section 361.3.” (*Cesar V.*, *supra*, 91 Cal.App.4th at pp. 1033, 1034.).

Ordinarily, a juvenile court’s placement orders are reviewed under the abuse of discretion standard. However, a discretionary decision may be reversed if improper criteria were applied or incorrect legal assumptions were made. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435-436.) “A discretionary order that is based on the application of improper criteria or incorrect legal assumptions is not an exercise of informed discretion, and is subject to reversal even though there may be substantial evidence to support that order. [Citations.]” (*Mark T. v. Jamie Z.* (2011) 194 Cal.App.4th 1115, 1124-1125.) If the record affirmatively shows the court misunderstood the proper scope of its discretion, remand is required to permit that court to exercise informed discretion with awareness of the full scope of its discretion and applicable law. (*F.T. v. L.G.* (2011) 194 Cal.App.4th 1, 15-16.) Because the juvenile court’s decision not to consider the issue of the suitability of placement with grandmother was based on an erroneous legal assumption, we conclude remand is the appropriate remedy to ensure compliance with the mandatory procedures set forth in section 361.3.

Although the jurisdiction/disposition report certainly contains positive information about grandmother’s home and relationship with the children, we cannot agree with the agency that any error in failing to assess the appropriateness of placement with grandmother under the section 361.3 factors is harmless because, in the agency’s words, “[t]he record contains ample evidence to support a finding that grandmother met these requirements.” The agency’s argument focuses on factors favorable to grandmother, but other factors, had they been adequately addressed, might have presented the placement in a different light. For example, one of the factors that must be considered is the wishes of the parents. (§ 361.3, subd. (a)(2).) The parents here attempted to present evidence of their concerns regarding the children’s placement with grandmother by asking her about

mental health issues not revealed by the jurisdiction/disposition report. On the record before us, we are unable to say how the court would have exercised its independent judgment had it been fully aware of its authority and duty under section 361.3 to evaluate the suitability of placing the children with grandmother. Accordingly, we reject the agency's claim of harmless error.

We likewise reject the agency's suggestion that the juvenile court was relieved from its duty to exercise its independent judgment on the suitability of placement with grandmother because the agency did not specifically request that the children be placed with grandmother pursuant to section 361.3 but instead requested a general placement order under section 361.2.⁵ The agency argues that any relative placement made pursuant to a general placement order "should not be subject to attack unless there is a motion alleging abuse of discretion by the Agency." This is so, the agency argues, because "[t]o allow every relative placement to be scrutinized at disposition would encourage disposition hearings to dissolve into a free-for-all attack on well-meaning relatives rather than to focus on the parents."

The agency's argument is without legal support. As mother correctly observes in her reply brief, application of section 361.3 is not dependent on the type of placement order sought by the agency but, as discussed above, is triggered by a request from a relative who seeks custody of the child. (*Rodger H.*, *supra*, 228 Cal.App.3d at p. 1174.) In this case, a timely request for placement was made by grandmother prior to the detention hearing. When a relative has requested placement, the law anticipates that the social worker and the court will determine whether a relative placement is appropriate for a dependent child at a disposition hearing (§ 358) when the court removes the child from

⁵ Section 361.2, subdivision (e), provides, in relevant part: "When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the child to be under the supervision of the social worker who may place the child in any of the following: [¶] ... [¶] (2) The approved home of a relative...."

a parent's custody. (§ 361.3, subd. (a)(8) ["The county social worker shall document these efforts [to assess relatives for possible placement] in the social study prepared pursuant to Section 358.1"]; § 361.3, subd. (d) ["Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the child must be made, consideration for placement shall again be given as described in this section to relatives"].) Therefore, in remanding the matter, we shall direct the juvenile court to order the agency to complete a section 361.3 assessment of grandmother, and thereafter conduct a new hearing and exercise its independent judgment on the appropriateness of placement with grandmother.

II. Reasonable Efforts to Prevent Removal

Mother contends the juvenile court's dispositional finding that the agency made reasonable efforts to prevent the children's removal from her custody is unsupported by substantial evidence. We disagree.

A. Legal Background

"After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court's supervision." (*In re N.M.* (2011) 197 Cal.App.4th 159, 169.) "Before the court may order a child physically removed from his or her parent's custody, it must find, by clear and convincing evidence, the child would be at substantial risk of home if returned home and there are no reasonable means by which the child can be protected without removal." (*In re T.V.* (2013) 217 Cal.App.4th 126, 135 (*T.V.*); § 361, subd. (c)(1).) The social services agency's report must discuss "the reasonable efforts made to prevent or eliminate removal" (Cal. Rules of Court, rule 5.690(a)(1)(B)(i); *In re Ashly F.* (2014) 225 Cal.App.4th 803, 809 (*Ashly F.*), and the court "shall state the facts on which the decision to remove the minor is based (§ 361, subd. (d); *Ashly F.*, at p. 809.)

“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.” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.) “In this regard, the court may consider the parent’s past conduct as well as present circumstances.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917; *T.V., supra*, 217 Cal.App.4th at p. 133 [“A parent’s past conduct is a good predictor of future behavior”].)

“On appeal from a dispositional order removing a child from a parent we apply the substantial evidence standard of review, keeping in mind that the trial court was required to make its order based on the higher standard of clear and convincing evidence.” (*Ashly F., supra*, 225 Cal.App.4th at p. 809; *In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) “In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court’s findings. Evidence is “[s]ubstantial” if it is reasonable, credible and of solid value. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*T.V., supra*, 217 Cal.App.4th at p. 133.) Our inquiry is thus limited to the question of whether the evidence would allow a reasonable trier of fact to make the findings required to support the challenged order. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 423.)

B. Analysis

Mother contends the juvenile court’s finding that the agency made reasonable efforts to prevent the children’s removal is unsupported by substantial evidence because the agency’s jurisdiction/disposition report “gave no explanation as to what reasonable means or efforts it attempted” to prevent or eliminate the need for the children’s removal

from her custody. In support of her contention, mother relies heavily on the recent opinion *Ashly F.*, *supra*, 225 Cal.App.4th 803, in which the appellate court reversed the disposition order for lack of substantial evidence because the record included no discussion of reasonable efforts to avoid the children's removal. (*Id.* at p. 809.) For reasons explained below, we conclude *Ashly F.* is distinguishable from this case.

In *Ashly F.*, the mother physically abused her children and, after the detention hearing, she moved out of the family home where the husband remained. (*Ashly F.*, *supra*, 225 Cal.App.4th at pp. 806-807.) The disposition report by the Department of Children and Family Services (DCFS) perfunctorily stated there were no "reasonable means" by which the children could be protected without removal and that "reasonable efforts" were made to avoid removal. (*Id.* at p. 808.) The report did not elaborate other than to say the family was provided with reunification services. (*Ibid.*) The report "did not state that DCFS had conducted the prerelease investigation report on Father as it was directed to do at the detention hearing." (*Ibid.*) The court made no inquiry, and in its order simply repeated DCFS's assertion it made reasonable efforts to avoid removal. (*Ibid.*)

The appellate court concluded "DCFS and the court committed prejudicial errors in failing to follow the procedures mandated by the Legislature and the Judicial Council for determining whether the children needed to be removed from their home." (*Ashly F.*, *supra*, 225 Cal.App.4th at p. 810.) The court explained: "By the time of the hearing Father had already completed a parenting class. Furthermore, 'reasonable means' of protecting the children that should at least have been considered include unannounced visits by DCFS, public health nursing services, in-home counseling and removing Mother from the home." (*Ibid.*)

Mother contends that, like the DCFS's report in *Ashly F.*, the agency's jurisdiction/disposition report in this case contained a perfunctory statement regarding reasonable efforts made to avoid the children's removal without elaboration except to say

the social worker met with the parents and provided them with service referrals and that the parents had intake appointments scheduled. Mother complains the agency failed to describe reasonable means it considered to prevent the children's removal, and suggests ordering the removal of father from the home would have been a reasonable means of protecting the children without removing them from her custody.

The agency's summary of reasonable efforts to avoid the children's removal is more detailed than mother's contention suggests. In addition to documenting that the parents were provided service referrals, the social worker documented that, when she met with father nearly a week later to discuss the service referrals, father stated that, while he was willing to participate in a clinical assessment, he was not willing to participate in the domestic violence program included in the referrals. When read in its entirety, the jurisdiction/disposition report supports the conclusion that reasonable efforts to prevent the children's removal were considered ineffective in light of the parents' consistent failure to participate in services whenever offered. Thus, later in the report, the social worker observed:

“In the past the agency has taken steps to offer/provide services to this family to address the above mentioned concerns; the agency has referred this family to the Patterson Resource Center on two prior occasions. Each time the parents did not follow through with these services. Therefore, it appears that voluntary services were not successful improve this situation and the parents are in need of family reunification services. Therefore it appears appropriate that the children continue to require the protection and supervision of the Juvenile Court and need out of home placement to best meet their needs.”

By detailing the parent's past failures to participate and current resistance to services offered to address the issues placing the children at risk in the home, the agency's report was sufficient to support the court's finding that the agency made reasonable efforts to prevent the children's removal from mother's custody.

Furthermore, unlike in *Ashly F.*, the parents here did not simply submit on the reports but challenged the agency's recommendations at a contested hearing and the court here provided an explanation for its dispositional findings and did not simply repeat the conclusions of the agency's report. The parents' testimony supported the court's finding that there were no reasonable means by which the children could be protected without removal from parental custody. The parents' testimony established that, three months after receiving the referrals for services addressing issues of domestic violence, neither had sought domestic violence counseling or felt such counseling was necessary to maintain the children safely in the home, despite their history of domestic violence of which they remained in denial. Father flatly testified he was unwilling to participate in domestic violence counseling and both parents were unwilling to have father leave the household so that the children could return to mother.

Moreover, the parents' testimony indicated mother was not being truthful when she represented to the superior court on September 30, 2013, that father was no longer living in the home and she did not plan to let him return, after which the court terminated grandmother's temporary guardianship over the children. The juvenile court here specifically referred to the parents' lack of truthfulness regarding their separation and father's anger issues in finding that removal was necessary to protect the children. Given the evidence of the parents' unwillingness to separate and their willingness to misrepresent the nature of their relationship and make misleading statements about whether father was living in the home, the record belies mother's claim that the agency should have considered removing father from the home as a *reasonable* means to protect the children from removal from her custody. For all these reasons, we reject mother's challenge to the sufficiency of the evidence supporting the court's dispositional finding that there were no reasonable means to protect the children without removal from parental custody.

DISPOSITION

The disposition order is reversed and the matter is remanded for the limited purpose of assessing the appropriateness of placing the children with grandmother. On remand, the juvenile court shall order the agency to prepare an assessment of grandmother as required by section 361.3. After the assessment is complete, the juvenile court shall conduct a new hearing and exercise its independent judgment on the appropriateness of placement with grandmother. In all other respects, the judgment is affirmed.

HILL, P. J.

WE CONCUR:

LEVY, J.

DETJEN, J.