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

In re K.C, a Person Coming Under the
Juvenile Court Law.

H037296
(Santa Cruz County
Super. Ct. No. DP002363)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

J.P.,

Defendant and Appellant.

In this dependency proceeding, the juvenile court initially placed four-year old K.C. with her father, J.P. (Father). Less than two weeks later Father delivered K.C. to the home of his mother. The court subsequently granted a supplemental petition under Welfare and Institutions Code section 387 (§ 387), and ordered K.C. placed out of Father's home. On appeal Father contends that the petition was not supported by the evidence before the court and that the home-removal order cannot survive appellate scrutiny. We find one of the petition's six enumerated grounds to be unfounded in part and immaterial in part, but find the remaining allegations amply supported and more than sufficient to sustain the challenged orders. Accordingly, we will affirm.

BACKGROUND

This is the second of three related appeals, and one of two we decide today.¹ The origins of this matter are described in detail in our previous decision, *In re K.C.* (Jun. 5, 2012, H036896) [nonpub. opn.] (*K.C. I*). To summarize, Father had two children, K.C. and her brother Z.J., as to whom he informally shared custody with their mother, T.C. (Mother). The Santa Cruz Human Services Department (Department) initiated dependency proceedings after Z.J. suffered severe brain injuries that doctors considered non-accidental. The Department eventually concluded that the injuries had been sustained while Z.J. was in the home of Mother. On April 7, 2011, the juvenile court sustained original petitions as to both children under Welfare and Institutions Code section 300. It placed Z.J. with the children's paternal grandmother, J.W. (Grandmother), while placing K.C. with Father under the supervision of the Department. We ultimately affirmed these orders, with modifications, in *K.C. I, supra*, H036896.

Meanwhile, on April 29, 2011, the Department filed the supplemental petition giving rise to the present appeal. It alleged that the previous disposition had not been effective in securing K.C.'s protection. (See § 387.) Grounds for the petition were set forth in six numbered paragraphs alleging in substance as follows:

“(s-1)” On April 20, after having “abruptly left his residence and quit his job,” Father left K.C. in his Grandmother's care. He “did not provide food and clothing for the child and does not have a plan for her future care.”

“(s-2)” Father had been “transporting [K.C.] . . . on his bicycle,” although she had no seat of her own. He “stated that this is not dangerous as he only rides slowly on his bike.”

“(s-3)” Father was homeless and, on April 24, had spent the night at Grandmother's home. Father was “not authorized to be in the paternal grandmother's residence” because the court had placed Z.J. there and Father was

¹ The other is *In re K. C.*, H037940 (*K.C. III.*)

only authorized to have three supervised visits per week with him. Grandmother had “stated that she is afraid of the father due to his undiagnosed mental illness.”

“(s-4)” On April 25, Z.J. bit Father and Father “responded by placing his own finger on [Z.J.’s] lips and pushing down on [Z.J.’s] teeth.” Z.J. “is a medically fragile child,” and Father’s “ability to understand [Z.J.’s] impairments, abilities, and developmental level is uncertain.” Father’s “ability to provide both of his children with appropriate and safe care is questionable and they therefore remain at risk while under his care.”

“(s-5)” Father was a “flight risk” because he had “repeatedly stated to relatives and professionals that he wants to leave the state of California to find work and plans to take [K.C.] with him.”

“(s-6)” On April 7, Father “became enraged with his mother as they were leaving court. When [he] exited the car he threw his cell phone at the car. Later, he berated his mother for an extended period of time. [His] anger issues place the child at risk of abuse or neglect in his care.”

After a contested detention hearing on May 2, 2011, the court ordered K.C. placed with the Department pending further order. The Department placed her in the home of Grandmother.

On June 29, 2011, the court conducted a hearing on the merits of the petition. At its conclusion, the court found the allegations of the petition true. The court ordered out-of-home placement and family maintenance services. The court ordered supervised visitation as to both parents.

On August 25, 2011, Father filed a notice of appeal from the orders of June 29, 2011.

DISCUSSION

I. *GENERAL PRINCIPLES*

Father argues that (1) the evidence was insufficient to establish grounds for the relief sought in the supplemental petition, and (2) the evidence was insufficient to warrant the disposition adopted by the court, i.e., the removal of K.C. from Father’s custody.

A supplemental petition under section 387 generally seeks to “modify a

dispositional order by establishing the need for a ‘more restrictive level’ of custody.” (*In re Jonique W.* (1994) 26 Cal.App.4th 685, 690, quoting former Cal. Rules of Court, rule 1430(c); see now Cal. Rules of Court, rule 5.560(c).) “In proceedings on a supplemental petition, a bifurcated hearing is required. [Citations.] In the first phase . . . , the court must follow the procedures relating to a jurisdictional hearing on a section 300 petition [Citation.] At the conclusion of this so-called ‘jurisdictional phase’ of the section 387 hearing [citation], the juvenile court is required to make findings whether: (1) the factual allegations of the supplemental petition are or are not true; and (2) the allegation that the previous disposition has not been effective in protecting the child is, or is not, true. [Citation.] If both allegations are found to be true, a separate ‘dispositional’ hearing must be conducted under the procedures applicable to the original disposition hearing” (*Id.* at p. 691.)

“The ultimate ‘jurisdictional fact’ necessary to modify a previous placement with a parent or relative is that the previous disposition has not been effective in the protection of the minor. [Citations.] The department must prove the jurisdictional facts by a preponderance of legally admissible evidence. [Citations.]” (*In re Jonique W., supra*, 26 Cal.App.4th at p. 691; see *id.* at pp. 697-698.) Where the jurisdictional facts are established, the court must address the further question of appropriate disposition. Where the petition seeks to remove the child from the home of a previously custodial parent, the petitioner must satisfy the heightened standard governing home removal under an original petition. As potentially applicable under the present circumstances, this requires the petitioning agency to “show by ‘clear and convincing evidence [that] . . . [t]here is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor’ if left in parental custody ‘and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from [parental] physical custody.’ ” (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th

1067, 1077, quoting Welf. & Inst. Code, § 361, subd. (c)(1); see *In re Paul E.* (1995) 39 Cal.App.4th 996, 1000-1003.)

Appellate review of both phases of the proceeding is governed by the substantial evidence test. (See *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170; *In re Amos L.* (1981) 124 Cal.App.3d 1031, 1038.)

II. *INEFFECTIVENESS OF PRIOR DISPOSITION*

A. Leaving K.C. with Grandmother

Father contends that the evidence was insufficient to establish that the previous disposition had not been effective in the protection of K.C. He separately challenges each of the distinct allegations in the petition, beginning with the allegation that shortly after K.C. was placed with him, he took her to live with his mother. He can hardly contest the central fact that he took her to his mother's home; he himself testified that he did so on April 20, 2011, a mere 13 days after she was placed in his care. He takes issue instead with the accompanying allegations that in leaving K.C. with Grandmother he failed to provide for her and lacked a plan for her future care. It indeed appears that the allegation was not borne out insofar as it asserted that he "did not provide . . . clothing for the child." The social worker testified at the detention hearing that she lacked any knowledge of what clothing Father might have left with Grandmother for K.C. The worker later reported that, according to Grandmother, Father had " 'provided her clothes and toys when he brought her to stay with me.' " This evidence stood uncontradicted. Accordingly this allegation could not be sustained.

With respect to food, however, the trial court could reasonably find the allegations substantially true. At the first (detention) hearing Father testified only that he gave his mother "all the food that I had." When asked at the second (adjudication/disposition) hearing what if anything he had delivered to Grandmother, he replied, "I did bring some stuff. And it's a good thing that *I brought very little* because there was no room for much

because that house is totally stocked. I have two different storage units, one in Scotts Valley and one in Watsonville that are totally stocked. And [his current host's] house is totally stocked. And *my van is totally stocked* with supplies and need of any sort, emergency or not.” (Italics added.) Assuming these “stock[s]” and “supplies” included food, the trial court was entitled to find several internal contradictions in Father’s testimony on this point and to conclude, contrary to his contention on appeal, that apart from clothing and toys he did not in fact provide any material support for K.C. when he left her with his mother.²

In any event, the degree of material support provided by Father seems secondary to the question whether he had any plan for K.C.’s longer term care, or indeed any intention to accept primary responsibility for it. He asserts on appeal that when he left K.C. with his mother, he “intended [her] stay . . . to be temporary and short-lived.” But this is more than he was prepared to unequivocally testify below. He did make the strikingly noncommittal statement that when he initially left K.C. with his mother, he “would say” his intention was for her to stay “through the weekend.” However he went on to say that by Monday he and his mother had “agreed to keep her there longer.” He manifestly lacked any definite idea of how long she might stay. To the extent his testimony touched on this point, it supported an inference that the stay was to last indefinitely. At the first hearing he testified that he and his mother “decided that it would be good for [the two children] and more stable feeling to have them together at her house,

² The brief also asserts that Father testified he would “continue his practice of bringing food whenever he went to [Grandmother’s] house.” This construes the cited testimony too generously to Father. He was asked what his intention would be about any money he might receive for K.C.’s support during any time she was staying with Grandmother while under his care. His reply was, “I would do the same thing I have done already. I *offer* every time I go over to stop at the store and *pick anything up*. And it’s always, you know—*last time I went I brought some food* anyway just to make sure that everything was okay, you know.” (Italics added.)

and I would do everything I could from where I was at.” He added, “I wanted to offer my daughter a sense of stability and a sense of—I didn’t want her to be estranged from her brother in any way.” Asked at the second hearing why he had taken her to his mother’s, he replied, “Because it’s a constant for her. It’s something that—it’s a place where she was before and something that’s rooted. It’s a place where she feels comfortable. It’s where she had been in the recent past. She had already been in the routine of being there, and as part of our goal as a team to keep that routine in practice.”

These rationales were not consistent with an intention to take K.C. back into his own care at any time in the immediate future. Indeed the trial court could quite reasonably infer that had the Department not filed the 387 petition, K.C. would still be residing with Grandmother while ostensibly in Father’s care. When asked in effect what had changed his mind about leaving her in his mother’s care—i.e., what had led him to oppose the petition—he alluded to a belief that he had been “grossly slandered.” This of course had nothing to do with the wellbeing of K.C. or with his now-professed willingness to assume and fulfill a parental role towards her.

These considerations furnished substantial evidence in support of the allegation that when he left K.C. with Grandmother, Father did “not have a plan for her future care.” Nor was the court required to find a “plan for her future care” in the mere fact that he had secured a new living arrangement. As Father’s own brief describes it, this situation “was no different than [the situation] when he was working for rent up until April 20,” i.e., “He was living rent free in the home of a longtime, elderly family friend, in exchange for some assistance to her.” The parallels to the previous situation are indeed striking, but hardly establish that the later arrangement furnished a plan, or more pertinently a reliable and stable residence, for K.C.’s future placement. At the time of the April 7 order Father was living on a Watsonville farm owned by a woman who described herself as his “landlady.” Father described her to the court as a person who would be available to help

in the care of Z.J., should he be placed with Father, and who by implication was also available to support him in caring for K.C. But as he conceded below, this arrangement abruptly collapsed less than two weeks after K.C.'s placement with him. Questioned about this by the court, Father testified that he had been providing work in lieu of rent, but "quit [his] job" because he had been "putting in way more [time] than I was getting paid for." He told his landlady that he "could only work for what I got paid for and what we initially agreed upon," but the terms "kept changing due to the convenience of whatever [she] wanted." As Father described it, his prior arrangement was to work 20 hours a week in lieu of rent. He testified that given the amount he was actually working, his effective pay rate was about \$4.25 an hour.

The trial court explicitly questioned the credibility of this testimony, which under its "conservative" estimate of rental value would mean that Father was working 60 hours a week—something he had never claimed. The court thus questioned whether he had shown that "the exploitation was such that it would warrant upsetting the stability that I saw that you finally had." Given the implausibility of his stated motivation, as found by the trial court, the court was entitled to find that his new, strikingly similar arrangement was no more stable than its predecessor had proven to be. Father denied that he had "any kind of work arrangement" with his new landlord/host, and said that although he had been working in her yard, "it doesn't appear to be a necessity to stay there." Asked if "technically you're a house guest," he replied, "I guess so, yeah. I guess you could put it that way." Yet his new landlady/host seemed to view it somewhat differently. Asked if she charged him rent, she testified, "*He's been such a big help to me* because I can no longer garden, and there's things that I do appreciate him doing for me *that I have not been charging him rent.*" (Italics added.) This suggests, of course, that once she stopped perceiving him as a "big help"—as could easily occur if he concluded that he was working more than he was "getting paid for"—she might indeed charge rent, or ask him

to leave, provided he did not leave on his own. Asked if there was a limit in how long he could stay, his new host replied, “The rest of my life, I guess.” But when asked what she would do if Father’s presence weren’t working for her anymore, she replied, “Well . . . it’s my home.” She offered no assurance that she would not ask him to leave, other than to say, “I very seldom ask anyone to leave. If they leave they leave on their own accord. I love people. And they know that I do and they generally love me too.”

The court was not obliged to find that residing at the sufferance of yet another well-intentioned benefactor constituted a “plan” for K.C.’s future care.

B. Carrying K.C. on Bicycle

Also off the mark is Father’s challenge to the allegation concerning the practice of riding with K.C. on his bicycle without a child helmet or her own seat. Characterizing the evidence most favorably to himself, Father asserts that he only did this “on one occasion” for “a half-block”; that he “wrapped [K.C.]’s head with a shirt so the helmet would fit snugly,” that they “coasted on the bike no faster than they could walk,” and that K.C. “had her own bike helmet.” But on at least some of these points the evidence supported inferences to contrary effect. With respect to frequency, Father testified that he had taken K.C. on his bicycle “ever since she was able to walk,” i.e., since she was around two. The evidence also supported inferences that he had more recently taken her on his bicycle at least four specific times—one admitted by him, for half a block to a bus stop, one for four blocks from a specified location to the house of a specified person, one for an unknown distance from that person’s house to another destination, and one for four blocks from a park to Grandmother’s house.

In any event it is not the number of bike rides that matters, but Father’s apparent inability or unwillingness to recognize or acknowledge the risk to which this practice exposed his daughter. And this in turn pointed to a tendency, which the court could find he repeatedly exhibited, to disregard or deny the children’s vulnerability to injury. This

tendency was more evident in the case of Z.J. than that of K.C. It appeared most strikingly here in Father's testimony about setting up a wading or swimming pool to provide "hydrotherapy" for Z.J. The court questioned Father about the prudence of having a pool on the premises, particularly given the quickness with which Z.J. had, on at least one occasion, escaped from adult supervision during a visit. Father testified that he intended to drain the pool when it was not in use, but his commitment to this precaution was cast in some doubt by the following question and answer: "THE COURT: And would it be realistic to expect that a pool would draw his attention? [¶] [FATHER]: No."

If this answer stood alone it might be dismissed as the ill-considered product of impatience or irritation. But the same tendency seemed to be at work in Father's defense of carrying K.C. on his bicycle. Grandmother reported that when she expressed disapproval of this practice, Father told her that " 'it was alright because he rides the bike slow.' " Of course the velocity of the bicycle is only one factor in the risk posed by such a practice. The other and perhaps more significant factor is the distance to the ground coupled with the chance that the child would land on her head if she fell. With one brain-injured child already, Father might be expected to exhibit particular sensitivity to the risk of the other child sustaining such an injury. Instead, when questioned about it at the jurisdictional hearing, he defended the practice on the ground that he had adapted his own adult helmet to make it safer than a child's helmet: "I created a thing called a head gasket, which my helmet is far superior to any helmet on the market. Especially for a child as far as fit and adjustability to certain sizes. So I created this thing called the head gasket, and it absorbs the space in between the sides of her head and the actual size of the helmet and it slightly adheres to the inside of the helmet so there's no movement. And she had the head gasket on and the helmet, and it fit well although it was my helmet."

The court noted that this description reflected an embellishment—which could

itself be viewed as troubling—on Father’s original testimony that he had taken an extra shirt of K.C.’s and “wrapped her head with [it] like a turban so the helmet would fit snug.” The trial court observed that by any name it was “not safe,” and that Father’s inability to “see that” pointed to a problem that needed to be solved before K.C. could safely be returned to Father’s care. As counsel for the Department argued below—and the trial court could quite reasonably conclude—it was Father’s “reasoning,” not the riding of the bicycle per se, “that give[s] cause for concern.” Whether or not he continued to carry K.C. on his bicycle, she was put at risk by his recurring tendency to disregard or minimize the hazards to which his children were or might be exposed by his own conduct or that of other persons. In this light it scarcely mattered whether he engaged in this particular practice once or a dozen times. It was his defense of the practice, on highly questionable grounds, that tended to demonstrate the failure of the placement with him to protect her.

The court was entitled to find this problem compounded by Father’s seeming imperviousness to guidance with respect to parenting techniques. This may have risen in part from a suspiciousness that a parents’ center therapist described as sometimes rising to the level of “paranoia.” Numerous examples appear in the record. The same therapist reported that Father frequently spoke “of ‘competing with everybody’ for control over his children ‘by those who want to impose power’.” When reflecting on dealing with the court, he spoke seriously of an evil force and used his fingers along side of his head to indicate horns. He was very clear that each of the three different Parent Center family counselors who supervised visits with his daughter had ‘put words In my daughter’s mouth’.^[3] He also suspended his visits with his daughter at the Parents Center because,

³ The court could find that this was Father’s usual interpretation of any attempt by a child welfare worker to draw his attention to the child’s emotional state, to which he often seemed insensible.

‘a stranger picks her up and transports her . . . I don’t know them and I don’t trust them’ (those same counselors).”

Father also told the social worker that he distrusted a friend of his mother’s to supervise visits, apparently meaning visits between the children and their mother. When asked why, he cited a supposed refusal to tell him the location of the visits. The social worker told him that he indeed had the ability to learn at what park the visit was occurring, to which he replied, “ ‘If I did that, I would have to show up at the park to make sure they are really there. I can’t do that because, I don’t know, maybe they are trying to set me up. I can’t risk that they might be trying to set me up. It has happened before.”

He repeatedly expressed his mistrust of the Parents Center personnel who supervised his visits with the children. Thus he complained that when counselors “told [him] how to parent in front of [his] daughter,” it “criminalized” him and caused him to “lose ground.” This in turn appeared to coincide with his tendency to minimize the family’s, and his own, issues. Thus he had expressed the view that the parenting classes he had taken showed that he “ ‘was already doing everything right.’ ”

The social worker reported that Father had “repeatedly stated his strong mistrust of the Department” itself. This was reflected in his own testimony that he had “[m]inimal” communications with the Department in an effort to “prevent any further miscommunication,” which he found reflected in “a constant flow of false allegations” against him.

The record suggests that beyond Father’s mistrust he had some additional difficulty in absorbing or retaining information. The social worker reported that she and her supervisor had “multiple conversation with [Father] that were of concern, in part [Father] does not seem to track conversations, i.e. from one phone call to the next, he does not appear remember what was discussed.” On some occasions he had “refused to

Speak with both the undersigned and social work supervisor, and then calls back and begins the conversation as if the previous call did not take place.” She described in detail six occurrences reflecting difficulty by Father in communicating or retaining information. At least one of them seemed to show a striking level of confusion: Shortly after K.C. was taken into custody, Father called Grandmother and asked if he should pick up K.C. the next day after school. According to Grandmother’s report as recapitulated by the social worker, Grandmother relied, “ ‘What are you talking about J[.]? You can’t pick up [K.C.]. Didn’t [the social worker] call you?’ [Father] replied, ‘Yeah, she told me we have court on Friday but that’s all.’ [Grandmother] replied, ‘No J[.], court is on Monday.’ [Father] told [Grandmother] that he had to get off the phone and hung up.” Elsewhere the social worker noted Father’s apparent inability to absorb, or at least accept, her repeated statements that he could not take K.C. out of state with him to look for work elsewhere. (See pt. II(E), *post.*) And Grandmother reported that immediately after losing his temper in the mobile phone incident (see pt. II(F), *post.*), Father “ ‘went silent and acted as if nothing had happened. Later on when something was said about what happened he said he knew we had a disagreement but did not know why or what it was about.’ ”

In addition to these handicaps the court was entitled to find that Father had exhibited a troubling lack of empathy toward his children, i.e., a seeming indifference to their emotional needs and a deafness to their attempts to communicate them. The parents’ center therapist had observed a visit which caused her “concern that [Father] may lack the empathy necessary to meet the emotional needs of his children.” She described an interaction in which he paid no attention to K.C.’s expressed wish to give him a birthday present she had made, and “did [not] appear to notice her disappointment.” Perhaps most disturbingly, as described in greater detail below, Father refused to visit his children at all for a period of some five weeks between the detention

hearing and the jurisdictional hearing.

The trial court was entitled to conclude that the record provided no coherent explanation for Father's refusal to visit other than his anger, resentment, and mistrust toward Parent Center personnel. Even if it be supposed that these feelings had some justification—which the record fails entirely to substantiate—the court could quite reasonably conclude that they furnished no basis for refusing to visit the children and that insofar as Father cited a need to rein himself in emotionally, that need itself did not bode well for their best interests.

C. Homelessness and Overnight Stay

We do find some merit in Father's challenge to paragraph s-3 of the petition, which alleged that (1) he was homeless, and (2) he stayed overnight in Grandmother's home, in violation of the order then in effect limiting him to three supervised visits with Z.J. per week, and (3) Grandmother had said she was "afraid of the father due to his undiagnosed mental illness." As the Department acknowledged at one point, homelessness and indigence alone are not grounds for juvenile court intervention. (*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1212.) Further, however tenuous Father's living situation might have been, there was no evidence that he was homeless, either when the petition was filed or at the time of the hearings on it. The fact that he stayed overnight at his mother's house, if a technical violation of extant visitation orders, hardly furnished grounds for finding a failure of the prior disposition, particularly since there is no indication that either he or his mother then appreciated that those orders posed any impediment to his staying there. Grandmother's stated fears about his mental health were not competent evidence of any material fact.

However there is no reason to believe that the trial court placed any reliance on this paragraph in reaching any of its conclusions. We are confident that it had no effect on the outcome. Accordingly, while we will direct that the true finding be stricken as to

this paragraph, we do not find in it a basis for reversing the orders from which the appeal is taken.

D. Lip-Biting Incident

Father contends that the lip-biting incident alleged in paragraph s-4 did not support a change in placement because it involved only Z.J. and not K.C. But again the relevance of the incident was to show a lack of parental judgment and a failure or inability to appreciate the harm to which his conduct exposed his children. In this instance the threatened harm may have been chiefly emotional and behavioral. Thus Grandmother reported that after the incident, Z.J. “became very upset” and “ ‘was crying.’ ” Thereafter he became “much more aggressive, biting others more often.” A therapy appointment was cancelled “because of his aggressive behavior.” Yet even at the hearings below Father saw no harm in his conduct, and indeed seem to view it as an instance of successful discipline.⁴ When his mother expressed disapproval, he replied, “ ‘no one is going to tell me how to raise my kids.’ ”

According to Father, this incident served only to cast doubt on his “ability to understand the needs of [Z.J.] as a medically fragile child.” But the trial court could quite reasonably take it as further evidence of Father’s insensitivity to his children’s emotional states and his resistance to external guidance.

⁴ He testified, “I think he got the point, because . . . the next couple times he would catch himself and be like, oh, I don’t want to bite.” Asked whether he thought there might be “better ways to handle behavior of a two-year-old,” he referred to “all the . . . different ways” others had tried, concluding, “I think that was—that one had the best effect, and he did it to himself.” After acknowledging that he had not taken any courses in “deal[ing] with two-year-olds with [Z.J.]’s particular limitations,” he still declined to entertain the idea that “maybe you may have to deal with his behaviors in a way that’s a little different.” Instead he testified, “Well, I haven’t had to deal with him biting me anymore, because he has not attempted to. So I think I got it through to him in that instance.”

E. “Flight Risk”

Father contends that he was not a “flight risk,” as alleged in paragraph s-5, and that in claiming otherwise the social worker “either misconstrued Father’s statements or stretched the facts.” This criticism is misdirected, however, for the question is not the soundness of the social worker’s assertions but the sufficiency of the evidence to sustain the *trial court’s* findings. As described by the social worker, the concern about Father’s leaving the state arose from the fact that after being told that he definitely could not take K.C. out of the state, he continued to allude to that possibility as a solution to his current difficulties. Assuming he had no present fixed intention to leave the state, there was no assurance that he would not abruptly form and act upon such an intention, as he had abruptly abandoned the live-work situation on which the previous dispositional order was based. The court could view his continued allusion to this option, after being told it was *not* an option, as evidence that the possibility remained alive in his mind. The risk established by that evidence cannot be dispelled simply by characterizing his remarks as “hypothetical.” If taking K.C. out of state was a hypothesis, he seemed unable to absorb or accept the fact that it had been ruled out.

F. Mobile Phone Incident; Anger Issues

Nor has Father articulated a sustainable challenge to the court’s true finding as to paragraph s-6, concerning the incident in which he lost his temper and threw his mobile phone at his mother’s car. Father concedes that the facts described in the petition are true, but asserts, “[t]his isolated incident, which did not occur in front of the children, does not show that the previous disposition had not been effective in protecting [K.C].” However this approach disregards the paragraph’s concluding sentence, which asserts, “The father’s anger issues place the child at risk of abuse or neglect in his care.”

That father had “anger issues” is amply established by the record. The social worker reported that after she received a voicemail from Father about K.C.’s visitation

with Mother, she “called back and spoke with [Father,] stating, ‘You are the custodial parent and I want to assist you with setting up visitations. Can you tell me what your understanding is of the visitation schedule?’ [Father] responded in a loud voice, ‘If you could stop talking for a minute.’ ” She also described a pattern in which he “refused to speak with . . . the undersigned and [her] . . . supervisor, and then calls back and begins the conversation as if the previous call did not take place.” On one occasion he spoke with the supervisor about his distrust of the social worker and her predecessor, whom he described as “working against him and . . . ‘insincere.’ ” When the supervisor “attempted to re-direct” him, Father became “more frustrated and agitated.” Although he was encouraged to file a grievance, he never did so, eventually telling the supervisor that he considered it pointless because “ ‘your office is just a circle of lies.’ ” On that occasion Father had called the supervisor for an explanation of the Department’s refusal to approve a friend of his to supervise his visits with K.C. According to the supervisor’s log entry, “I responded by asking [Father] if he remembered the recent conversations he has had with me—in which I let him know that his initial visits needed to be supervised at the Parents Center. [Father] seemed offended by my choice of words. He responded in an angry tone, ‘Well don’t you remember that I’ve already completed a series of visits at the Parents Center—and they lie!?’ ”

It is true that there was no direct evidence of Father directing his anger at K.C., but the court was entitled to consider the possibility that the incident in which he caused Z.J. to bite his own lip included an element of anger. Moreover there was considerable evidence that Father’s hostility to child welfare workers interfered with his ability to act in the children’s best interests. The court was entitled to find that he came into opposition with the Parents Center because he resented the very idea that anyone should give him direction with respect to parenting, or that anyone other than him should—at least in his presence—give direction to his children.

These feelings led Father to refuse to visit his children at all for a period of some five weeks. He testified that his doing so was in their best interest because he “felt falsely accused” and “didn’t want that coming off into my relationship with” the children. He also said that he “had to check [him]self.” Asked if this meant he was “mad at the department,” he did not deny it, but said, “I had to take a step back and make sure that the route that I’m taking is correct and I had to figure out a way to try to protect my children further.” Asked how Z.J. was protected by his not visiting him, he said, “Because I need to be in a certain mindset when I’m around my son that portrays life and prosperity. And if he sees me in a certain light, I don’t want him to have a negative reaction from that” He then suggested that he needed the time to “study up,” apparently to better understand Z.J.’s needs. After testifying that he made “[d]aily phone calls” to Z.J., he was asked whether he believed that this provided “the care and support that he needs.” This ultimately led him to acknowledge that “part of the reason” he did not visit was that the circumstances of the offered visitation had not been “acceptable to [him].” The cross-examination continued in this vein, but need not be further described. The trial court was entitled to conclude that Father had no reasonable explanation for his refusal other than his anger and resentment at Parent Center personnel over their involvement in the visits, which he perceived as demeaning him.

Similarly he acknowledged having engaged in “[m]inimal” communication with the Department in order to “prevent any further miscommunication.” Asked why he felt there had been miscommunication, he replied, “Because there’s been a constant flow of false allegations.” But it is difficult to picture a scenario in which refusing to communicate with the Department could help to redress the “false allegations” supposedly lodged against him. All it seemed to accomplish was removing him that much further from the process of caring for his children.

In sum, substantial evidence amply supported the allegations of the petition, all of which—with the possible exception of paragraph s-3, involving Father’s overnight stay at his mother’s—supported the ultimate finding that K.C.’s placement with him had failed to adequately protect her.

III. HOME-REMOVAL ORDER

Father contends that even if the evidence before the court was sufficient to sustain the allegations of the petition, it was not sufficient to establish that remaining in his custody posed a threat to K.C.’s physical safety, and therefore cannot sustain the order removing her from his care. The argument is based on Welfare and Institutions Code section 361, subdivision (c) (§ 361(c)), which states that a dependent child “may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated” unless one of six enumerated circumstances is found by clear and convincing evidence. The most apposite of the enumerated grounds appears in section 361(c), subdivision (1), which permits a home-removal order when “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.” (§ 361(c)(1).)

Citing *In re Isayah C.* (2004) 118 Cal.App.4th 684, 698, Father insists that the evidence must show that returning K.C. to his custody would pose a *physical* threat to her. To the extent the cited decision so holds, however, it has since been repudiated by the court that rendered it. (*In re H.E.* (2008) 169 Cal.App.4th 710, 719-723.) In any event, given the matters discussed in the preceding part the trial court could reasonably find that Father’s unrealistic ideas about the hazards faced by his children and his resistance to change on that point posed a threat of physical harm.

Father also contends that the evidence failed to satisfy the requirement that there be “no reasonable means by which the minor’s physical health can be protected without removing the minor from the parents’ . . . physical custody.” (§361, subd.(c)(1).) He contends that the court below “did not consider less drastic alternatives which could be successfully implemented to sufficiently protect [K.C.]’s well-being. [Citation.] The juvenile court could have allowed [K.C.] to remain with Father under a family maintenance plan with continued Department supervision. [Citation.] The Department could put into place more intense services to support [K.C.]” But the “plan” adopted in the original dispositional order already called for family maintenance services. The abstract possibility that “more intense services” might have eliminated some of the dangers was not a reason to place K.C. back in his care while those dangers still existed. Indeed his recurring inability or refusal to cooperate with social workers and child visitation supervisors suggested that “more intense” services would not likely be any more successful than those already attempted, at least in the absence of a change of heart or mind on his part, or some other development that suggested a new avenue of addressing the family’s problems.⁵

Father emphasizes the heightened standard of proof by which facts justifying a home-removal order must be established. But that standard is primarily for the guidance of the trial court. (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750.) The question on appeal is whether, “[v]iewing the evidence in the light most favorable to the finding, and presuming in its support the existence of every fact the trier could reasonably deduce, . . . any rational trier of fact could have made the finding by the requisite standard.” (*In re*

⁵ In *K.C. III*, also filed today, we hold that the Department failed to provide reasonable services when it failed to arrange for Father to be evaluated for possible treatment with psychotropic drugs after a psychological evaluation had recommended that such treatment be considered.

H.E., supra, 169 Cal.App.4th at p. 724.) Here there was ample evidence, as discussed in the previous part, that Father was unable or unwilling to recognize at least some of the circumstances in which his children needed protection. This in turn supported a finding that returning K.C. to Father’s care would pose a “substantial danger to [her] physical health, safety, protection, or physical or emotional well-being.” (§ 361(c)(1).)

DISPOSITION

The true finding as to paragraph s-3 of the petition is stricken. In all other respects the orders appealed from are affirmed.

RUSHING P.J.

WE CONCUR:

PREMO, J.

ELIA, J.