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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re I.G., a Person Coming Under the
Juvenile Court Law.

H042726
(Santa Clara County
Super. Ct. No. 1-12-JD-21580)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

C.G.,

Defendant and Appellant.

I.G. was adjudged a dependent child of the court in early 2013, not long after she was born. (See Welf. & Inst. Code, §§ 300, 360, subd. (d).)¹ I.G. was originally placed in the custody of her mother, C.G. (mother), under the supervision of the Department of Family and Children's Services (Department). I.G. was subsequently removed from mother's custody. She was later returned to mother's custody with family maintenance services.

On August 14, 2015, while I.G. was back in her mother's custody, the juvenile court held a contested status review hearing (§ 364). The court found that continued supervision was necessary because conditions that justified initial assumption of jurisdiction under section 300 still existed or were likely to exist if supervision was

¹ All further statutory references are to Welfare and Institutions Code unless otherwise stated.

withdrawn. (§ 364, subd. (c) hereafter (§ 364(c)).) The court ordered I.G. to continue as a dependent child of the court, and it ordered her to continue in mother's care, custody, and control under the Department's supervision.

Mother appeals from the August 14, 2015 orders. (§ 395, subd. (a)(1).) Mother asserts that the juvenile court erred when it failed to terminate its jurisdiction because there was not substantial evidence to support the court's finding. In addition, mother contends that the trial court abused its discretion by shifting the burden of proof to her.

We affirm the August 14, 2015 orders.

I.

Procedural History

When I.G. was only about a month old, a juvenile dependency petition was filed on her behalf pursuant to section 300, subdivision (b) (failure to protect).

At the initial hearing on the petition, the juvenile court found that M.H. (father) was the presumed father of I.G.

A first amended petition, filed in late December 2012, alleged the following facts. Mother's four children, including I.G., were at risk of neglect in mother's care. Mother's three sons, who were older than I.G., had been residing in the home of their paternal grandparents since September 2012 because mother was unable to provide care for them.² During the week of November 19, 2012, father had heavily used methamphetamines, and he had sold mother's breast pump to support his substance abuse habit. On November 19, 2012, a social worker found a lack of adequate or nutritious food in the home. Father had stolen mother's electronic benefit transfer card, and mother was unable to buy food for herself and I.G.

The first amended petition also alleged that father had a history of substance abuse and domestic violence, and mother had failed to take the necessary precautions to protect

² Mother testified at the status review hearing in August 2015 that her sons, who were then eight, 10, and 12 years old, were in a legal guardianship with their paternal grandparents and she had limited visitation with them.

her children from father's substance abuse. Father had been convicted of domestic violence in 2007. He had been manipulative and controlling of mother, behavior consistent with the behavior of a domestic violence perpetrator. He had prohibited mother from attending her job skills class, and he had a verbal altercation with mother over the name given to I.G.

In addition, that petition alleged that mother had "a felony conviction for fraud in obtaining AFDC and food stamps" and that she was then on formal probation. Father's parental rights as to six other children had been terminated in 2008.

In January 2013, the juvenile court found the allegations of the first amended petition, as amended to clarify that father was only I.G.'s father and not the father of mother's other children, were true. The court adjudged I.G. a dependent child of the court. It placed her in mother's custody subject to the Department's supervision.

On June 26, 2013, at the six month review hearing, the court continued I.G. as a dependent child of the court, and it ordered her to continue under mother's care, custody and control under the Department's supervision. The court ordered family maintenance services for mother and I.G. The court ordered mother to participate in and successfully complete (1) a program of counseling or psychotherapy addressing, among other things, intimate partner violence, victimization, and the impact of violence on children and (2) a closed-curriculum based domestic violence victims' support group. The court ordered that "[t]here shall be no physical contact or communication of any kind between the child and the father . . . because it is detrimental to the physical and/or emotional well-being of the child."

On November 22, 2013, the Department filed a supplemental petition (§ 387) on behalf of I.G. On November 26, 2013, the Department filed a first amended supplemental petition on behalf of I.G.

The first amended supplemental petition alleged the following facts. I.G., who was then one year old, had been placed into protective custody on November 22, 2013.

At the time of removal from her mother's custody, mother acknowledged that father was living with her and I.G. and that he continued to yell at her in the presence of the child and abuse illegal substances. Mother, in direct violation of a court order, had repeatedly exposed I.G. to father, who had not taken steps to address the issues that brought the family to the court's attention. Despite the court's no-contact order, mother and I.G. had been residing in the home of I.G.'s paternal grandmother, and father continued to spend time there. Mother had been allowing father to have extended, sometimes unsupervised, contact with I.G. Mother had repeatedly violated the no-contact order, despite her knowledge that father's "untreated substance abuse and intimate partner violence" placed I.G. "at risk of serious physical harm and emotional damage." Mother had repeatedly denied that she was having contact with father to the social worker, but mother had been living in "father's residence for the past several months." Although mother had completed a domestic violence victims' support group, mother was failing to recognize the risk that her continued involvement with the father posed to I.G.

On December 18, 2013, the juvenile court found the allegations of the first amended supplemental petition to be true. The court found, by clear and convincing evidence, that I.G.'s welfare required her to be removed from her mother's custody. It ordered family reunification services for mother, father, and I.G. Mother was again ordered to participate and successfully complete a program of counseling or psychotherapy and a closed-curriculum based domestic violence victims' support group. The court ordered that mother be given assistance with locating safe, appropriate housing. Father was ordered to participate and successfully complete a number of programs related to substance abuse or domestic violence and to submit to on-demand testing based on suspicion. The court removed I.G. from parental custody and placed her into the Department's care, custody and control for placement. It ordered supervised visitation with I.G. for both mother and father and reasonable visitation for siblings and other relatives.

On March 5, 2014, following case plan review, the court ordered random drug testing of father at least once a week, and the court conditioned each scheduled visit with I.G. upon father confirming the visit by 4:00 p.m. the day before.

On August 13, 2014, following the six-month review hearing (§ 366.21, subd. (e)), the court terminated family reunification services for father. The court ordered mother to participate in and successfully complete (1) therapeutic visitation focusing on developing safe parenting skills and supporting parent-child bonding, (2) a program of counseling or psychotherapy, and (3) a closed-curriculum based domestic violence victims' support group. The court ordered I.G. to continue under the Department's care, custody, and control for foster home placement. It ordered supervised visitation for both parents.

Mother's case plan service objectives required her to develop a positive support system that included at least three persons other than abusive partners, current or former, and their family members. It also required her to take appropriate action to avoid being a victim of further domestic violence, such as by not getting involved or living with partners who were abusive, used drugs, or were controlling. It provided that mother would not use father, or other persons with intimate partner violence issues, for childcare and that mother would not permit father to visit with I.G. outside of the arranged visitation with the Department.

On December 17, 2014, following the 12-month review hearing (§ 366.21, subd. (f)), the juvenile court returned I.G. to mother's care, custody and control under the Department's supervision. The court ordered family maintenance services for mother and I.G. The court ordered mother to participate in and successfully complete a program of counseling or psychotherapy and a closed-curriculum based domestic violence victims' support group. It ordered supervised visitation between father and I.G., reasonable sibling visitation, and reasonable relative visitation.

II

Status Review

A. Social Worker's Reports

The social worker's status review report, dated July 1, 2015 and prepared for the court's family maintenance status review hearing (§ 364), recommended that the court continue family maintenance services for mother. The report related the following facts.

On March 11, 2015, mother e-mailed the social worker to cancel the home visit scheduled for that date and related that she was sick. On March 13, 2015, the social worker received a call from mother who stated that she was busy at work and could not talk long.

The social worker later learned from T.C., I.G.'s daycare provider (and former foster parent), that mother told T.C. that she did not bring I.G. to daycare on March 12, 2015 because I.G. was ill. In addition, I.G. missed her supervised visit with father. Mother did not bring I.G. to daycare on March 13, 2015. When T.C. told mother that I.G. could attend daycare anytime I.G. was sick, mother stated that she wanted to stay home with I.G. and she "didn't mind missing work." When T.C. expressed concern about mother retaining her new job if she were absent and reiterated that I.G. could come to daycare even if she were sick, mother indicated that her sister was visiting that day (March 13, 2015) and that was why I.G. did not go to daycare and she did not go to work.

T.C. told the social worker that she was concerned that mother was withdrawing from her. Mother had indicated that she would be discontinuing daycare with T.C. because an old friend was moving back to the area and that the friend would be taking over childcare. Mother had asked T.C. not to share that information with the social worker. T.C. had invited mother and I.G. for Easter. Mother had said she had no other plans and, on the morning of their get together, mother had texted the message that she would see T.C. soon, but mother had failed to show up.

T.C. also reported I.G. had been saying “daddy” and pointing to the door. When I.G. had said “daddy” at daycare in front of mother, T.C. had expressed her concern to mother. Mother had stated that I.G. was saying “dolly.” I.G. had said “daddy” several times. Although I.G. had referred to T.C.’s husband, Johnny, as “daddy” in the past, I.G. had not done so “for quite a while.”

On March 18, 2015, the social worker conducted a home visit during which she met with mother and I.G. Mother reported that she had started a new job on March 5, 2015, but she had missed a couple days when she was sick. According to mother, I.G. had been sick the following week. After mother told the social worker that she was seeing her therapist on Saturdays, the social worker asked who was watching I.G. during those times. Mother looked at the ground and was silent for several moments. Mother indicated that an old friend named Linda, whom mother had never before mentioned to the social worker, was watching I.G. when mother went to therapy, and, according to mother, Linda lived near mother’s therapist. When the social worker asked who was watching I.G. while I.G. was sick and mother was at work, mother “again looked away and down at the ground and was silent for a little while.” Mother reported that her sister had come from out of town and visited for a couple of days and that she had watched I.G., but mother reported that the sister did not stay the night as that would be against the rules of her housing.

While I.G. was playing in another room during the social worker’s home visit, mother disclosed to the social worker that I.G. was saying “daddy” according to T.C., but mother thought that I.G. was saying “dolly” and I.G. had not said such a thing at home. But the social worker heard I.G. say, “Daddy,” “periodically throughout the remainder of the visit.” When the social worker had picked up a doll and asked I.G. to identify the object, I.G. had clearly said, “Dolly.” When the social worker asked mother, what mother and I.G. were “going to do” that evening, I.G. said, “Daddy’s house.” Mother

looked at the ground, and not at the social worker, while she discussed father and her case plan concerning that relationship.

During the March 18, 2015 home visit, the social worker told mother that she lacked verification that mother was attending the domestic violence victims' support group. Mother represented that she was regularly attending workshops and the support group.

On March 19, 2015, T.C. told the social worker that mother had not brought I.G. to daycare that day because I.G. had been up all night. T.C. reportedly told mother to bring I.G. to daycare and advised that I.G. could sleep at daycare. T.C. reported that I.G. had not come to daycare from approximately March 4, 2015 to March 13, 2015 because, according to mother, I.G. was sick. T.C. told the social worker that I.G. "had been increasingly saying 'Daddy's house' at daycare."

Also on March 19, 2015, the social worker questioned mother regarding her conflicting statements. Mother denied that she was seeing father.

On March 23, 2015, the social worker spoke with T.C., who reported that mother had brought I.G. to daycare and stayed for a while. A couple of times I.G. said, "Mommy, daddy's house." Mother initially denied that I.G. had said those words, but when I.G. repeated the phrase, mother said she did not know why I.G. was saying that.

Later that same day, mother contacted T.C. from work and said that she had remembered that I.G. had found a photograph of father in mother's closet. Mother also informed T.C. that a friend with whom mother had gone to school, and who was moving back to this area, would be watching I.G. in June or July, 2015.

On March 24, 2015, the social worker called T.C., who reported that I.G. had come to daycare without having been bathed. According to T.C., mother had indicated that her 12-week funding for childcare would end about the time her friend from college would be moving back to the area to watch I.G., and mother had asked T.C. not to share that information with the social worker. The social worker had disclosed that mother's

statements to T.C. differed from what mother had told her, namely that mother's friend Linda, whom mother knew from college, lived in the area and watched I.G. on Saturdays when mother went to her therapist.

Also, on March 24, 2015, the social worker went to visit I.G. at daycare and meet with T.C. T.C. reported that I.G. had said, "Daddy's house," that morning and that mother had maintained that I.G. was saying, "Dolly's house." The social worker showed I.G. a photograph of T.C.'s husband "Johnny," and asked I.G. who that was. I.G. said, "Johnny." When I.G. was playing with a toy phone, the social worker asked I.G. with whom she was talking, and I.G. said, "Mommy." The social worker asked, "Where is mommy?" I.G. answered, "Mommy, daddy's house." The social worker asked I.G. where she was right now, and I.G. answered, "Auntie [T.] house." I.G. continued to talk on the toy phone, and she said, "Daddy's house." When the social worker again asked I.G. to whom she was talking, I.G. said, "Mommy," and then she said, "Mommy, daddy's house."

During the social worker's March 24, 2015 visit, T.C. also mentioned that there were no photographs of mother's sister and I.G. posted on mother's Facebook account and that usually such photographs were posted online when mother's sister was visiting. T.C. also reported that I.G.'s paternal grandmother was mother's friend on Facebook, and the grandmother frequently commented on mother's Facebook posts. As the social worker was getting ready to leave the daycare, I.G. pointed to the door and said, "Daddy house," "Mommy, [d]addy house." I.G. said "Mommy, [d]addy house" multiple times.

On March 25, 2015, T.C. reported to the social worker that mother had brought I.G. to day care with the same ponytail in which T.C. had put I.G.'s hair on Monday, March 23, 2015 and that I.G. still had not had a bath. I.G. had continued to say, "Mommy, [d]addy's house." I.G. had hit a child, and she had been more aggressive than usual, which was behavior T.C. had seen since I.G. had originally been placed with her as

a foster child. T.C. was concerned about who had been watching I.G. during I.G.'s extended absence from daycare.

At 9:00 p.m. on March 25, 2015, the social worker drove by mother's residential complex and saw a man "who looked very much like" father walking out of the complex's parking lot.

On the evening of Friday, March 27, 2015, and subsequently at 9:00 p.m. on the same date, the social worker went to mother's home and saw that mother's car was not in the parking lot.

Before 7:00 a.m. on Saturday, March 28, 2015, the social worker returned to mother's home and saw that mother's car was still not in the parking lot. The social worker then drove to father's last known address and down a side street, from where she could see the home's rear entrance. The social worker saw father and a golden colored car, which looked much like mother's car, parked in the driveway. The social worker returned to mother's complex, and she noted that mother's car was still not in the parking lot. The social worker waited at the house until about 1:00 p.m.

On April 8, 2015, the social worker met with mother. Mother denied that she was allowing I.G. to be with father or arranging visits with I.G.'s paternal grandmother. Mother said she would delete I.G.'s paternal grandmother as a Facebook friend.

On April 25, 2015, the social worker met with mother and I.G. at their home. Mother reported that she was regularly attending a domestic violence victims' support group with Next Door Solutions and that the facilitator was going to provide verification. Mother had not seen her therapist for a couple of weeks. Mother indicated that she needed a respite from childcare to socialize with other adults.

On May 5, 2015, T.C. reported concerns to the social worker. I.G. had been a little aggressive. Mother was distancing herself from T.C. on the weekends, and mother and I.G. had not come to any of the events, such as birthday parties, to which they had been invited. Mother had told T.C. that the only reason I.G. had been saying, "Daddy,"

was that I.G. had found a photograph of father in mother's closet. T.C. and other daycare workers had offered to provide respite childcare several times, but mother had not arranged for such childcare.

During a home visit on May 18, 2015, mother told the social worker that she wanted the dependency case dismissed.

On May 19, 2015, the social worker spoke with Mirela Mitchell, one of the two therapists from Community Solutions, which was providing therapeutic services for I.G. and mother. Mitchell provided therapeutic support regarding I.G.'s adjustment and attachment issues. Lorena Talaveras, the other therapist, was the case manager and provided support to mother.

Mitchell reported that, during the previous month, Talaveras and she had informed mother that they were considering closing the therapeutic services for I.G. But, after hearing that I.G. had exhibited increased aggressive behaviors at daycare, they decided to continue services. Mother seemed upset at that decision, and she indicated that she did not want any more services, that she was not interested in having a speech assessment of I.G., and that she "wanted to 'shut the door on this part of her life.'" Mitchell was concerned that mother "wanted to 'push away' any support, given the concerns and inconsistencies in her stories" and that mother's return to a relationship with I.G.'s father might be "the reason why [mother] wanted to push everyone out of her life and have the case closed so quickly." Although mother had reported to her social worker that the Community Solutions therapists believed the dependency case should be dismissed, Mitchell stated that they had never discussed that. Mitchell had "deep concerns" about closing services, and was worried that mother "was hiding things, and not being truthful."

On May 26, 2015, George Lopez, mother's individual therapist, reported to the social worker that he had a positive assessment of mother's ability to support herself, but he acknowledged that his assessment was based on what mother reported to him. Mother

did not discuss father with him. Mother had recently stated that she wanted CPS (Child Protective Services) “out of her life” and “all her services closed.”

On June 4, 2015, T.C. reported to the social worker that childcare had been paid for only two more days, and she wanted to know whether mother had contacted the social worker for additional childcare funding. T.C. disclosed that mother was upset with her for expressing her concern to the social worker about mother not wanting to spend more time with T.C. and T.C.’s family. Mother had not come to important events such as Easter, birthdays, and graduations.

On June 8, 2015, Lopez told the social worker that mother had asked him for a letter summarizing her progress in therapy, and he provided a copy of that letter, which was attached to the status review report. He indicated that mother had achieved some insight regarding the effect of her emotionally abusive relationship with her father and that she had “come to realize” that her attraction to male rescuers was “a trap for continued abuse and degradation.” He noted the benefits of employment to mother’s self esteem. He stated that mother had “made great strides to remove herself from her past trajectory and continues to be focused on achieving positive goals for herself and her children.” He thought that “her accomplishments over the past two years [were] exemplary.” He had “agreed to make [his] service available to [mother] as needed.”

On June 9, 2015, the social worker received a voice message from Talaveras relating that Mitchell and she had met with mother and I.G. Talaveras informed the social worker that the Community Solutions treatment plan would end on July 14, 2015 because I.G. had met her therapeutic goal. Talaveras had referred I.G. for a cognitive and speech therapy assessment, to which mother had agreed. Talaveras believed that the dependency case should remain open with mother receiving family maintenance services.

On June 9, 2015, the social worker learned from an advocate with Next Door Solutions that mother had attended only two sessions of a domestic violence support group since the last court hearing on December 17, 2014, contrary to mother’s reports to

the social worker. On June 12, 2015, the social worker had received a written letter from Next Door Solutions confirming that mother had attended only two sessions of a domestic violence support group, one on April 21, 2015 and the other on May 5, 2015.

The July 1, 2015 status review report emphasized the importance of mother continuing to develop and maintain a support network. It stated that mother had agreed to the goal of “build[ing] and maintain[ing] a strong support network of at least three safe and healthy people to strengthen her and hold her accountable [and] to keep her from reverting back to past behaviors.” Those past problematic behaviors included mother isolating herself, mother “seeking the emotional, physical and financial support of her previous abusers” and “their unhealthy family members,” and mother “establishing new relationships with unsafe people” who would “pose harm or risk to her and [I.G.’s] well being.” In December 2014, T.C., who was then I.G.’s foster parent, had been identified as mother’s primary support person. Talaveras and Mitchell from Community Solutions had been identified as two other support persons for the time being.

In the July 1, 2015 status review report, the social worker indicated that mother had not provided the names and contact information of any additional persons who were presently part of her support network. Mother had said that she met two people who had recovered from domestic violence relationships and that she thought each “would be a strong support and role model for her.” But mother did not identify them as persons whom she wanted to invite to the then upcoming family conference and support meeting. When the social worker asked for permission to speak with Linda to confirm that she had provided childcare for I.G. and asked mother to invite her to the meeting, mother said that she did not want Linda to know about the dependency case. Mother did not want to bring in her parents or her sister as support persons. Mother identified only T.C. as an ongoing support person. She did not want any further services through Community Solutions, and she did not want Mitchell and Talaveras involved in her life any longer.

The status review report stated, as to father, that father called the social worker on March 25, 2015, that he apologized for missing supervised visits for several weeks, and that father confirmed that he would be there for his supervised visit the next day. Father failed to show up for the supervised visit on March 26, 2015. Father attended a supervised visit on April 2, 2015, but there had been no supervised visits between father and I.G. since that date. Father had not shown up for the supervised visits scheduled for May 7, 2015 and May 15, 2015. Neither father nor I.G.'s paternal grandmother had responded to the social worker's multiple attempts to contact them since May 27, 2015.

The status review report stated that there had been inconsistencies in the information given by mother. The social worker indicated that mother's inconsistent statements had created "uncertainties and concerns for the ongoing safety and well being of [I.G.]" and, in her opinion, "warrant[ed] continued supervision by the Court." According to the social worker, many service providers, including T.C., had expressed concern that mother was engaging in patterns of behavior that were indicative of regression, including becoming isolated, resisting services, and making inconsistent statements to them.

The status review report also reported that I.G.'s paternal grandmother had "continued to be in denial that her son has a problem with methamphetamines and domestic violence issues" and that, in the social worker's opinion, the grandmother "would allow [father] access to [I.G.] without supervision, which continue[d] to create a risk [of harm] to [I.G.]." Mother had continued to keep I.G.'s paternal grandmother as a Facebook friend, and mother and I.G.'s paternal grandmother had been seen having lunch in public with I.G. present. The social worker had concerns that the grandmother, as mother's Facebook friend, had access to the activities and whereabouts of mother and I.G. The social worker was concerned that I.G.'s paternal grandmother might already be spending time with I.G. in light of the grandmother's failure to regularly attend supervised visitation as she had before I.G. was returned to mother's custody and the

grandmother's unresponsiveness to the social worker's attempts to communicate with her.

An addendum report also dated July 1, 2015, reported that mother had invited T.C., Mitchell and Talaveras (the Community Solutions therapists), and Lopez (her individual therapist) to a family conference and support meeting, which had not yet been held due to scheduling conflicts. According to the social worker, she had encouraged mother to invite family members or others to take the place of Mitchell and Talaveras in her support network. The case plan update, signed by the social worker and her supervisor, Linda Hsiao (Hsiao), and dated June 30, 2015, indicated that the goal had been for mother to replace Mitchell and Talaveras by making friends through the domestic violence victims' support groups and workshops and at her housing complex. Although mother had identified two women with whom she was trying to build friendships, mother had not invited them to be a part of her support network. The case plan update identified the goal of building a support network, consisting of at least three persons, as important to mother remaining strong and self-sufficient and staying away from unsafe people.

The addendum report stated as to father that he had "a long term addiction to methamphetamines and did not utilize the support services offered to him through his Case Plan." It stated that "the behaviors that [father] was having at the time the minor was brought into dependency are still present." The social worker expressed the concern that father, who "only had four supervised visits since [I.G.] returned home and [was] no longer in communication with the Department," "may have been provided access to [I.G.] without the supervised visits offered through the Department."

B. Status Review Hearing

A status review hearing (§ 364) commenced on August 5, 2015 and continued on August 14, 2015. The court indicated that it had read and reviewed the social worker's

status review report and her addendum report. The court admitted the reports into evidence.

Hsiao, whom the Department called as a witness, testified as an expert in risk assessment and placement assessment of dependent children. Hsiao supervised Leslie Nelson,³ the social worker currently assigned to the case. The Department's recommendation was for the court to continue family maintenance for six months.

Hsiao explained that one of the reasons for the Department's recommendation was that mother had not completed the court-ordered domestic violence victims' support group, even though mother's two previous partners had been abusive and the issue of domestic violence had brought I.G. to the Department's attention in the first place. She reviewed the history of the case, including mother's return to living with father, who was supposed to have only supervised contact with I.G. and who had not addressed the issues of domestic violence.

Hsiao testified that mother's case plan, upon I.G.'s return to mother's custody in December 2014 after a year out of mother's custody, had required mother to regularly attend a domestic violence support group, but mother had attended only two classes. The requirement that mother participate in a domestic violence support group was an important component of her case plan because mother had secretly returned to living with father, who had not participated in services. In addition, mother had repeatedly lied to her social worker by saying she was not having any contact with father. Although mother had previously completed two domestic violence support groups during the dependency, it did not appear that mother had internalized "any of the things that she needed to learn from" those groups since she returned to the "perpetrator" of domestic violence in November 2013.

Mother had told her social worker in January 2015, after I.G. had returned to mother's custody, that she needed help avoiding social isolation and maintaining

³ The Department's counsel told the court that Nelson was unable to appear at the hearing because she had been in a serious traffic accident.

financial independence. Mother indicated that she needed a support group to break the patterns of domestic violence in her life and to prevent her from becoming socially isolated and reverting to old behaviors.

The Department was worried because mother was unemployed again, and she was socially isolating herself. Mother had disclosed that in the past she had become financially dependent on abusers. The Department was concerned that mother might slip back into old patterns in her vulnerable situation.

Hsiao went over some of the history of the case, focusing on mother's contradictory statements and her problematic conduct. In March 2015, I.G. began talking, "out of the blue," about "daddy and mommy" and "daddy's house" on several occasions. I.G. referred to "daddy" both at daycare and during the social worker's home visit.

T.C. reported to the social worker that I.G. had not come to daycare for about a week and a half in March. The Department was concerned about who had been taking care of I.G. during that period. Mother had started a new job on March 5, 2015, and she made contradictory statements related to I.G.'s March 2015 absences from daycare and who was caring for I.G.

In March, mother began distancing herself from T.C. Mother stopped accepting T.C.'s invitations for mother and I.G. to join in family celebrations, birthdays, and Easter. Historically, T.C. had been a primary support person for mother. T.C. had been I.G.'s foster parent when I.G. was removed from mother's custody and then I.G.'s daycare provider after I.G. was returned to mother's custody. T.C. had seen I.G. almost every day when I.G. was coming to her daycare.

The Department was concerned that mother was no longer availing herself of T.C.'s support. The Department was alarmed that, since July 6, 2015, mother had not had any in-person contact with T.C., whom mother had identified as a primary support person.

On July 31, 2015, mother told Hsiao that she also had support from someone named Linda, a classmate from Heald College. Linda apparently lived in the Sacramento area. Mother had said that Linda had watched I.G. on several occasions, but mother later denied making that statement. When directly asked who provided daycare for I.G. when I.G. was not going to T.C.'s daycare, mother had not responded.

Mother was directly asked whether she was seeing father, and she separately told Social Worker Nelson and Hsiao that she was not seeing him. Hsiao was concerned that mother was, in fact, seeing father based on I.G.'s references to "daddy" and "mommy, daddy's house" and on mother's reaction when confronted. Mother insisted that I.G. was merely saying, "dolly," but I.G. kept clearly saying "daddy." When Social Worker Nelson showed a doll to I.G. and asked what it was, I.G. said, "[O]kay, dolly." Mother suggested that I.G. was referring to T.C.'s husband, but T.C. said that I.G. had been calling her husband, "Johnny," for a while. In Hsiao's view, I.G. made a very clear distinction between "daddy" and "Johnny."

Hsiao was very worried because mother had a pattern of becoming financially dependent on abusive persons. At the time of the hearing, mother was unemployed. She told Hsiao that her job had been a contract position and it had ended. According to mother, she had applied for unemployment compensation and she would receive \$245 every two weeks in unemployment compensation. Hsiao was concerned that mother, whose monthly rent at Homesafe was \$550, had no plan for making up the deficit.

Mother had no plan for securing daycare while looking for a job or working. Childcare was an issue because mother had failed to maintain herself on the 4 C's⁴ waiting list.

As to housing, Hsiao did not know how much longer mother would be able to stay at Homesafe. Hsiao indicated that such living situations for domestic violence victims are usually time limited.

⁴ Presumably, this is a reference to Community Child Care Council of Santa Clara County.

Mother was short \$250 for her August rent. Hsiao was going to assist mother in applying for rental assistance by filling out the application for funds from the “Seasons of Sharing.” In her view, mother and I.G. were very financially vulnerable.

Hsiao testified that the dependency case was not ready for dismissal. Mother was in a financially vulnerable situation without consistent support from people in her life. Mother had previously returned to living with father when she did not have a job and was homeless, in violation of the court’s order. If support services were discontinued, I.G. would be at potential risk.

Hsiao acknowledged she did not have specific information that mother was spending nights with father or currently in a domestic violence relationship or that I.G. recently was saying “daddy” or “daddy’s house” as she had in March 2015. But mother had failed to comply with the court’s order that she complete a closed-curriculum domestic violence victims’ support group. Mother had misrepresented to her social worker that she was participating in the group on a weekly basis.

Hsiao’s foremost concern was that mother was isolating herself. Mother was not keeping in touch with T.C., and she did not have “any regular people in her life to kind of keep her accountable” or with whom to “talk through things.” Consequently, Hsiao was concerned there was a possibility that mother would fall into a relationship involving domestic violence.

Hsiao was also concerned that I.G.’s language development might be delayed and that mother had failed to follow through with obtaining a speech assessment for I.G. Hsiao testified that I.G. did not have “a lot of expressive language,” and she was not able to express herself sometimes. But Hsiao acknowledged that the Department’s involvement was not necessary to secure speech services because mother could obtain them from her own school district if she requested them or through “First 5.”

Hsiao’s recommendation to continue family maintenance was not altered by Lopez’s letter. The therapist’s information was based on mother’s self-reporting.

Lopez, a licensed clinical social worker and mother's therapist, testified on behalf of mother. Beginning in April 2013, Lopez saw mother for 24 sessions. Therapy was interrupted by a funding issue. Lopez began seeing mother again in October 2013 and thereafter generally saw her on a regular, weekly basis. But Lopez had not seen mother for therapy since their last session, three weeks earlier.

About three weeks before the status review hearing, mother had indicated to Lopez that she was "ready to quit therapy," and "she felt she was doing very well." At that time, he had concurred. He testified that mother had made great strides in that she was making and managing money, she was taking care of I.G., she was speaking positively of herself, she was planning to reunify with her other children, and she had talked about taking more classes to improve her skills. Lopez believed that mother had gained insight that her attraction or attachment to abusive men stemmed from her relationship with her father who was emotionally abusive of her.

Lopez had worked with mother on becoming independent when she was unemployed, she was living in the home of I.G.'s paternal grandparents, and she did not have the resources to extricate herself from that dependent position. But Lopez had not been told that father was also living in that home. Mother had reported incidents of domestic violence to Lopez. Lopez had encouraged mother to report the abuse to the police, but she had not done so.

According to Lopez, mother began to do better after she obtained a job in about January or February of 2014. She moved out of the paternal grandparents' home when she obtained housing. Once mother began working, mother appeared more "well-kept" and she spoke more confidently about herself and the future.

Lopez was aware that mother left her first job as a receptionist for a better paying job, but he was not aware until the day of the hearing that the new job was only a three-month contract job. The day of the hearing, Lopez found out that mother's contract job was over, and it was the first time that he had "seen her looking a little disheveled."

Lopez expressed concern that mother might regress without a job, and he considered mother's employment a pillar of her progress. But Lopez was not concerned that mother was at risk of becoming involved in a relationship involving domestic violence. Lopez placed mother at two on a risk scale of zero to 10, with 10 representing the greatest risk, of entering into another abusive relationship. In his opinion, mother had the tools to identify the warning signs of potential predators, and she had internalized the warning signs of an unhealthy relationship. He did not think mother needed any more therapy sessions.

But Lopez "[a]bsolutely" agreed, however, that it was very important for domestic violence victims to have a support group. When asked about who was part of mother's personal support group, Lopez said mother had mentioned Linda and I.G.'s daycare provider named T.C. Lopez was unaware that mother had not seen T.C. for the previous three weeks. When asked whether that lack of contact was of concern to him if T.C. was an important support person for mother, Lopez answered, "Yes, of course."

Lopez understood that Linda was a friend whom mother had known for several years, but Linda was not local and she was not someone whom mother necessarily saw "on an ongoing basis." He was, in fact, concerned if mother's only sources of support were Linda and him. Lopez acknowledged that a victim of previous domestic violence is at greater risk of being re-victimized if the victim becomes isolated from a support group and is financially vulnerable.

Lopez conceded that he relied on mother's report of the facts. Lopez was not familiar with mother's case plan, and he was unaware that, in December 2014, mother had been ordered to participate in a domestic violence support group. He agreed that there were potential red flags in this case.

Mother testified in her own behalf. At the time of the hearing, I.G. was two years old.

Mother reviewed the history of the dependency case. Even though I.G. had been initially placed with mother and mother had received family maintenance services for about a year, mother had participated in a 12-session support group for victims of domestic violence, and mother had gone to counseling with Lopez, who specialized in domestic violence, mother had still moved back in with father. Mother admitted that she did not inform her therapist that father was living in the home, but she explained that she was afraid that I.G. would be removed from her custody.

Mother indicated that she had returned to living with father in the house of I.G.'s paternal grandmother because she had no stable place to go and she was not talking to her own family members. During the time mother was living with father and I.G.'s paternal relatives, there were some incidents of domestic violence.

Mother recognized that she had been ordered to participate in a third domestic violence victims' support group after I.G. was returned to her custody on December 17, 2014. Mother acknowledged she had only gone to only two support group classes even though her participation was court ordered. Mother's explanation was that she got more out of individual therapy than the domestic violence victims' support group.

Mother claimed that her last contact with father had been in April or May of 2014. At one point, mother claimed that she had no contact with I.G.'s paternal grandmother in over a year. At another point, mother acknowledged that the grandmother was still a Facebook friend. Mother said she was not in a relationship with a man.

Mother believed that I.G. used the word "daddy" to refer to "Johnny" because I.G. had been in foster care with T.C. and "Johnny" for a year. Mother claimed that she had never heard I.G. call "Johnny" by his name.

According to mother, when I.G. was sick in March 2015, I.G. had stayed with Linda for a few days and then with her sister for a few days so that she could go to work. But mother was aware that I.G. had some behavioral issues, and she agreed that it was important for I.G. to have consistency and stability in her daycare situation.

Mother acknowledged that, during the past three or four months, she had stopped taking I.G. to family events to which T.C. had invited them. Even though she agreed that I.G. had a strong relationship with T.C. and her family, she did not see her choice as detrimental to I.G. Mother no longer considered T.C. to be part of her support system.

Mother had discontinued daycare altogether since July 6, 2015. Mother said she did not have a reason to explain why she had not contacted T.C. since July 6, 2015.

Although Lopez was one of her support people, she was discontinuing regular, weekly therapy. She testified that, nevertheless, she would “definitely visit [Lopez] a couple of times a month.” She said that Lopez had said he could come up with a payment plan.

Mother claimed to have a current safety plan in case father tried to contact her, but she never described it. Mother acknowledged that her own family was not part of her support system. When asked about her personal support network, mother indicated that she had a couple of friends from a support group that she had attended, and she also had kept in touch with a couple of high school friends and Linda.

Mother’s plan was to stay at Homesafe for the time being. At the time of the hearing, mother was living in a two-bedroom Homesafe apartment with I.G. The monthly rent was \$550. Mother thought she could stay there indefinitely.

Although mother had a 40 hour a week, eight hour a day job as an administrative assistant, mother had taken a contract position as a front office manager because the work paid more. Mother said she did not know the position would last for only three months.

After the contract position ended, mother applied for unemployment compensation and food stamps, and she had been awarded both. According to mother, she was receiving \$245 a week in unemployment compensation, and she was eligible for unemployment for a year. Mother testified that she had been looking for work “nonstop,” and she had an interview the Monday following the hearing.

Mother testified that she took I.G. with her when she was applying for jobs, but her friend Linda watched I.G. when she went to interviews. Mother claimed to have someone to take care of I.G. if she went back to work. Mother indicated that she had a number of childcare options, including T.C. But mother also said that the drive to T.C.'s daycare was long and the Department did not require her to use T.C. as I.G.'s daycare provider.

According to mother, another childcare option was the 4 C's. But mother had applied for childcare through the 4 C's when I.G. had returned home in December 2014, and she had been stuck on the waiting list.

Mother agreed that she lived month to month financially. Mother acknowledged that she had expended money on car problems, and, as a result, she needed help from the Department to pay her rent while she was waiting for unemployment benefits. Mother conceded that she would no longer have that safety net if the Department were no longer involved. She acknowledged that Hsiao was applying for funds for her from the Seasons of Sharing.

As to speech therapy services for I.G., mother did not think such therapy was necessary, and she claimed that she was not aware of any issue requiring speech therapy, but mother acknowledged that her social worker had expressed concern about I.G.'s speech. According to mother, Mitchell and Talaveras from Community Solutions had been amazed at how much I.G. was talking. Mother had not sought an assessment of I.G.'s speech even though she knew that could be done through Community Solutions. Mother claimed that she had no objection to contacting the public school system regarding speech services and that she was willing to take I.G. to speech therapy if necessary.

After argument, the juvenile court indicated that it perceived a number of red flags that undermined mother's credibility. The court was convinced, by a preponderance of

the evidence, that mother had significant contact with father over the six months prior to the hearing.

The juvenile court found the evidence that mother had pulled away from her primary support person, who was I.G.'s stable caregiver and who had heard I.G. spontaneously say, "[D]addy" and "[D]addy's house," to be significant. The court also considered its order requiring mother to complete a domestic violence support group to be a significant aspect of the case plan, but mother had attended only two classes.

The court found mother's credibility was undercut by her failure to inform her therapist that she had lost her job given that financial vulnerability was a factor leading to her involvement in a dependent, abusive relationship. Mother had asked the Department for financial support over the next month. At the time of the hearing, she had no job and it was unclear whether she would actually get the job for which she had applied.

The court continued family maintenance services for another six months, and it did not terminate the dependency. Mother was ordered to (1) participate in a program of counseling or psychotherapy, (2) attend a closed-curriculum domestic violence victims' support group at least twice a month to maintain an ongoing support network, and (3) utilize T.C. for daycare as determined appropriate by the social worker.

III

Discussion

A. Governing Law and Standard of Review

Section 364(c) provides: "After hearing any evidence presented by the social worker, the parent, . . . or the child, the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn. Failure of the parent . . . to participate regularly in any court ordered treatment program shall constitute

prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary.”

“Orders made pursuant to section 364 are reviewed for substantial evidence. [Citations.]” (*In re J.F.* (2014) 228 Cal.App.4th 202, 209.) “In reviewing the sufficiency of the evidence, this court is guided by well-settled principles. ‘[T]he power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,’ to support the trial court’s findings. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429; *Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) ‘We must therefore view the evidence in the light most favorable to the prevailing party, giving [him] the benefit of every reasonable inference and resolving all conflicts in [his] favor’ [Citation.]” (*Estate of Leslie* (1984) 37 Cal.3d 186, 201; see *In re I.J.* (2013) 56 Cal.4th 766, 773.) “When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court. [Citations.]” (*Crawford v. Southern Pacific Co.*, *supra*, at p. 429; see *In re I.J.*, *supra*, at p. 773.)

B. *Prima Facie Evidence*

As indicated, section 364(c) provides that “[f]ailure of the parent . . . to participate regularly in any court ordered treatment program shall constitute prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary.”

The evidence established that mother attended only two classes of the third court-ordered domestic violence victims’ support group. Mother acknowledges on appeal that she participated in the domestic violence support group “only minimally” and that she failed to complete that case plan component. That evidence established the fact that mother failed “to participate regularly in [a] court ordered treatment program” and constituted prima facie evidence “that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary.” (§ 364(c).)

“A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption.” (Evid. Code, § 602.) The question is whether the prima facie evidence established a rebuttable presumption affecting the burden of producing evidence or a rebuttable presumption affecting the burden of proof. (Evid. Code, §§ 603, 605.)

The Legislature has expressed its preference for terminating dependency jurisdiction if possible by making termination mandatory in the absence of the requisite showing by a preponderance of the evidence and by generally placing the burden of proof on the Department if it opposes such termination. (§ 364(c); see *In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1155-1156 (*Aurora P.*)) In light of this general mandate, we conclude that the rebuttable presumption created by prima facie evidence of a parent’s failure “to participate regularly in any court ordered treatment program” is a presumption affecting the burden of producing evidence, rather than a presumption affecting the burden of proof. (See Evid. Code, §§ 603, 630; Cal. Law Revision Com. com., 29B Pt. 2 West’s Ann. Evid. Code (1995 ed.) foll. §§ 603 and 630, pp. 57, 166; cf. Evid. Code, §§ 605, 660; Cal. Law Revision Com. com., 29B Pt. 2 West’s Ann. Evid. Code (1995 ed.) foll. §§ 605 and 660, pp. 62-63, 206.)

“The effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption.” (Evid. Code, § 604.) Thus, in this case, the prima facie evidence gave rise to a rebuttable presumption and, the burden of producing evidence that the conditions that justified initial assumption of jurisdiction did not still exist and that continued supervision was unnecessary rested on mother. (§ 364(c).)

Mother claims that substantial evidence rebutted the prima facie evidence. She presented her own testimony that she had not been in contact with father since April or May of 2014 and that she was not in a relationship with a man. Lopez, her individual therapist, also testified that mother had made “great strides” and there was a low risk that mother would enter into another abusive relationship.

The evidence supports a finding of the nonexistence of the presumed fact, i.e. “that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary.” (§ 364(c).) Mother met her burden of producing evidence, which dispelled the rebuttable presumption. (Evid. Code, § 604.) Therefore, the juvenile court, as the trier of fact, was required to determine from the evidence whether “the conditions still exist which would justify initial assumption of jurisdiction under Section 300” or whether those conditions were “likely to exist if supervision is withdrawn.” (§ 364(c).)

In evaluating the evidence in this case, the juvenile court disbelieved mother’s testimony to the effect that she had not seen father during the review period. It discounted Lopez’s assessment of the risk that mother would enter into an abusive relationship. The court found that mother was not being truthful with her individual therapist and she was giving him “one-sided reports,” and it observed that Lopez had testified on cross-examination that he did see red flags if certain information were true.

C. Continued Dependency Jurisdiction and Supervision

Under section 364(c), the court may continue dependency jurisdiction if it is proven by a preponderance of the evidence that (1) “the conditions still exist which would justify initial assumption of jurisdiction under [s]ection 300” *or* (2) the conditions that would justify initial assumption of jurisdiction under section 300 “are likely to exist if supervision is withdrawn.” Mother contends that there was not substantial evidence to support either alternative.

1. *Conditions Justifying an Initial Assumption of Jurisdiction Not Shown*

Mother does not dispute that, if she were involved with father, who had a history of domestic violence and drug abuse, the conditions justifying initial assumption of dependency jurisdiction would still exist. She recognizes that the juvenile court assumed dependency jurisdiction partially because of the domestic violence perpetrated by father and her dependence upon him. But mother challenges the sufficiency of the evidence to support the court's finding that she had significant contact with father over the previous six months.

We agree that the Department did not present direct proof that mother had been in contact with father during the six months prior to the status review hearing. “ ‘[D]irect evidence’ means evidence that directly proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact.” (Evid. Code, § 410.) But there was substantial circumstantial evidence, which is “nothing more than one or more inferences which may be said to arise reasonably from a series of proven facts. [Citations.]” (*Hatfield v. Levy Bros.* (1941) 18 Cal.2d 798, 805; see Evid. Code, § 600, subd. (b).) “[C]ircumstantial evidence may support a logical conclusion that the disputed fact is true.” (*People v. Lenix* (2008) 44 Cal.4th 602, 627.) “[T]he fact that evidence is ‘circumstantial’ does not mean that it cannot be ‘substantial.’ ” (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 548, overruled on another ground in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580.) Regardless whether the evidence is direct or circumstantial, the same standard of review applies to a challenge to the substantiality of the evidence. (See *People v. Manibusan* (2013) 58 Cal.4th 40, 87.)

Circumstantial evidence supports the juvenile court's finding that mother had significant contact with father during the previous six months even though mother was never caught red-handed. That circumstantial evidence includes I.G.'s repeated, spontaneous references to “daddy” and “daddy's house” at daycare and at home during March 2015, mother's attempts to obfuscate what I.G. was saying, I.G.'s absences from

daycare during March 2015 and mother's inconsistent statements concerning the reasons for those absences and who was caring for I.G., mother's inconsistent statements about Linda (whom mother had said cared for I.G. at times), mother's refusal to give her permission to the social worker to speak to Linda to confirm that Linda had cared for I.G., mother's failure to comply with the court's order to participate in a domestic violence victims' support group, mother's social distancing from T.C. after T.C. became concerned that mother and I.G. may be in contact with father, mother's concerted efforts to end all support services regardless of her financially vulnerable situation and social isolation and the recommendation that I.G. undergo a speech assessment, mother's failure to be forthcoming with her individual therapist regarding father and her recent job loss, father's discontinuation of supervised visitation, mother's continued contact with I.G.'s paternal grandmother, and the social worker's sighting of someone who appeared to be father at mother's complex and her sighting of what appeared to be mother's car at father's house during March 2015.

Our conclusion does not, however, end our review. Under the first prong of section 364(c), the focus is on present circumstances, whether "the conditions *still exist* which would justify initial assumption of jurisdiction under Section 300." (§ 364(c), italics added.) The circumstantial evidence regarding mother's apparent contact with father revolved principally around occurrences in March 2015, and the review hearing took place in August 2015. Even the Department does not attempt to argue that the evidence was sufficient to support a finding by the juvenile court that "the conditions still exist which would justify initial assumption of jurisdiction under Section 300." (*Ibid.*)

2. *Conditions Likely to Exist Without Supervision*

Mother argues that the evidence was insufficient to show that the conditions that justified the initial assumption of dependency jurisdiction would resume if the dependency case was terminated. This argument does not accurately reflect the standard for continuing dependency jurisdiction. Section 364(c) speaks in terms of likelihood, not

certainty, as to prospective conditions that may arise without supervision. The word “likely” means “of such a nature or so circumstances as to make something probable.” (Webster’s 3d New Internat. Dict. (1993) p. 1310.)

Both Lopez and Hsiao agreed on the critical importance of a support network. Mother claims that she had developed a positive support network as required by her case plan. She asserts that her support network includes friends from earlier support groups, a friend from the housing complex, a friend from community college, and her individual therapist (whom she now claims that she will see on a reduced schedule), and T.C. In seeming contradiction, mother also maintains that it was not unreasonable for her to distance herself from T.C. since T.C. was “demonstrating controlling behavior.”

Mother did not name and provide contact information to the Department for those supposed friends who could serve as support persons going forward. She did not invite any of those persons, including Linda, to participate in the family conference and support meeting. Mother had discontinued regular, weekly therapy with Lopez, and she had withdrawn from her relationship with T.C., whom heretofore had been her primary support person and I.G.’s daycare provider. The juvenile court could reasonably infer from the evidence that mother had not met her case plan objective of developing an ongoing positive support system of at least three persons other than father and his family.

Mother admits that she did distance herself from T.C., but she contends that the court’s perception of a resulting risk to I.G. did not constitute “substantial evidence of risk” because mere perceptions are not enough. In support of this contention, mother quotes from *In re James R.* (2009) 176 Cal.App.4th 129 (*James R.*), where it was stated: “Perceptions of risk, rather than actual evidence of risk, do not suffice as substantial evidence. [Citation.]” (*Id.* at p. 137.)

Mother’s reliance on *James R.* is misplaced. In that case, the parents challenged the sufficiency of the evidence to support the court’s jurisdictional findings under section 300, subdivision (b), arguing that it had not been shown that the children were at

substantial risk of serious physical harm as a result of mother's mental illness or substance abuse. (*James R., supra*, at p. 134.) The appellate court stated that, "[a]lthough [mother] had a history of mental instability, she had not abused or neglected the minors in the past." (*Id.* at p. 136.) "[T]here was no evidence of actual harm to the minors from the conduct of either parent and no showing the parents' conduct created a substantial risk of serious harm to the minors." (*Ibid.*) It found that "[a]ny causal link between [mother's] mental state and future harm to the minors was speculative" (*ibid.*) and that it had not been shown "how the minors were or would be harmed by [mother's] alleged substance abuse" (*id.* at p. 137).

Here, in contrast, the dependency history shows that there was more than a mere perception of possible risk. Mother herself had told her social worker that a support network was critical to avoiding the conditions that had led to the court's assumption of dependency jurisdiction, particularly social isolation and financial dependence on abusers. In this case, even after successfully completing a court-ordered domestic violence victims' support group, mother resumed living with father, who had a history of domestic violence and drug abuse. The court ordered I.G. removed from mother's custody, and it ordered mother to complete a second domestic violence victims' support group, which she did. When the court returned I.G. to mother's custody, the court ordered mother to complete a third domestic violence victims' support group. Despite having completed two domestic violence victims' support groups, the juvenile court found, based upon substantial circumstantial evidence, that mother was again in contact with father after she had regained custody of I.G.

The juvenile court considered the current domestic violence support group requirement to be a very significant aspect of mother's case plan, and the court found it telling that mother had attended only two classes following I.G.'s return to mother's custody in December 2014. In addition, at the time of the status review hearing, mother was facing some of the same vulnerabilities that led to her dependence on abusers.

Mother had no job; she did not even have enough money to cover her rent. She lacked an ongoing support network to which she could turn, and she did not have definite childcare arrangements in place.

Substantial evidence supported the court's implicit finding that the conditions that "would justify initial assumption of jurisdiction under Section 300" "are likely to exist if supervision is withdrawn." (§ 364(c).) Even if the evidence could be reconciled with a contrary finding, reversal is not warranted under the substantial evidence test. (See *In re George T.* (2004) 33 Cal.4th 620, 631.)

3. Alleged Shift in the Burden of Proof to Mother

Mother asserts that the trial court abused its discretion by requiring mother to obtain a favorable recommendation from T.C. before it would agree to terminate the dependency, and that requirement improperly shifted the burden of proof to her.

a. Background

At the status review hearing, the court made the following comments: "At this point we don't have an individual in place who can report their concerns in a viable way. I would like to see mom utilize [T.C.'s] daycare services again. I think it's in [I.G.'s] best interest, and to continue to expose her to new and different childcare providers I don't think is in her interest. I would ask the Department to support . . . mother in that. And I would say if mother takes the child back to [T.C.] and [T.C.] can assure the Court through her own comments that mother, in fact, is not retreating and falling back into habits that are a problem, and that she's not hearing the child spontaneously talk about where she's going, 'daddy's house,' then perhaps the Court would feel safe in dismissing the case." The court also stated: "I am going to add under the case plan that I would like to see mother cooperate with the Department, and if possible, for the Department to support a plan where the child could continue in the care of [T.C.], assuming she is available, as the childcare provider. And I just want mom to know that that is a very important person to the Court. If she's serious about having this dismissed, then we

would expect to have from [T.C.], reports that mom is, in fact, engaging in a way that we can trust that she is not falling back into the cycle, but rather is able to stand on her own two feet and move forward, so that's an important support person at this point.”

b. *Analysis*

The court's remarks do not establish that it imposed the burden of proof on mother at the status review hearing. Their thrust was that the court found T.C. to be a reliable reporter. The court, as the trier of fact, is the sole judge of the credibility and weight of the evidence. (*Estate of Teel* (1944) 25 Cal.2d 520, 526.) In addition, those remarks about T.C. related to mother's new case plan and possible termination of the dependency in the future.

The court's comments might be construed as signaling its intent to impose an incorrect burden of proof at a future status review hearing. On appeal, the Department concedes that the court's "statement that it would expect a positive report from the daycare provider to consider a termination in the future was inappropriate." But the Department asserts that any error was harmless, and we agree.

At the next review hearing, the court will again be governed by section 364. If the Department then opposes termination of dependency jurisdiction, it will bear the burden of proving by a preponderance of the evidence "that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn." (§ 364(c); see *Aurora P.*, *supra*, 241 Cal.App.4th at p. 1146.)

DISPOSTION

The August 14, 2015 orders are affirmed.

ELIA, ACTING P.J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.