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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JOSEPH W., a Person Coming Under
the Juvenile Court Law.

B238661
(Los Angeles County
Super. Ct. No. CK 79000)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CHRISTOPHER M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Rudolph Diaz, Juvenile Court Referee. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Christopher M. appeals from the dependency court's jurisdictional findings and dispositional order relating to his three-year-old son Joseph W., claiming the findings and order are not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

The child involved in this appeal is Joseph W. (now almost four), and his father Christopher M. is the only appellant. However, Joseph has seven half-siblings, and M.W. is the mother of all eight children. Derek B. is the father of Regina B. and Aaliyah B.; F.L. is the father of Shan. L., Sham. L., F.L., Jr., G.L. and M.L. In a prior opinion, we addressed appeals filed by Derek B. and F.L.¹ (*In re Regina B.* (Jul. 18, 2012, B237286) [nonpub. opn.].) We discuss Joseph's half-siblings as well as Derek B., F.L. and M.W. as relevant to this appeal.

Before Joseph was born, the Department of Children and Family Services had received multiple referrals regarding Joseph's half-siblings, including Regina B., a "medically fragile" child with cerebral palsy and a number of other health conditions who was living in a medical care facility. The Department initiated voluntary services on three occasions between May 2008 and August 2009. Then the Department received a referral indicating M.W. had stopped visiting Regina and the medical care facility could not reach her for necessary authorizations. M.W.'s whereabouts were unknown, and Derek B. told the social worker she had a "serious drug problem" and was homeless.

In September 2009, the Department filed a petition on behalf of all eight children, alleging M.W.'s neglect and substance abuse as well as Christopher's failure to provide

¹ The record in this appeal contains a single clerk's transcript and a single reporter's transcript. However, in their briefs, both parties refer to the record in Derek B.'s prior appeal. (*In re Regina B.* (Jul. 18, 2012, B237286) [nonpub. opn.].) On the court's own motion (by separate order), the clerk's and reporter's transcripts that comprise the record in this prior appeal (B237286) are incorporated by reference as part of the record on appeal in this case (B238661).

Joseph with the necessities of life. (Welf. & Inst. Code, § 300, subds. (b), (g) & (j) [all further undesignated statutory references are to the Welfare and Institutions Code].)

Christopher did not appear at the September hearing, but M.W. identified Christopher as Joseph's father, and the dependency court directed the Department to conduct a due diligence search for Christopher. The court found a prima facie case for detaining the children and that they were minors within the meaning of section 300, subdivision (b) and (g); Aaliyah was released to Derek's custody.

In October, the Department's social worker spoke with Christopher by telephone. He said he started caring for Joseph (then ten months) when he was three months old by agreement with M.W., but when Joseph was about five months old, Christopher allowed his mother Margaret M. to care for Joseph because Christopher said he was "unstable." He said he had separated from his wife Gladys and was living with different people. He said he visited Joseph and helped care for him.

Christopher appeared at the next court hearing in October and denied the allegation in the petition as to him. The Department had already released Joseph to Christopher, and the dependency court ordered Joseph to remain in Christopher's care.

Also in October, the Department dismissed the original petition and filed a first amended petition, adding allegations as to Derek B. (Regina's and Aaliyah's father), indicating his 34-year history of substance abuse and status as a registered controlled substance offender as well his criminal history placed his children at risk.

According to the December jurisdiction and disposition report, Christopher said he had recently reunited with his wife Gladys and said they had been married since 2001. Christopher said he had four children. In addition to Joseph, he had two daughters (ages six and three) and another son (seven months). The Department recommended reunification services for Christopher along with an order directing both Christopher and Gladys to submit to a background check. Although Gladys "carrie[d] the primary responsibility of caring for [Joseph]," she had not made herself available to the social worker.

At the adjudication hearing in January 2010, as to Joseph, the dependency court sustained the amended petition pursuant to subdivisions (b) and (j) of section 300. (For Joseph's half-siblings, the amended petition was also sustained pursuant to subdivision (g) in addition to subdivisions (b) and (j).)

According to the interim review report prepared in March, Christopher was separated and had moved to Valley Village. After numerous calls and home visits, the Department had been unable to locate Joseph, but he was later found to be with Margaret (Christopher's mother) who said Christopher had left Joseph in her care, and she had applied for MediCal for Joseph. Although he had "initiated a safety plan" for Joseph in leaving him in his mother's care, Christopher had not had any contact with the Department for more than a month, and his whereabouts were unknown. It had been previously reported that Christopher may have a substance abuse problem with alcohol and crystal meth, but he had denied any substance abuse history. Margaret promised the social worker she would inform the Department if and when Christopher returned to take custody of Joseph and would protect him from Christopher if necessary. The Department recommended continued family maintenance services for Christopher to include substance abuse counseling and random drug testing along with parenting education.

At the disposition hearing in April, the court declared the children dependents, placing Joseph with Christopher. Christopher was ordered to cooperate with Family Preservation Services and to keep the Department informed of his address and telephone number.

As of the October status review, the social worker had visited Christopher at his home with Joseph in Valley View, and Joseph was doing well in his father's care, with assistance from Margaret as Joseph's secondary caregiver. The social worker had no concerns regarding Joseph and saw no reason to believe he was at risk in Christopher's care. Christopher wanted custody of Joseph and termination of his case; the Department recommended termination of jurisdiction. In October, the dependency court terminated jurisdiction as to Joseph.

In January 2011, the Department filed a subsequent petition (§ 342) on behalf of Joseph's half-siblings, alleging Christopher had sexually abused Shan. L. at the age of 13, and had been charged with rape against a person's will (Pen. Code, § 261, subd. (a)(2)), rape with an accomplice (Pen. Code, § 264.1) and sex crimes against a child under 14 (Pen. Code, § 288, subd. (b)(1)); M.W. had assisted him by forcibly removing Shan.'s clothes and threatening her if she disclosed the abuse; and Christopher had physically abused Sham. L. among other allegations.

Similarly, in a new section 300 petition filed on Joseph's behalf, the Department alleged Joseph was at substantial risk of physical and sexual abuse pursuant to section 300, subdivisions (a), (b), (d) and (j) based on the following allegations:

(1) On a prior occasion, Christopher physically abused Sham. by pulling her hair; on a prior occasion, Christopher struck Sham. with his hands; M.W. knew or should have known of this abuse and failed to protect the child (counts (a)(2), (b)(7) and (j)(5));

(2) On a prior occasion, Christopher sexually abused then 13-year-old Shan. by forcibly raping her and by placing his penis in her vagina; on a prior occasion, Christopher forced Shan. to orally copulate his penis; on a prior occasion, Christopher orally copulated Shan.'s vagina; on a prior occasion, Christopher fondled and kissed Shan.'s breasts; M.W. knew of the sexual abuse and failed to protect Shan. by allowing Christopher to reside in the home with unlimited access to her; Christopher was charged with rape against a person's will, rape with an accomplice and sex crimes against a child under 14 (counts (b)(1), (d)(1) and (j)(1));

(3) On a prior occasion, M.W. sexually abused then 13-year-old sibling Shan. by forcibly removing her clothing and watching as Christopher forcibly raped Shan., threatening her with punishment if she did not allow the rape; M.W. was charged with rape with an accomplice (counts (b)(2), (d)(2) and (j)(2));

(4) On prior occasions, M.W. and Christopher sexually abused Shan. by engaging in sexual activities in Shan.'s presence (counts (b)(3), (d)(3) and (j)(3));

(5) Christopher has a history of substance abuse, including cocaine, ecstasy, marijuana and alcohol, in the presence of the children (count (b)(4));

(6) On prior occasions, M.W. established a detrimental and endangering home environment for 13-year-old Shan. by providing her with alcohol and marijuana (counts (b)(5) and (j)(4)); and

(7) On prior occasions, M.W. and Christopher engaged in violent altercations in the presence of Shan., Sham., G.L., F.L. Jr., M.L., Regina B. and Aaliyah B.; on a prior occasion, M.W. struck Christopher's head with a wine bottle; on prior occasions, Christopher struck M.W. with his hands (count (b)(6)).²

According to the January detention report, based on all party interviews and collateral reports, the allegations of sexual abuse were substantiated, and Joseph was found to be "at high risk of abuse." Noting the prior case history and Christopher's denial of the allegations, the Department filed a supplemental petition, maintaining Joseph's placement. Christopher was living with his mother Margaret who said she would be with Joseph at all times and would not leave Christopher alone with Joseph.

In the course of an interview with a dependency investigator, Shan. disclosed that Christopher had had sexual intercourse with her in 2008 when she was 13 years old. She said it had happened when her mother and Christopher returned home from a club at 1:00 or 2:00 a.m. Shan. said she was in her own room when M.W. called her into the living

² According to the briefs, the section 300 petition was not made part of the record on appeal and must have been inadvertently omitted from the copying of the transcripts, but it is referenced in the reporter's transcript and minute order of November 7, 2011, the date on which the dependency court made its jurisdictional findings. At that time, the dependency court expressly stated the language of the section 342 petition filed as to Joseph's seven siblings was identical to the language of the section 300 petition filed as to Joseph (except that Christopher was identified as M.W.'s male companion (rather than Joseph's father) in the section 342 petition regarding Christopher's half-siblings); an allegation designated as "(a)(1)" was stricken and dismissed. (The separate petition had been filed because Joseph's case had previously been dismissed when Joseph was released to his father, but the subsequent allegations set forth in the section 342 petition necessitated "reactivating" Joseph's case.) The allegations from the petition filed as to Joseph were also set forth in the January 2011 jurisdiction and disposition report.

room and “asked her to do her a favor” and have sex with Christopher. Shan. responded, “No, that’s nasty.” M.W. begged her and pulled down her pants, and Shan. and Christopher had sexual intercourse. She said he put his penis inside her vagina and “started doing it” as her mother stood watching. The next morning, Shan. said, M.W. came into Shan.’s room crying, apologizing and begging her not to tell anyone about the incident because Christopher would go to jail. Christopher also came into her room and begged her not to tell anyone. Shan. said the only person she told was a cousin, but she was telling the investigator what had happened because she felt safe in her placement.

Shan.’s sister Sham. said she hated Christopher for sexually abusing her sister and said she knew he was a “pervert . . . from day one.” She said her mother knew about the sexual abuse and had seen Christopher get into bed with Shan. when he was intoxicated. Sham. said she had never allowed anyone to touch her sexually, but she said Christopher had slapped her butt and had pulled her hair before. Joseph was too young to provide a meaningful statement; the other siblings denied having been abused themselves or having seen Christopher sexually abuse Shan.

Christopher said he had never had sex with Shan., never touched her, never said anything inappropriate, had never been alone with Shan. and M.W. had never asked him to have sex with Shan. In a later interview, he told a social worker he thought one of the children’s aunts was encouraging the girls to make accusations against him. Christopher also said Derek B. (Regina’s and Aaliyah’s father) was “trying to make this happen” because he (Derek) “had it out” for him. According to Christopher, Derek was upset when M.W. had Joseph, and Derek wanted Joseph to “end up in the system” like his own children.

Christopher said he and M.W. had gone out to clubs “now and then” but had stopped going out after Joseph was born in 2008. He said they drank at clubs but did not return home intoxicated. Christopher denied using drugs and said when M.W. began using drugs, he took Joseph and ended his relationship with M.W. He said Derek was

“the dope man.” Christopher’s mother and brother also denied the possibility he could have sexually abused Shan.

In November, Derek told the social worker he knew about the sexual abuse and said he knew M.W. made Shan “do sexual things for [Christopher].” He said he knew the incident the social worker referenced had occurred in 2008 but said it was not the first incident. In addition to the night M.W. asked Shan. to have sex with Christopher, Derek said there were times when Shan. would be in the same room when Christopher and M.W. were naked and smoking marijuana. Shan. would be topless and Christopher would kiss her breasts while M.W. orally copulated Christopher. Derek said Christopher and M.W. also used ecstasy and crack. He said Christopher should not be around children.

According to the Incident Investigation Report filed with the Los Angeles County Sheriff’s Department in Lancaster, Shan. reported the same details she had given the social worker. She was home watching television one night during the winter of 2008 when M.W. and Christopher came home from a club. They sat in the living room with her. Then M.W. asked Shan. to have sexual intercourse with Christopher. She said her mother pulled down her pants and Christopher started having sex with her. Shan. told him to stop and tried to push him off. The next morning, both M.W. and Christopher asked Shan. not to tell anyone what had happened the night before. She said she had not disclosed the abuse until April 2010 because she was scared.

Joseph was detained in Margaret’s home. When the Department interviewed Christopher again in January 2011, he continued to deny the allegations (sexual abuse, substance abuse and physical altercations with M.W.) and said Derek was behind “all of this stuff” because he was upset Joseph was conceived while he (Derek) was incarcerated. The investigator was unable to speak with Shan. who would not make herself available for a statement.

Meanwhile, Sham. had been arrested and was in Sylmar Juvenile Hall and was interviewed again there. She said M.W. and Christopher would fight, and M.W. hit

Christopher on the head with a wine bottle one time. She believed both were probably intoxicated; they would drink “all the time.” They would go out and leave the children with their disabled sister Regina. Sham. again said Christopher had pulled her hair and “smacked” her on the buttocks, and she believed both actions to be sexual because he was not upset or angry at the time. When Sham. told her mother about it, M.W. just laughed and did nothing about it. Sham. said she knew about the time Christopher had sex with her sister Shan. and their mother watched; Shan. had told her about it. On another occasion, when M.W. was in the hospital giving birth to Joseph, Sham. said Christopher came to the house intoxicated and got into bed with Shan. who was not wearing any pants. Sham. said a neighbor who was babysitting had also seen this incident, and the neighbor told Christopher to leave and go check on his baby.

M.L. said M.W. and Christopher fought, and Christopher would hit M.W. when he was angry. M.L. also said he had seen Christopher touch Shan.’s “private area” and said Christopher “touched her breasts too. Me and my sisters [Sham. and G.L.] saw him.” M.L. also said he had seen Christopher use cocaine. The younger siblings said they did not know anything about the allegations. (Regina is nonverbal, and Joseph was too young to make a statement.)

Derek provided the same account he had previously given. In addition, he said the police had to come to the house after M.W. broke a wine bottle over Christopher’s head; he said the physical altercation occurred because M.W. was jealous of another woman with whom Christopher and M.W. may have had sex. A maternal aunt (Tierra W.) said she had been present for the incident with the wine bottle “years ago.” She did not know anything about sexual abuse; she said she had not spoken to Shan. or M.W. for some time.

Shan.’s school counselor (Lawrence Q.) was very concerned about Shan. and said she appeared despondent. He said she had told him about the abuse; he had not reported it because the court and authorities had already been notified.

When the social worker spoke with Shan. in January, she said her mother threatened her into having sex with Christopher. She reiterated that Christopher had inserted his penis into her vagina and said her mother and Christopher had sexual intercourse in her presence, did “all types of drugs” and fought. One time, her mother “cracked” Christopher on the head with a bottle. She said she drank alcohol with M.W. and Christopher—“like a gulp of Hennessey.”

During a January 11 home visit, the social worker saw Joseph holding an empty vodka bottle; Margaret said it was from New Year’s Eve, and Joseph had taken it from the recycling bin.

At the February hearing, the dependency court received a first amended petition and dismissed the prior petition. Christopher did not appear. The Department noted the first amended petition as well as the jurisdiction and disposition report provided further information regarding the allegations against Christopher and M.W. and asked the dependency court to order Christopher not to reside in the same home as Joseph. Joseph’s counsel joined in the request. Joseph was ordered detained with Margaret, with Christopher ordered not to reside in the home.

Two weeks later, Shan. was hospitalized as a danger to herself and diagnosed with major depressive disorder. She was prescribed Prozac and Risperdal and discharged two days later. The Department opined her isolating behaviors and recent diagnosis suggested traumatic abuse.

At the March hearing, Christopher appeared and denied the allegations against him; an adjudication hearing was set for May.

In its Last Minute Information for the Court, the Department reported Sham. had left her placement in late March and refused to return. Shan. had also left her placement at the end of April, and her whereabouts were unknown.

The Department also advised the dependency court of a recent interview with a neighbor (Renee Q.). She said the children had not told her about sexual abuse or M.W. and Christopher fighting but said Christopher and M.W. “just drank and they drank a

lot.” She said there had been something that seemed “really strange to [her].” She had seen Christopher drunk in bed with Shan. when Shan. was only wearing a shirt and panties. She “thought it was weird” and told him so. She remembered asking Christopher what he was doing and why he was not at the hospital with his baby.

On May 5, the dependency court issued a protective custody warrant for Shan. and continued the matter for trial setting five days later. After another continuance to June, on the day of the hearing, the Department presented counsel and the court with a transcription from an audiotape Derek B. said he had obtained, with M.W.’s admission Christopher had sexually abused Shan. The matter was continued again to give counsel an opportunity to review the material and prepare to discuss its admissibility. Protective custody warrants issued for Shan. and Sham. were recalled. Because of concerns regarding the transcription of the audiotape submitted with the Department’s report, the Department did not submit its report, and the matter was again continued to August and then to September.

In September, Christopher’s counsel said he had to ask to be relieved because of a conflict. New counsel was appointed; the adjudication hearing was advanced and vacated and the matter was again continued to November.

According to the interim review report prepared for the November hearing, the District Attorney’s office had rejected the filing of criminal charges against Christopher. The Department did not have an explanation from the detective involved. Shan. had been hospitalized again in late October for being a danger to herself and threatening to kill herself by overdosing on prescription medication. She was scheduled for possible release ten days later. The discharge plan included communication with Shan.’s therapist to possibly increase her sessions.

The social worker also documented a telephone interview with M.W. and Derek B. in the report. M.W. said she had been used and abused all her life and blamed Christopher. She said he abused her and brought drugs into her life. M.W. said Christopher “was there to get what he could get” and “didn’t mind watching [her]

daughters.” M.W. said Shan. was “hip” to Christopher and “knew something was wrong with him.” M.W. said she believed Shan. because she (M.W.) knew Christopher. “It was different behind closed doors.” When M.W. was asked whether she and Christopher had had sexual intercourse in Shan.’s presence, Derek told the social worker, “There she goes all teary-eyed.” Derek said he believed Shan. and thought she should testify at the hearing.

According to the Department’s report, the evidence supporting the allegations was overwhelming; Shan. had made a number of consistent disclosures of the abuse, and her behavior, hospitalization and diagnosis further supported her account. In addition, multiple empty bottles of alcohol and excuses for missing on-demand drug testing supported the substance abuse allegations. The Department recommended reunification services, including individual counseling to address domestic violence, parenting, sexual abuse and substance abuse.

When the November adjudication hearing began, Christopher was not present, but his counsel indicated he was ready to proceed. The dependency court received the Department’s reports into evidence and took judicial notice of the previously sustained section 300 petition. No witnesses were called, and the hearing proceeded to argument; Christopher arrived during that time.

The dependency court found all of the remaining allegations had been proven by a preponderance of the evidence. Having considered all of the evidence and having taken judicial notice of the various petitions and case plans, the court stated, “I am convinced that the Department has met its burden in this instance[. N]otwithstanding the fact that [Derek B.] has some significant credibility issues, I don’t think he could orchestrate all this with the children.” In the court’s view, the “most compelling testimony in evidence” was Shan.’s. “To have to retell this in a fairly consistent basis throughout, I think she’s afforded a significant amount of credibility.” The dependency court found Joseph to be a dependent child under section 300, sustaining the petition pursuant to subdivisions (a), (b), (d) and (j).

The matter was then continued to mid-December for a contested disposition hearing. At the disposition hearing, no additional evidence or arguments were presented regarding Joseph. The dependency court found by clear and convincing evidence, pursuant to section 361, subdivision (c), there was a substantial danger to Joseph if returned to his parents and ordered Joseph removed from their custody. The dependency court further ordered reunification services for Christopher to include drug and alcohol treatment with random testing, sexual abuse counseling for perpetrators and individual counseling to address all issues contributing to his molestation of Shan., drug and alcohol abuse, domestic violence and the negative impact all of these issues had on parenting Joseph. Visitation was to be monitored by a Department-approved monitor.

Christopher appeals, challenging the jurisdictional findings of November 7, 2011 and dispositional orders of December 14, 2011.³

DISCUSSION

Standard of Review

As Christopher acknowledges, we review the dependency court's jurisdictional findings and dispositional orders for substantial evidence. (*In re David M.* (2005) 134 Cal.App.4th 822, 828; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) We examine the whole record in the light most favorable to the findings and conclusions of the dependency court and defer to that court on all issues of credibility. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.) We determine only whether there is any substantial evidence, contradicted or uncontradicted, that supports the court's order, resolving all conflicts in support of the determination and indulging all legitimate inferences to uphold the court's order. (*In re*

³ According to subsequent minute orders, the dependency court terminated reunification services for Christopher as of June 13, 2012, finding Christopher was not in compliance with his case plan.

Katrina C. (1988) 201 Cal.App.3d 540, 547; *In re John V.* (1992) 5 Cal.App.4th 1201, 1212; *In re Eric B.* (1987) 189 Cal.App.3d 996, 1004-1005.) ““The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.”” (*David M.*, *supra*, 134 Cal.App.4th at p. 828, quoting *Savannah M.*, *supra*, 131 Cal.App.4th at pp. 1393-1394; accord, *In re Albert T.* (2006) 144 Cal.App.4th 207, 216-217.)

Toward the end of his opening brief, Christopher concedes: “It is well recognized that a section 300 petition need only contain allegations against one parent to support the exercise of the juvenile court’s jurisdiction. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) A jurisdictional finding good against one parent is good against both. (*Id.*) [¶] Accordingly here, the allegations against [M.W.] and [Christopher] under several other subdivisions would satisfy a jurisdictional basis for the section 300 petition.” He also recognizes the following: “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. (*In re Alexis* (2009) 171 Cal.App.4th 438, 451.)”

“However,” Christopher says, “if sustaining a challenged part of the petition could impact placement and reunification orders, courts have been willing to review such challenges on appeal. (See *In re John S.* (2001) 88 Cal.App.4th 1140, 1143; *In re Joel H.* (1993) 19 Cal.App.4th 1185, 1193; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547.)” “As relevant here,” he says, “once a court has sustained an allegation of sexual abuse, not only does a permanent social stigma attach to both father and son, but there are virtually inescapable repercussions from placement of the parent’s name on the state’s official list of child abusers. (See *Los Angeles County v. Craig A. Humphries* (2010) 131 S.Ct. 447.)” Consequently, Christopher says, he challenges several of the dependency court’s

jurisdictional findings under subdivisions (a), (b), (d) and (j) of section 300 as unsupported by substantial evidence because “[s]uch jurisdictional findings directly impacts [sic] the court’s dispositional orders, as [he] has been ordered to partake in a drug program, sex abuse counseling, etc. More importantly, Joseph was removed from [Christopher’s] custody. Moreover, the jurisdictional findings could affect [him] in the future, if dependency proceedings were [sic] ever initiated or contemplated with regard to [his] other children. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547 [appeals in dependency matters are not moot if the purported error is of such magnitude as to infect the outcome of subsequent proceedings].) [¶] Accordingly,” Christopher says, “regardless whether [sic] the court properly assumed jurisdiction due to the conduct of [M.W.] and [Christopher] in non-challenged counts, [Christopher] seeks this court’s review of his challenge to the section 300 petition as addressed herein because these allegations are not supported by substantial evidence.”

Accordingly, we note at the outset that all of the allegations set forth above were sustained as to M.W. (as well as Christopher) and M.W. did not appeal. Moreover, Christopher does not challenge any of the domestic violence allegations set forth in “b-6.” The dependency court found true the allegations that M.W. and Christopher engaged in violent altercations in the presence of Joseph’s sibling, including allegations Christopher struck M.W. with his hands on prior occasions and she hit him in the head with a wine bottle, and such violent conduct endangered Joseph’s physical and emotional health and safety.

Nonetheless, Christopher argues the evidence was insufficient as to a number of other allegations. We disagree.

The Finding that Joseph Is at Substantial Risk of Serious Physical Harm under Subdivision (a) of Section 300 Is Supported by Substantial Evidence.

Christopher says the evidence was insufficient to support the dependency court’s “jurisdictional finding of physical abuse under [a-2, b-7 and j-5] of the section 300

petition.”⁴ Pursuant to subdivision (a) of section 300, a child comes within the dependency court’s jurisdiction when the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.”

Christopher challenges the allegations he had physically abused Joseph’s sibling Sham. L. by pulling her hair and, on another occasion, striking her with his hands; M.W. knew or should have known of this physical abuse and failed to protect Sham.; and Christopher’s physical abuse and M.W.’s failure to protect placed Joseph at risk of physical and emotional harm. As Christopher acknowledges, the jurisdictional finding in this regard as to M.W. supports the finding as to Christopher. (*In re Alysha S.*, *supra*, 51 Cal.App.4th at p. 397.) Further, Sham. told the social worker Christopher had pulled her hair and “smacked” her for no reason; when she told M.W., she just laughed, and Christopher denied the allegations. Sham.’s report constitutes substantial evidence of

⁴ In the section 300 petition, the Department identified multiple allegations supporting the dependency court’s exercise of jurisdiction pursuant to subdivisions (a), (b), (d) and (j)—with some of the allegations submitted in support of more than one subdivision—and the dependency court sustained all of them. (For example, the Department set out seven allegations within the meaning of subdivision (b), listed as “b-1” through “b-7,” and some of these allegations were stated in support of subdivisions (d) and (j) as well.) Christopher frames his argument in terms of the sufficiency of the evidence in support of certain allegations separately (other than the domestic violence allegations and allegations as to M.W.). (For example, under one subheading in his brief, he argues the dependency court erred in sustaining the allegations identified as “b-1”, “d-1” and “j-1” because there was no evidence he would harm his biological son.) We consider whether the petition was properly sustained as to each *subdivision* in the petition: subdivisions (a), (b), (d) and (j) of section 300.

physical abuse. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.) Finally, M.L. said Christopher hit his mother when he was angry, and M.W. acknowledged Christopher's abuse (and she hit him over the head with a bottle when the children were home). Yet, neither Christopher nor M.W. challenged the allegations of domestic violence in the children's presence which, in context, further support the finding of risk of physical abuse. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

The Finding that Joseph Is at Substantial Risk of Serious Physical Harm under Subdivision (b) of Section 300 Is Supported by Substantial Evidence.

Citing *In re James R.* (2009) 176 Cal.App.4th 129, Christopher says "subdivision b-4" (alleging his substance abuse placed Joseph at risk) should be stricken because "no one opined that [he] neglected or endangered Joseph . . . as a result," and he had had a negative drug test.

As provided in subdivision (b) of section 300, a child comes within the dependency court's jurisdiction when the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. . . ."

The Department alleged Joseph was at substantial risk of serious physical harm within the meaning of subdivision (b) of section 300 as a result of Christopher's failure to protect Joseph, as a result of Christopher's failure to protect Joseph from M.W. and because of Christopher's substance abuse on the basis of seven separate allegations as summarized above (Christopher's physical abuse of Sham., Christopher's and M.W.'s

multiple acts of sexual abuse of Shan., Christopher's and M.W.'s substance abuse and their domestic violence). As noted in the preceding section, substantial evidence supports the dependency court's true finding under subdivision (a) on the basis of Christopher's physical abuse of Sham. To the extent the allegations of Christopher's failure to protect Joseph within the meaning of subdivision (b) of section 300 rest on Christopher's substance abuse, the true finding is again supported by substantial evidence.

M.W. said Christopher had brought drugs into her life, and not only Sham. but also the neighbor (Renee) said Christopher and M.W. drank a lot and "dr[a]nk all the time." The same neighbor said Christopher was drunk when she saw him in bed with Shan. Shan. said Christopher and M.W. gave her alcohol and used "all types of drugs" and fought; and both had been drinking when they sexually abused Shan. The social worker also reported seeing Joseph carrying around an empty vodka bottle at a home visit. Notwithstanding Christopher's challenges to Derek's, M.W.'s and the children's credibility, substantial evidence supports the true findings pursuant to subdivision (b) of section 300. (*In re Stephen W.* (1990) 221 Cal.App.3d 629, 642-643; *In re Jordan R.* (2012) 205 Cal.App.4th 111, 135-136 ["[w]e do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts; t]he appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders".])

The Finding that Joseph Is at Substantial Risk of Sexual Abuse under Subdivisions (d) and (j) of Section 300 Is Supported by Substantial Evidence.

According to Christopher, substantial evidence does not support the findings that Joseph was at risk of physical, emotional or sexual abuse under subdivisions (b), (d) or (j) because there was "no evidence" he would harm or abuse his biological son and there was no evidence Joseph ever witnessed Christopher's sexual activity. We disagree.

Section 300, subdivision (d), specifies that a child may be declared a dependent when: "The child has been sexually abused, *or there is a substantial risk that the child*

will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.” (Italics added.)

Penal Code section 11165.1, subdivision (b)(4) defines “‘sexual assault’” to include “[t]he intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.”⁵ Penal Code section 11165.1 also includes child molestation under Penal Code section 647.6, which makes it a crime to annoy or molest

⁵ Penal Code section 11165.1 provides, in part, “As used in this article, ‘sexual abuse’ means sexual assault or sexual exploitation as defined by the following: [¶] (a) ‘Sexual assault’ means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation). [¶] (b) Conduct described as ‘sexual assault’ includes, but is not limited to, all of the following: [¶] (1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen. [¶] (2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person. [¶] (3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose. [¶] (4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose. [¶] (5) The intentional masturbation of the perpetrator’s genitals in the presence of a child. . . .”

any child under 18 years of age. (*In re Jordan R.*, *supra*, 205 Cal.App.4th at p. 135, citing *People v. Kongs* (1994) 30 Cal.App.4th 1741, 1749 [“‘Annoy and molest’ are synonymous and mean to disturb or irritate, especially by continued or repeated acts; to vex, to trouble; to irk; or to offend.”].) As we noted in *In re R.C.* (2011) 196 Cal.App.4th 741, “No touching is required, but the statute requires conduct that would unhesitatingly irritate a normal person, and “conduct “‘motivated by an unnatural or abnormal sexual interest’” in the victim [citations].” (*In re Karen R.* (2001) 95 Cal.App.4th 84, 89–90 [115 Cal.Rptr.2d 18]; see *People v. Shaw* (2009) 177 Cal.App.4th 92, 103 [99 Cal.Rptr.3d 112] [‘there can be no normal sexual interest in any child and it is the interest in the child that is the focus of the statute’s intent’].)” (*In re R.C.*, *supra*, 196 Cal.App.4th at p. 750.)

Subdivision (j) provides for dependency jurisdiction where “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

As Christopher notes, courts are divided as to whether sexual abuse of a female child, standing alone, is sufficient to establish substantial risk of sexual abuse to a male sibling.⁶ As the court in *In re R.V.* (2012) 208 Cal.App.4th 837, explained: “The issue of whether a parent’s sexual abuse of a female child can support a finding that the child’s male sibling is at substantial risk of sexual abuse has been addressed in a number of cases. In *In re Rubisela E.* (2000) 85 Cal.App.4th 177 [101 Cal. Rptr. 2d 760] (*Rubisela E.*), the father had sexually abused his 13-year-old daughter. The court held the evidence supported a finding the victim’s 11-year-old sister was also at risk of sexual abuse under

⁶ The issue is currently pending before our Supreme Court. (*In re I.J.* (2012) 207 Cal.App.4th 1351, review granted Sept. 19, 2012, S204622.)

section 300, subdivision (j) because it was reasonable to assume the father, in the victim's absence, would turn his sexual advances on the victim's sister. (85 Cal.App.4th at p 197.) The court, however, reversed the jurisdictional findings as to the victim's four brothers, who ranged in ages from two to 12, because there was no evidence they were at risk of sexual abuse based solely on the sexual abuse of their sister. (*Id.* at p. 199.)

“In *In re Karen R.* (2001) 95 Cal.App.4th 84 [115 Cal. Rptr. 2d 18] (*Karen R.*), the court disagreed with *Rubisela E.*, and held a father who forcibly raped his 13-year-old daughter ‘reasonably can be said to be so sexually aberrant that both male and female siblings of the victim are at substantial risk of sexual abuse within the meaning of section 300, subdivision (d), if left in the home.’ (*Id.* at pp. 90–91.) In that case, the evidence showed the male siblings had witnessed other forms of physical abuse by the father and heard their sister report the rape to their mother, who refused to help. (*Id.* at p. 90.) The court noted ‘[a]lthough the danger of sexual abuse of a female sibling in such a situation may be greater than the danger of sexual abuse of a male sibling, the danger of sexual abuse to the male sibling is nonetheless still substantial.’ (*Id.* at p. 91.)

“In *In re P.A.* (2006) 144 Cal.App.4th 1339, 1345 [51 Cal.Rptr.3d 448], a father who sexually abused his nine-year-old daughter argued the evidence was insufficient to support the jurisdictional findings as to his sons, ages five and eight, because there was no showing the father had touched them inappropriately and they were unaware he had abused their sister. The court disagreed, holding because the father had sexually abused his daughter, he reasonably could be found to pose a risk of sexual abuse to her two brothers. (*Id.* at p. 1343.) The court agreed with the holding of *Karen R.* that ‘aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior.’ (*Id.* at p. 1347.)

“In *In re Andy G.* [(2010)] 183 Cal.App.4th [1405,] 1414–1415, the juvenile court found a two-year-old boy was at risk of sexual abuse by his father under section 300, subdivisions (d) and (j) as a result of the father's sexual abuse of the son's 12- and 14-year-old half sisters. On appeal, the father challenged the sufficiency of the evidence to

support the court's jurisdictional findings, arguing his son was not at risk of sexual abuse because there was no evidence the father had touched him or any other minor male inappropriately. (183 Cal.App.4th at p. 1411.) The court rejected that argument, noting the evidence showed the father exposed himself to one of the girls while the son was in the room. (*Id.* at p. 1414.) Although the son did not directly witness the incident and was too young to understand what was happening, the court nevertheless concluded this showed 'a total lack of concern for whether [the son] might observe [the father's] aberrant sexual behavior.' (*Ibid.*) Moreover, the mother had been told about the abuse before it was reported to the police but she refused to believe it was true, allowing an inference she was unable to ensure her children's safety. (*Id.* at p. 1409.) Under these circumstances, the evidence was sufficient to support a finding the son was at substantial risk of sexual abuse. (*Id.* at p. 1415.)

"In *In re Ana C.* (2012) 204 Cal.App.4th 1317 [139 Cal. Rptr. 3d 686], the father had sexually abused his 11-year-old stepdaughter, Kimberly, who had moderate mental disabilities. On appeal, the court disagreed with the father's argument that he did not pose a risk to the other children in the family home as a result of the sexual abuse of Kimberly. (*Id.* at p. 1330.) The court reasoned: 'The nature and extent of the abuse, that it was perpetrated upon a particularly vulnerable child, that the abuse was conducted in a place where it was observed by her younger sister and capable of being observed by other siblings, place all the children who still reside in the home at risk of similar abuse by [the father].' (*Id.* at p. 1332.)

"In [*In re*] *Maria R.* [(2010)] 185 Cal.App.4th [48,] 57, the juvenile court found the father had sexually abused his 14- and 12-year-old daughters in the same manner he had previously molested his two adult daughters when they were around that age. The juvenile court also found the 10-year-old daughter and eight-year-old son were at substantial risk of being sexually abused by the father within the meaning of section 300, subdivision (j). (*Maria R.*, at p. 57.) On appeal, this court [the *R.V.* court] held substantial evidence supported the jurisdictional findings as to the 14- and 12-year-old

daughters under section 300, subdivision (d), and as to the 10-year-old daughter under section 300, subdivision (j). (*Maria R.*, at pp. 60–62.) With respect to the son, however, we held there was no evidence in the record to support a finding the father had an interest in engaging in sexual activity with a male child, and thus, the father’s sexual abuse of the daughters—‘as aberrant as it is’—did not establish the son was ‘at substantial risk of sexual abuse within the meaning of subdivision (j), as defined in subdivision (d) and Penal Code section 11165.1.’ (*Id.* at p. 68.) Significantly, the limited information in the record pertaining to the son showed only that he denied having been inappropriately touched. (*Id.* at p. 69; accord, *In re Alexis S.* (2012) 205 Cal.App.4th 48, 55–56 [139 Cal. Rptr. 3d 774] [where father sexually molested adolescent stepdaughters, court affirmed jurisdictional findings that minor sons were at risk of sexual abuse, but reversed dispositional orders removing them from family home because there was no evidence the sons were aware of father’s actions and father had moved out of the home]; *In re Jordan R.*, *supra*,] 205 Cal.App.4th [at pp.] 138–139 [40 Cal. Rptr. 3d 222] [this court [the *R.V.* court] affirmed juvenile court’s finding two-year-old son was not at risk of sexual abuse where father’s sexual abuse of niece living in family home did not occur in son’s presence and there was no evidence suggesting father had any interest in molesting young boys].)” (*In re R.V.*, *supra*, 208 Cal.App.4th at pp. 845-846.)

“In reaching our conclusion,” the *R.V.* court continued, “we noted that generally, brothers of molested girls may be harmed by the fact of molestation occurring in the family, but in the absence of evidence ‘that the perpetrator of the abuse may have an interest in sexually abusing male children,’ there is no risk of sexual abuse within the meaning of section 300, subdivision (d). (*Maria R.*, *supra*, 185 Cal.App.4th at p. 67.) We reasoned that section 300, subdivision (d) limits sexual abuse to the definitions in Penal Code section 11165.1 (sexual assault and sexual exploitation), and “does not include . . . the collateral damage on a child that might result from the family’s or child’s reaction to a sexual assault on the child’s sibling.” (*Maria R.*, at pp. 67–68.) Nevertheless, we held that when a child’s sibling has been sexually abused by a parent,

the court may assume jurisdiction under section 300, subdivision (j) if it finds, after considering the totality of the child's and sibling's circumstances, there is a substantial risk to the child in the family home under any of the subdivisions referred to in subdivision (j). (*Maria R.*, at p. 65.)” (*In re R.V.*, *supra*, 208 Cal.App.4th at p. 846.)

In *R.V.*, however, the court found the facts to be “materially different from those in *Maria R.*” (*In re R.V.*, *supra*, 208 Cal.App.4th at p. 846.) “The record shows the father sexually abused [another child] Y.R. at least once a week for eight months by touching and kissing her breasts, touching her genitals (including digital penetration), forcing her onto the bed in order to remove her skirt and making her watch a pornographic movie with him while he exposed his genitals to her. (See Pen. Code, § 11165.1, subds. (a) & (b) [defining “sexual abuse” to mean “sexual assault,” including intentional touching of a child's breasts or genital area for purposes of sexual arousal or gratification].) R.V. not only witnessed the father sexually abusing Y.R., but he also participated in helping Y.R. resist the father's unwanted advances, showing he was keenly aware of the inappropriateness of the father's behavior. *By repeatedly exposing R.V. to aberrant sexual behavior in this manner*, and allowing him to engage in the struggle, the father placed R.V. at risk of sexual abuse within the meaning of section 300, subdivision (d). (See *In re Andy G.*, *supra*, 183 Cal.App.4th at p. 1414 [son was at risk of sexual abuse by father, whose actions in sexually abusing stepdaughters in son's presence showed total lack of concern for whether his son would observe aberrant sexual behavior]; *In re Ana C.*, *supra*, 204 Cal.App.4th at p. 1332 [sexual abuse was conducted in a place where it could be seen by other siblings, thus placing all the children at risk of similar abuse by the father].) This is unlike *Maria R.*, where the record was devoid of any evidence the son had been exposed to his sisters' sexual abuse or was even aware of it. (*Maria R.*, *supra*, 185 Cal.App.4th at p. 69.)” (*In re R.V.*, *supra*, 208 Cal.App.4th at pp. 846-847.)

Just as Christopher argues here, “The father [in *R.V.*] assert[ed] there was no evidence he had any interest in engaging in sexual activity with a male child.” (*In re R.V.*, *supra*, 208 Cal.App.4th at p. 847.) Rejecting the assertion, the court in *R.V.* stated:

“[S]everal factors, in addition to the father’s sexual abuse of Y.R., have an established correlation with risk of sexual abuse to R.V. The father often bathed naked with R.V. and routinely kissed him on the mouth. Although these activities could be entirely innocuous under other circumstances, they become suspicious in the context of the father’s audacity to purposely engage in sexually aberrant behavior in front of his three-year-old son. (See *Rubisela E.*, *supra*, 85 Cal.App.4th at p. 198; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1217 [272 Cal. Rptr. 316].) Further, the risk of sexual abuse to R.V. was increased by the mother’s refusal to believe the father had molested Y.R. Under these circumstances, the court was required to focus on ensuring the safety, protection and well-being of minors like R.V. who are at risk of sexual abuse. (§ 300.2.)” (*In re R.V.*, *supra*, 208 Cal.App.4th at p. 847.)

Similar to Christopher’s argument in this case, the father in *R.V.* also “assert[ed] the evidence was insufficient to support the court’s jurisdictional findings under section 300, subdivision (j) because there was no forensic interview or psychological evaluation of R.V., and R.V. did not reveal anything of concern to the social workers. (*Maria R.*, *supra*, 185 Cal.App.4th at p. 69.) However,” the *R.V.* court emphasized, “the language in *Maria R.* was not intended to require a forensic interview or psychological evaluation of a potential victim of sexual abuse in every case. Instead, our reference to the absence of those types of evaluations and reports was made in the context of a record that contained no evidence as to what particular harm had occurred to the son regarding risk of sexual abuse to him. Consequently, we remanded the matter to the juvenile court to allow Agency to obtain any necessary evaluations to ensure the son’s safety and well-being, and to allow Agency to file an amended petition under any of the criteria enumerated in section 300, subdivision (b). (*Maria R.*, at pp. 70, 71–72 *R.*, at pp. 70, 71–72.)” (*In re R.V.*, *supra*, 208 Cal.App.4th at p. 848.) By contrast, the *R.V.* court determined in the case before it, “even in the absence of a forensic interview or psychological evaluation, the court properly considered the *totality of the circumstances*

in making its finding R.V. was at risk of sexual abuse by the father.” (*Ibid.*, italics added.)

Turning to the facts presented here, we note that, in concluding that the sexual abuse of a female child did not *necessarily* mean that a son was at risk of sexual abuse by that parent, the *Maria R.* court also stated that it was a ““commonsense notion that any child who is residing with a parent . . . who has sexually abused the child’s sibling, and/or a parent who has minimized the sexual abuse of the child’s sibling, is living in a dysfunctional and potentially harmful environment.”” (*In re A.G.* (2012) 207 Cal.App.4th 276, 281, quoting *In re Maria R.*, *supra*, 185 Cal.App.4th at p. 68.) Further, as the court in *P.A.* observed, section 355.1, subdivision (d), provides in pertinent part that: “(d) Where the court finds that either a parent, a guardian, or any other person who resides with . . . a minor who is currently the subject of the petition filed under Section 300 . . . (3) has been found in a prior dependency hearing . . . to have committed an act of sexual abuse, . . . that finding shall be prima facie evidence in any proceeding that the subject minor is a person described by subdivision (a), (b), (c), or (d) of Section 300 and is at substantial risk of abuse or neglect. The prima facie evidence constitutes a presumption affecting the burden of producing evidence.” (*In re P.A.*, *supra*, 144 Cal.App.4th at p. 1347.) In the *P.A.* court’s view, even where this subdivision is not triggered, it “nonetheless evinces a legislative determination that siblings of sexually abused children are at substantial risk of harm and are entitled to protection by the juvenile courts.” (*Ibid.*)

Here, the dependency court was presented with and credited evidence that Christopher sexually abused Shan. when she was 13 years old.⁷ In multiple consistent accounts, Shan. described how her own mother pressured and threatened her to have sexual intercourse with Christopher, removed Shan.’s clothes and watched as Christopher raped her. The dependency court found Shan.’s account to be the “most compelling”

⁷ The Department’s reports were received into evidence without objection. (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1243.)

evidence presented and was “convinced” that all of the allegations had been proven. Sham. said Christopher also “slapped her butt” for no reason in a manner she believed to be sexual and offensive, believed Christopher to be a “pervert” and reported that she had seen Christopher get into bed with Shan. when he was drunk. A neighbor also reported seeing the same “really strange” behavior, witnessing Christopher climbing into bed with Shan. while he was drunk and she was wearing only panties. M.L., a male half-sibling, reported seeing Christopher touch Shan.’s “private area.” Derek B. said M.W. had admitted to him that she made Shan. “do sexual things” for Christopher along with M.W. In a conversation with the social worker, M.W. stopped speaking and got “teary-eyed” when Derek confronted M.W. about having sexual intercourse with Christopher in Shan.’s presence. M.W. acknowledged they smoked marijuana, and Shan. said Christopher and M.W. gave her alcohol. Sham. and others reported Christopher and M.W. drank a lot and he was drunk all the time. Shan. was diagnosed with major depressive disorder and hospitalized as a danger to herself. She was despondent and isolating herself, exhibiting behavior consistent with traumatic abuse. Meanwhile, Christopher denied all of the allegations, and his mother and brother did not believe Christopher could have sexually abused Shan.

In light of all of the evidence presented and all reasonable inferences that could be drawn from this evidence, Christopher has failed to demonstrate error in the dependency court’s finding that Joseph was at substantial risk of sexual abuse within the meaning of subdivision (d). Christopher’s behavior went far beyond inappropriate sexual touching. Christopher, together with Shan.’s mother M.W., repeatedly sexually abused Shan. He sexually abused Shan.—together with M.W.—and in the presence of other children and in the open, where a neighbor also witnessed him climb into bed with 13-year-old Shan. while she was wearing only panties. He was reportedly repeatedly drunk and/or using drugs and giving alcohol to Shan. as well. A male sibling witnessed Christopher’s behavior and another female sibling objected to Christopher’s inappropriate sexual touching and believed him to be a “pervert.” Given the nature and extent of

Christopher's sexual abuse and that the abuse was committed in places where it could be observed by other siblings, the dependency court did not err in concluding that Joseph was at risk of similar abuse in his father's care. (*Andy G.*, *supra*, 183 Cal.App.4th at p. 1414; *Ana C.*, *supra*, 204 Cal.App.4th at p. 1332; *R.V.*, *supra*, 208 Cal.App.4th at p. 848.)

Subdivision (d) of section 300 provides that a child comes within the jurisdiction of the dependency court when “[t]he child has been sexually abused, *or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code*, by his or her parent or guardian or a member of his or her household” (Italics added.) Penal Code section 11165.1, in turn, defines “sexual abuse” to include any act that violates Penal Code section 288 (lewd or lascivious acts upon a child under the age of 14) or Penal Code section 647.6 (annoying or molesting a child). (See *In re R.C.*, *supra*, 196 Cal.App.4th at pp. 747-748, 750, citations and footnote omitted; *Karen R.*, *supra*, 95 Cal.App.4th at pp. 89-90; and see *People v. Shaw*, *supra*, 177 Cal.App.4th at p. 103 [“there can be no normal sexual interest in any child and it is the interest in the child that is the focus of the statute’s intent”].)

As the court in *Karen R.*, *supra*, 95 Cal.App.4th 84 determined, we agree that a parent who exhibits such serious sexual aberrance toward a child cannot be expected to engage in such aberrant behavior only in a consistent pattern with respect to a child’s gender or age. (*Id.* at pp. 90-91.) In particular, we note that, even if Joseph was too young to have observed his father’s sexual abuse of Shan. at the time it occurred, Christopher showed a “total lack of concern for whether [children] might observe [his] aberrant sexual behavior.” (*Andy G.*, *supra*, 183 Cal.App.4th at p. 1414.) For purposes of subdivision (d) of section 300, the evidence supports the inference Joseph was at substantial risk of sexual abuse as that term is defined in 11165.1 of the Penal Code.

Further, for the reasons summarized above, the evidence in this case, and all reasonable inferences permissible on this record, support the dependency court’s determination that Joseph was also at risk of physical, emotional and sexual abuse within the meaning of subdivision (j). (*R.V.*, *supra*, 208 Cal.App.4th at p. 848.) Again, a single

basis for jurisdiction is sufficient to uphold the dependency court's order in any event, but multiple bases for jurisdiction are supported here. (*Alysha S.*, *supra*, 51 Cal.App.4th at p. 397; *Alexis S.*, *supra*, 171 Cal.App.4th at p. 451; and see *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.) It bears emphasis that "the paramount purpose underlying dependency proceedings is the protection of the child," and Christopher "does not represent 'a competing interest in this respect.'"⁸ (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 877, citations omitted.)

DISPOSITION

The jurisdictional findings and disposition order are affirmed.

WOODS, J.

We concur:

PERLUSS, P. J.

JACKSON, J.

⁸ It follows that Christopher has failed to demonstrate any error in the dependency court's disposition order. (§ 361, subd. (c)(1); *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.)