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

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

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Plaintiff and Respondent,

v.

G.F.,

Defendant and Appellant.

F069620

(Super. Ct. Nos. JD132278,  
JD132279, JD132280)

**OPINION**

APPEAL from a judgment of the Superior Court of Kern County. William D. Palmer, Judge.

Carolyn S. Hurley, under appointment by the Court of Appeal, for Defendant and Appellant.

Theresa A. Goldner, County Counsel, and Thomas G. Morgan, Deputy County Counsel, for Plaintiff and Respondent.

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G.F. (mother) appeals from the juvenile court's finding that three of her children, J.F., Q.F., and Kat.F., came within the jurisdiction of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (c).<sup>1</sup> We conclude there was substantial evidence to support the finding that Q. came within the jurisdiction of the juvenile court because he was a person described pursuant to section 300, subdivision (b)(1). Mother does not challenge the finding that Q. also was a person described by section 300, subdivision (c). We agree with mother, as does the Kern County Department of Human Services (the Department), that there was not substantial evidence that J. and Kat. came within the jurisdiction of the juvenile court because they were children described by section 300, subdivision (c). Accordingly, we will vacate that finding.

## **FACTUAL AND PROCEDURAL SUMMARY**

### ***The First Amended Petition***

In the first amended petition the Department alleged Q. came within the jurisdiction of the juvenile court pursuant to the provisions of section 300, subdivisions (a), (b), and (c). The subdivision (a) allegation stated there was a substantial risk that Q. would suffer serious physical injury because the father (father) had choked Q. and stated he would kill Q. The subdivision (b) allegation stated two grounds for juvenile court jurisdiction. The first ground stated Q. had suffered, or there was a serious risk he would suffer, serious physical harm because of ongoing domestic violence in the household. This ground also stated that the choking incident described above occurred when Q. attempted to protect mother from father. The second ground for jurisdiction alleged under subdivision (b) was that Q. was at a substantial risk of suffering serious physical harm because of father's substance abuse. The petition alleged two grounds for the

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

juvenile court to assume jurisdiction over the child pursuant to subdivision (c). Both grounds stated Q. was suffering, or was at substantial risk of suffering, emotional injury as a result of the ongoing acts of domestic violence in the home, and the second ground added that Q. was fearful of his father.

The first amended petition for J. alleged the child came within the jurisdiction of the juvenile court pursuant to the provisions of section 300, subdivisions (a) and (b). The facts supporting these allegations were the same as in the first amended petition filed on behalf of Q. A separate first amended petition was filed on behalf of Kat., which was essentially identical to the first amended petition filed on behalf of J.

### ***The Detention Social Study***

The detention social study<sup>2</sup> informed the juvenile court the children were placed into protective custody on March 24, 2014, following a referral and investigation that originated on March 13. The investigation began with an interview of father. He denied any domestic violence in the household, but admitted he had had a disagreement with mother recently. Q. was in the room and refused to leave when father told him to do so. Father took away Q.'s electronic tablet and Q. proceeded into his bedroom.

Father admitted he and mother had been arguing because father believed mother was having an extramarital affair, but he denied any history of domestic violence. Father claimed he was disabled because of carbon monoxide poisoning. He was diagnosed with a mental illness and brain damage, for which he was prescribed numerous medications. Father claimed he was in the care of a psychiatrist.

Father initially claimed the children were at school and refused permission for them to be contacted at school. He then admitted J. was at home, at which time J. was interviewed. Father introduced J. to the social worker and then the two spoke privately in

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<sup>2</sup>Separate detention social studies were filed for each child, but were essentially identical.

J.'s bedroom. J. admitted hearing his parents arguing, but he stayed in his bedroom. He stated his father had been accusing his mother of having affairs for a number of years. J. opined his mother had not had an affair, and his father was confused because of advertisements that appeared unsolicited on the computer. J. stated he felt safe in the home and did not have any concerns.

The investigation proceeded to mother's place of work where she was interviewed. Mother admitted father had accused her of having an affair for the last two years because of unsolicited advertisements that appeared in her e-mail account. Mother stated father would follow her around the house when they argued and called her names, like "slut" and "whore," and he did not care if the children heard him.

Mother also explained the latest incident with father. She stated she had been sitting on the couch with Q. when father instigated an argument. Father told Q. to leave the room, but Q. refused. Father took Q.'s electronic tablet and Q. went to his bedroom. Mother followed Q. into the bedroom and was seated beside Q. on Q.'s bed when father came into the bedroom. Father reached over mother and grabbed the front of Q.'s shirt and yelled at Q. Mother stayed between father and Q. to protect Q.

Mother confirmed father is disabled due to carbon monoxide poisoning. Mother stated father "has a broken brain stem and a diagnosis of a mental disability." Father controls the family's only vehicle. Mother is not allowed to use the vehicle by herself. Mother previously had applied for a restraining order due to domestic violence but did not pursue it because father left the home with Q. and stated he would not return if she did not drop the matter. Mother stated she did not want to leave her 21-year marriage. Mother refused any literature about domestic violence from the investigator because the literature would anger father.

When the investigator told mother she should not tell father of the visit, mother explained father already knew because father had called her to warn her that the investigator might come to her workplace. Father told mother not to say anything until

she returned home. Mother also stated father would come to her workplace to check on her. Mother admitted father is very controlling. When the investigator asked for permission to interview the children at school, mother stated father had instructed her to refuse the request. Mother stated she was fearful of father and did not want to have another confrontation.

The investigator returned to the family home and first spoke with father and mother. Father denied choking Q. and reiterated his version of the argument with mother. When Q. was told to leave the living room, father stated Q. “got ‘mouthy with me and I told him that I was going to get my belt out if he didn’t go.”” Father stated he did not use his belt because Q. left the room. Father heard Q. talking about him to mother a short while later, so he entered the bedroom and told Q. to stop. Father and Q. began arguing, with mother between the two of them. Father grabbed Q. by the front of his shirt and then let go and left the bedroom. Father told the investigator that he thought this whole matter was about the electronic tablet. Father denied threatening mother. Father denied using illegal narcotics, although he admitted smoking marijuana a few days previous. Father refused to participate in a drug test voluntarily.

Mother reiterated that she did not see father grab Q. by the neck and that she would protect the children if necessary. She also denied knowing father had smoked marijuana recently.

When Kat. arrived home she was interviewed by the investigator in her bedroom. While the bedroom door was closed, father appeared outside of an open window, apparently in an attempt to monitor the conversation. Kat. confirmed mother and father argue sometimes, and father calls mother inappropriate names. She also confirmed father thinks mother had an affair, but Kat. stated her mother did not do so. Kat. did not express any concerns. When the investigator left the bedroom, she observed father standing in the hallway near the bedroom door.

Q. arrived home from school and was interviewed in the bedroom. The investigator did not observe any marks on Q.'s neck. Q. turned on the television to create noise when the investigator suggested he do so. Q. explained his father monitors everyone's conversations.

In a hushed voice, Q. explained what occurred on the night in question. He was sitting on the couch next to his mother when his father began yelling at mother. He refused to leave the living room because he was afraid his father would hurt her. Father called Q. names, which Q. stated occurs whenever one of the children appears to favor mother. Q. also stated his father often calls his mother "slut" and "whore." Q. described his father as very controlling. Q. was upset with his father that night because his father had made his mother walk to the store to buy food for dinner instead of letting her take the family vehicle.

Mother followed Q. when Q. finally went to his bedroom. Q. was lying on his bed and his mother was sitting next to him talking to him. Father came into the bedroom with his belt and threatened to beat Q. When mother asked father to calm down, father reached over mother and grabbed Q. by the neck and choked him. Q. could not breathe for a few seconds. Father let go after a short time and left the room. Q. stated he did not feel safe in the home, but would feel safe if his father left the home.

Q. stated his father takes everyone's phones and the house phone to prevent the children from calling the police. Q. stated he spoke out because he was tired of how his father treated his mother.

The investigator sought permission to speak with the oldest child, Kay.F., at school because she was staying with a friend.<sup>3</sup> Father refused, stating he would like the investigator to speak to Kay. in the home. Father sent Kay. a text message asking her to

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<sup>3</sup>The dependency action initially included Kay., but she turned 18 during the pendency of the action, and the action was dismissed as to her.

call home. Kay. called a few minutes later. Father made arrangements for Kay. to return to the home after school the following day to speak with the investigator.

The following day the investigator interviewed Kay. Kay. explained she “broke the rule” and told someone what had occurred in the home so a referral would be made. Kay. stated she was tired of her father abusing her mother. Kay. stated her father was on his best behavior because the investigator was present.

Kay. stated she normally stays in the room to protect her mother when her father gets angry. She heard her father yelling on the night in question, but she stayed in her bedroom because she knew Q. was in the room protecting their mother. Father threatened Q. when he refused to leave the room. Father told Q. he was going to sell his electronic tablet to upset Q.

Normally, when mother’s yelling reached a “certain pitch,” Kay. would go into the room and attempt to calm her father. She heard her father state in the past he would have mother arrested or killed if she tried to leave him. Father “bullies and demeans anyone who takes the mother’s side.” Father told Q. he was “a piece of shit and stupid” because Q. bit his fingernails. Father often threatened to take everything away to keep the children under control. According to Kay., her father “has a lot of control issues.” He would take away all of the phones when he was mad so no one could call the police. On one occasion Kay. called the emergency operator when her parents were arguing. When father saw she was on the phone, he took the phone from her and threw it into the street, causing it to break. Mother would always protect the children when father was upset by getting between father and the children.

Kay. was surprised J. did not tell the investigator about the choking incident because J. initially argued with father because he made mother walk to the store to buy food for dinner that night. Kay. stated her father does not let her mother drive the vehicle alone because on one occasion her mother left the home for a few days and stayed at a shelter.

Kay. related another incident where father went to mother's place of work and saw mother helping a customer. When mother smiled at the customer, father instigated a "big fight" later and accused mother of flirting. Father also would come into a room when he heard mother and the children talking and accuse them of conspiring against him. While Kay. has not seen her father smoking marijuana, she has smelled marijuana smoke emanating from the garage.

When the investigator arrived at the home to take the children into custody, father told J. he was being taken into custody "based on what all the children said about his argument with [their] mother." Father told Kay. it was her siblings' and her fault they were being taken into custody. Father made a similar statement to Q. Kay. became very upset and claimed she lied to the investigator, and all she wanted was for her father to leave the home. Mother also was distraught.

After leaving the home, the investigator asked Kat. what had occurred. Kat. stated she had been on the upper bunk bed when her father entered the room with a belt in his hand. Her mother put herself between Q. and father. Father reached over mother and put his hands around Q.'s neck "and acted like he wanted to choke him." Kat. said she was afraid of her father. Q. said he just got tired of seeing his father bully his mother. Q. said that if the investigator had not been there, his father would have been yelling at everyone to remain silent.

The detention social study summarized five previous contacts (Feb. 23, 1999, June 22, 2002, May 29, 2008, July 11, 2008, and Aug. 7, 2013) between the Department (or another similar agency) and the family. None was found to be substantiated. The social study concluded by recommending the children be detained and the parents allowed supervised visits.

### ***The Detention Hearing***

A contested detention hearing was held. Kay. testified she felt safe in the home and wanted to return to her mother and father. She confirmed she heard an argument on

the night in question and heard her father threaten her mother, although she did not feel he would hurt her mother physically. She reported the incident to a school counselor because she thought her parents needed counseling so they could communicate better.

Sixteen-year-old J. testified he also heard the argument on the night in question but did not think it was serious. He did not testify that he heard a threat. He felt safe at home and wanted to return home.

Twelve-year-old Kat. testified she was in her room on the night in question. Q. and her mother were sitting on the bottom bunk of a bunk bed, while she was on the top bunk. Her father was very angry, and he put his hands around Q.'s neck to relieve stress, but he did not touch Q. Q. and his father were fighting because Q. was supporting his mother. Kat. felt safe in her home and was not afraid of her father.

Thirteen-year-old Q. testified outside the presence of his father. On the night in question, his father and mother were having an argument in the kitchen. Q. went to the kitchen to support his mother. Q. eventually returned to his bedroom, but by that time his father was very angry. Q. was lying on his bed, and his mother was sitting on the bed speaking to Q. Father came into the room with a belt. Mother prevented father from hitting Q. with the belt. Father went past mother and choked Q. twice. He held Q. for about five seconds each time. Q. grabbed his father's arm and tried to pull his father's hands away from his neck. Q. and his mother told father to stop choking Q. Q. did not have any trouble breathing. It felt as if father were trying to tighten his grip, but Q. and his mother were able to get father off of Q. before father "was able to do any real damage." Q. was very scared. Father eventually let go and stomped out of the room.

Q. did not feel safe in the home with his father. Q. has wanted his father out of the home since father got out of jail two years ago. On two occasions Q. saw his father smoking marijuana in the bathroom.

Mother testified she and father would fight about infidelity on occasion, but not as often or as long as suggested by the children's testimonies. Mother and father were in the

process of obtaining counseling. She also attempted to minimize the statements attributed to her in the social study.

As to the incident involving Q., mother testified father grabbed Q.'s shirt but did not choke him. She blamed Q. for upsetting father by using profanity towards him. She wanted Q. to return home.

The juvenile court detained the children but authorized an extended home visit for Kat., J., and Kay. Visitation was authorized between the family and Q., with a visit with father subject to Q.'s discretion. The matter was then set for a jurisdictional/dispositional hearing.

### ***The Jurisdictional Social Study***

The social study prepared for the jurisdictional hearing summarized the allegations of the first amended petition, as well as the investigation and prior proceedings. Subsequent contacts with the family also were summarized. A comprehensive summary is not necessary for our purposes. It is sufficient to note neither father nor mother made any substantive effort to ameliorate the conditions that caused the Department's intervention. For example, father refused to move out of the family home so the children could return, and mother ceased all efforts to move out of the home at the first sign of difficulty. Neither parent attempted to enroll in the domestic violence classes recommended by the Department. All of the children recanted their testimonies except for Q. The children also attempted to convince Q. to recant his testimony so they could all return home.

In a subsequent interview, Q. stated his father smoked marijuana twice a day. Father apparently stores the marijuana in the house, but he hides it from the children. Q. described "hot boxing," where father would smoke marijuana in the bathroom with all doors and windows closed, apparently to increase the effect of the marijuana.

In a further interview, father again denied smoking marijuana, but he refused to take a voluntary drug test. J. and Kat. denied any problems in the home and stated they felt safe.

A review of records from Arizona, where the family previously lived, indicated eight referrals to a state agency regarding the family (Nov. 2, 2001, Dec. 4, 2003, Apr. 23, 2008, Apr. 30, 2009, Aug. 24, 2009, Apr. 8, 2010, Jan. 9, 2012, and Nov. 16, 2012). Many of the referrals involved allegations of domestic violence and/or abuse or neglect of the children. All but one were unsubstantiated. The one referral that was substantiated was the result of both parents being incarcerated as a result of the arson of their home. The children were in the home when father started a fire in the garage.

Citing the extensive record of domestic violence, the Department recommended the juvenile court find the allegations of the petition true and find the children came within the jurisdiction of the juvenile court pursuant to section 300, subdivisions (a), (b), and (c).

#### ***The Dispositional Social Study***

The social study prepared for the dispositional hearing summarized the prior court proceedings, as well as the interactions between the family and the Department. The Department recommended Q. remain in foster care and family reunification services be provided to the parents. It was recommended both parents take anger management and domestic violence classes. Random drug testing also was recommended.

#### ***The Jurisdictional/Dispositional Hearing***

The juvenile court held a combined jurisdictional/dispositional hearing, which was contested. Q. testified he had two visits with his family that included his father. Q. noticed a big change in his father, including that he was more kind and respectful. Q. now believed he would be safe at home and asked to be returned to his parents. Q. also somewhat recanted his testimony at the detention hearing. He testified he was not sure if his father was trying to choke him, nor was he sure about what actually occurred,

although he believed his father's hands touched his throat. Q. doubted his father intentionally touched his throat. Q. also denied hearing his father threatening to harm his mother.

Mother testified father currently was working and that this had improved his demeanor dramatically because he could now provide for the family. Also, there had not been any escalated arguments at home since J. and Kat. were returned to mother's care. Mother and father signed up for anger management classes, but the classes had not yet started. Mother also was willing to attend domestic violence counseling.

Father testified that the argument that started this proceeding occurred because he thought mother was cheating on him. Since that time, he has made many "very good changes." Although he has used marijuana in the past, he has stopped doing so. He is now employed, and he had to pass a drug test to get the job. The employer also conducts random drug tests. Father testified that the Department's involvement in his family had improved the family dramatically.

The juvenile court found true the section 300, subdivisions (b)(1) and (c) allegations as they pertained to Q. As to J. and Kat., the juvenile court amended the petition to add allegations pursuant to section 300, subdivision (c) and then found those allegations true. The juvenile court found the section 300, subdivision (a) allegations for each child unsupported by the evidence. It also concluded the subdivision (b)(1) allegations as to J. and Kat. unsupported by the evidence. The juvenile court found it had jurisdiction over the children and then ordered the children returned to the custody of mother and father, and ordered mother and father to participate in family maintenance, including domestic violence classes and counseling. Father also was ordered to test randomly for drugs.

## DISCUSSION

### *Standard of Review*

Mother asserts the juvenile court erred because some of its findings were not supported by substantial evidence. “The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to all appeals. If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary conclusion. [Citations.] The appellant has the burden of showing the finding or order is not supported by substantial evidence.” (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333-1334.)

### *The Section 300, Subdivision (b)(1) Finding*

Mother’s first argument is that there was insufficient evidence to support the juvenile court’s jurisdictional finding that Q. came within the provisions of section 300, subdivision (b)(1). This section provides that a child is within the jurisdiction of the juvenile court if the “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 or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left ....” The petition alleged Q. fell within the provisions of this section because of the ongoing domestic violence in the home, as well as father’s substance abuse. The petition alleged the choking incident described above occurred when Q. attempted to protect mother from father.

Mother argues Q. was not choked, but father merely grabbed the front of Q.’s shirt. She asserts the family is a loving, bonded family most of the time. The children

are well cared for, the home is well taken care of, the family enjoys vacations together, and the parents communicate regularly. According to mother, she and the other children denied any physical abuse occurred.

Mother also attempts to place the blame on the confrontation between Q. and father squarely on Q.'s shoulders. According to mother, Q. antagonized his father, refused to go to his bedroom when instructed to do so, and was yelling at his father. According to mother, Q. and Kay. wanted father to leave the home, thus motivating their reports. Mother also emphasizes father's good behavior when the Department visited the home.

Our task, however, is to review the entire record, not only those portions of the record that support an argument. Q. told the Department and testified at the detention hearing that his father grabbed him by the throat and choked him. Q. said he could not breathe for a few seconds. Father also threatened to beat Q. with a belt. Mother, although present, could not protect Q. from father. Q. testified he was afraid of his father. Moreover, while father was on his best behavior when the Department visited, the children's statements to the Department painted a much different picture. These statements strongly suggested father was a controlling and verbally abusive parent.

In addition, neither mother nor father provided any indication of attempting to resolve these issues. The Department suggested they take appropriate classes to deal with the anger and domestic violence issues. By the time of the dispositional hearing, the two had not yet taken a single class, claiming they finally had signed up for a class that had not yet started. Father refused to submit to random drug tests. In other words, mother's and father's behaviors strongly indicated they did not believe there was anything wrong in their relationship, which the initial reports from the children suggested was incorrect.

We agree with mother that the facts do not support a finding that Q. suffered serious physical harm. Q. did not report any physical conduct by his father other than the choking incident, and that single incident would not be sufficient to establish serious

physical harm. The issue, however, is whether these facts provided substantial evidence that Q. was at a *substantial risk* of suffering serious physical harm because of his mother's inability to protect him from father's angry outbursts. The cases cited by mother discussing what type of injury constitutes substantial physical harm are therefore inapposite.

We conclude the evidence was sufficient to uphold the section 300, subdivision (b)(1) finding based on a substantial risk that Q. would suffer serious physical harm. Father's anger and control issues are well documented. His inability to control his anger, his unwillingness to acknowledge a problem, and his refusal to accept any assistance with that problem created a substantial risk that he would not only repeat his behavior, but also that his violent conduct would escalate. Mother's inability to protect Q. in this incident results in a substantial risk that when father becomes more violent, she will not be able to protect Q., who would then suffer serious physical harm.

***The Section 300, Subdivision (c) Finding***

Mother also argues there was insufficient evidence to support the juvenile court's conclusion that J. and Kat. were children described by section 300, subdivision (c). This section permits the juvenile court to determine a child comes within the jurisdiction of the court if the "child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent ...." Mother asserts there was no evidence that either J. or K. were suffering serious emotional damage, or were at risk of suffering serious emotional damage as defined in the statute.

The Department concedes there was not sufficient evidence to support this finding. We accept the Department's concession and will order the finding stricken. We understand the juvenile court's concern for these children as a result of living in a home with father and mother, but there was no evidence the children suffered serious emotional

damage or were at substantial risk of suffering serious emotional damage. Neither child reported any emotional issues to the Department, nor did either testify to such problems. Under these circumstances, we agree substantial evidence did not support the finding.<sup>4</sup>

**DISPOSITION**

The juvenile court’s finding that it had jurisdiction over Q. because he was a child described by section 300, subdivision (b)(1) is affirmed. The juvenile court’s findings that it had jurisdiction over J. and Kat. because they were children described by section 300, subdivision (c) are vacated. The disposition orders are vacated to the extent they pertain to J. and Kat., but are affirmed in all other respects.

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CORNELL, Acting P.J.

WE CONCUR:

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GOMES, J.

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SMITH, J.

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<sup>4</sup>Our conclusion renders moot mother’s constitutional arguments presented in her supplemental brief.