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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Joseph B. et al., Persons Coming Under
the Juvenile Court Law.

B235042

(Los Angeles County
Super. Ct. No. CK86734)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOSEPH B.,

Defendant and Appellant.

APPEAL from jurisdiction and disposition orders of the Superior Court of Los Angeles County. Jacqueline Lewis, Juvenile Court Referee. Affirmed.

Kimberly A. Knill, under appointment by the Court of Appeal for Objector and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Joseph B. (“Father”) appeals from the juvenile court’s jurisdiction and disposition orders declaring his three children dependents of the court pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), (d), and (j),¹ removing the children from the custody of Father, and placing them in the home of their mother, Lucia B. (“Mother”). Father raises the following arguments on appeal: (1) the juvenile court abused its discretion in excluding the telephonic testimony of the paternal grandmother at the jurisdiction hearing; (2) the evidence was insufficient to support the jurisdictional finding that Father’s prior sexual abuse of six unrelated female children placed his children at substantial risk of sexual abuse under section 300, subdivisions (b), (d), and (j); and (3) the evidence was insufficient to support the jurisdictional finding that Father’s history of domestic violence against Mother placed his children at substantial risk of physical harm under section 300, subdivision (b). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Juvenile Dependency and Family Law History

Father and Mother are the parents of three children – 16-year-old Joseph B., Jr. (born November 1995), 15-year-old Jake B. (born April 1997), and 13-year-old N. B. (born October 1998). The family has a long history with the juvenile dependency system, including 20 prior referrals for alleged physical, emotional, and sexual abuse, and general neglect. Two of the prior referrals resulted in the initiation of dependency proceedings through the San Bernardino County Juvenile Court. Specifically, in June 2006, the juvenile court removed the children from parental custody based on sustained allegations of physical abuse by Father and general neglect by Mother. The children were returned to parental custody one month later, and the parents received family maintenance services. The court dismissed the case in January 2007. Later that year, in August 2007,

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All further statutory references are to the Welfare and Institutions Code.

the children were again removed from parental custody based on sustained allegations of physical and emotional abuse by Father and general neglect by Mother. The children were returned to parental custody 10 months later following the parents' compliance with court-ordered services, including programs in parenting education, family relationships, and anger management. The court dismissed the second case in October 2008.

Father and Mother divorced in 2008. In the family law proceedings, Mother stipulated that Father be awarded sole legal and physical custody of the children with visitation for Mother. According to Mother, she left Father in 2008 after years of physical and verbal abuse, but was unable to take the children with her because Father threatened to kill her if she did. Mother also claimed that Father "tricked" her into relinquishing her custodial rights during the family law proceedings, and that he thereafter severely limited her contact with the children. In October 2008, Father obtained a restraining order against Mother based on an allegation that she physically assaulted him. Mother did not have any contact with the children for two years from October 2008 to November 2010.

II. Initiation of the Current Dependency Case

The current matter came to the attention of the Los Angeles County Department of Children and Family Services ("DCFS") in January 2011. Two months earlier, on November 19, 2010, Father had been arrested on an outstanding federal warrant and taken into custody. He later was convicted of falsifying a military identification card and sentenced to a 90-day term. Father arranged for the paternal grandmother to care for the children during his incarceration. While the children were staying with her, the paternal grandmother permitted Mother to take the children for a weekend visit. At some point during Father's incarceration, the children disclosed to both Mother and the paternal grandmother that Father had been physically abusing them. A child abuse referral was made to the Riverside County Sheriff's Department.

On November 26, 2010, a Riverside County deputy sheriff interviewed the children and the paternal grandmother about the abuse allegations. The paternal

grandmother stated that she recently learned of Father's physical abuse from the children and that the children felt safe coming forward at that time because Father was in custody. All three children reported that Father hit them with a closed fist on numerous occasions and that the most recent abuse had occurred earlier that month when Father discovered that the children had entered his bedroom without permission. During that incident, Father hit N. several times with a closed fist and threw her against a dresser. When Joseph and Jake tried to intervene to protect their sister, Father began hitting them with a closed fist all over their bodies. The children admitted that they had not previously disclosed the abuse because they feared retaliation by Father, and that they believed the abuse would continue as long as they resided with him. The children also stated that they felt comfortable staying with Mother, and they began living with Mother in late November 2010. Because Mother's home was in Los Angeles County, the matter was forwarded to the DCFS for further investigation.

In January 2011, the DCFS initiated its dependency investigation. Joseph disclosed to the DCFS that Father had been physically abusing the children since Mother left the family home in October 2008. When Joseph tried to protect his younger siblings from the abuse, Father would punch, push, and hit Joseph with his closed fist. Joseph also reported that Father was having a sexual relationship with a minor girl that Joseph had been dating, and that he and Father had a physical altercation when Joseph caught Father and the girl having sex. Joseph further related that Father had tried to sexually abuse some of his other female friends who were also minors. N. confirmed that Father hit her with a closed fist in November 2010 and that she continued to be fearful of him. Because the DCFS was concerned that Mother had failed to protect the children from Father's prior physical abuse, the children were detained from Mother and placed in foster care.²

² In January 2011, Jake had a physical altercation with Joseph during which Jake threatened to kill Joseph. Mother called the police and Jake was taken into custody. Juvenile delinquency proceedings were thereafter initiated for Jake.

III. Section 300 Petition

On February 24, 2011, the DCFS filed a section 300 petition on behalf of the children based on allegations that Father physically abused each of them, sexually abused an unrelated female child, and had a history of engaging in domestic violence against Mother. The following day, the juvenile court ordered that the children be detained from both parents and that the parents be granted monitored visitation. On March 25, 2011, the DCFS filed a supplemental report regarding Father's visitation with the children. The DCFS reported that Father kept whispering to the children during a recent visit and that the monitor had to direct Father not to do so several times. The DCFS also noted that, following the visit, N. was more reserved and Joseph was very upset about the prospect of returning to Father's home. The juvenile court admonished Father not to discuss the case with the children and ordered that Father's visits take place at the DCFS office. The matter was set for a jurisdiction and disposition hearing.

For its Jurisdiction/Disposition Report, the DCFS conducted individual interviews with the family about the allegations in the section 300 petition. With respect to the allegations of physical abuse, all three children related that Father regularly used corporal punishment to discipline them. Father's methods of disciplining the children included choking them, striking them with a belt, leash, or piece of wood, and hitting them with a closed fist. Joseph was the child most disciplined because he would try to protect his younger siblings from Father. However, Jake appeared to be the child most traumatized by the abuse, particularly by one incident in which Father forced Jake to point a gun at him and told the child to shoot, and then took the gun and fired a blank shot at the child's head. Mother did not have any personal knowledge of Father's physical abuse of the children, but confirmed that the children disclosed the abuse to her after Father was incarcerated in November 2010. According to Mother, the children also told her that Father had asked them to lie to the DCFS and the juvenile court. Both Father and the paternal grandmother denied that Father physically abused the children or used corporal punishment to discipline them. Father blamed Mother for the children's allegations and

asserted that Mother likely was coaching the children into making false accusations against him because she wanted to regain custody.

With respect to the allegations of sexual abuse, Joseph recounted that Father made sexual advances toward four of his female friends when they visited Joseph in the family home. The age range of the girls was 13 to 15 years old. In 2008, Joseph's girlfriend, Breanna, told Joseph that Father touched her in a sexual manner and then tried to have sex with her. In 2009, Joseph's friend, Lisa, similarly disclosed to Joseph that Father touched her breasts and vagina when she was in Father's bedroom. Another friend named Cece told Joseph that Father asked her in an inappropriate way if she was ready for sex. Later in 2009, Joseph learned that Father was having a sexual relationship with Joseph's girlfriend, Emily, which lasted for over a year. According to Joseph, he and Father engaged in fist fights over Father's conduct toward his female friends, and the violence between them escalated when Father began the relationship with Emily. Joseph also stated that he tried to stay near his sister, N., to make sure Father was never alone with her, and that he did not believe N. was safe in Father's custody because of his sexual abuse of the other girls. N. also related that she was aware that Father had a sexual relationship with Joseph's girlfriend, Emily, and that Father and Emily would engage in sexual intercourse in Father's bedroom within earshot of the children. N. denied that Father had ever sexually abused her.

Mother reported that the children told her about Father's sexual relationship with Emily when they began residing with her. Although the children never stated that Father sexually abused them, Mother became concerned when N. touched Mother's breast in a sexually inappropriate manner that was similar to Father's touching of Mother during their marriage. The maternal grandmother likewise told the DCFS that she once observed Father touching N.'s breasts "like it was nothing." Mother further recounted that two of her sisters disclosed to her as adults that Father had sexually abused them when they were minors. One of the maternal aunts confirmed with the DCFS that Father had molested her when she was a teenager and was staying in the home of Mother and Father. Father denied that he ever engaged in sexual conduct toward any child.

With respect to the allegations of domestic violence, all three children disclosed that Father and Mother had violent physical altercations in their presence. Joseph explained that Father made it appear that Mother was the aggressor in the altercations and forced Mother to lie to law enforcement authorities that Father was not abusing her. N. related that Father pushed, choked, and hit Mother in front of the children, and Jake recounted that Mother tried to defend herself against Father during their altercations. Mother reported that Father was physically abusive to her several times a month during their marriage and that the altercations sometimes occurred in the children's presence. Father, on the other hand, denied the domestic violence allegations. He indicated that he had not had any contact with Mother in the last two years and that he believed Mother had convinced the children to falsely accuse him of abuse. Father also asserted Mother was the aggressor during their marriage, which required him to obtain a restraining order against her.

Based on its investigation, the DCFS recommended that the juvenile court sustain the section 300 petition and order family reunification services for Mother, including domestic violence and parenting education classes and individual counseling to address case issues. The DCFS recommended that Father not be offered any family reunification services.

On April 15, 2011, counsel for the DCFS informed the juvenile court that Father had posed as an attorney at Jake's last delinquency hearing which enabled him to have an extended unmonitored visit with the child. Over Father's objection, the court ordered Father not to have any contact with the children pending the jurisdiction hearing. On April 26, 2011, the DCFS filed a supplemental report regarding its increasing concern over the children's safety. The social worker indicated that Father was attempting to control the children by insisting that they call him multiple times a day, and that Father had stated he would see the children regardless of their placement in foster care. Father also had been observed watching Joseph and N. as they walked to school, and had been able to make unauthorized contact with Jake at a confidential group home. On April 27,

2011, the juvenile court granted a temporary restraining order against Father prohibiting him from having any contact with Mother or the children.

IV. Jurisdiction and Disposition Hearings

The jurisdiction hearing was held over a two-day period in May 2011. Joseph testified that Father began physically abusing the children in 2008 after Mother left the family home. The abuse was frequent and severe, but Joseph did not disclose it to anyone because he was concerned that he and his siblings would be separated in foster care. On one occasion, Father hit Joseph so hard that the child lost consciousness. On other occasions, Father tried to scare the children by firing a gun at them that shot blanks. Joseph testified that Father was also physically abusive toward Mother, and that Joseph had to intervene at times in their altercations. Joseph further recounted Father had engaged in a sexual relationship with Joseph's girlfriend, Emily, when she was 14 or 15 years old, and that both Joseph and N. overheard them having sex. Joseph testified that, during their monitored visits, Father told the children that Mother was at fault for the current dependency case and that Mother did not want to have any contact with them after she left the family home. Joseph denied that he was being coached by anyone to make false accusations against Father, and asserted that he wanted to live with Mother.

N. testified that Father told her to say certain things to the social worker and the police, but denied that Mother ever coached her. N. confirmed that Father physically abused all three children and that his abuse of her included kicking her, pushing her, and hitting her with a closed fist. N. tried reaching out to Mother for help, but Father recorded the child's telephone conversations and hit N. when she attempted to disclose the abuse to Mother. N. saw Father hit Mother a lot during their marriage and saw Mother hit Father at times when she was trying defend herself from Father's abuse. N. also confirmed her prior statement to the DCFS that she had overheard Father having sexual intercourse with Joseph's friend, Emily. N. stated that she was afraid of Father and wanted to live with Mother.

Jake testified that he was never coached by anyone about what to say to the social worker or the police. He recounted that Father disciplined all three children when they misbehaved by hitting them with the palm of his hand or a belt, but he could not recall being hit with a closed fist. Jake denied that Father ever pointed a gun at him other than when they were playing paintball and denied that Father ever caused him to lose consciousness. When asked whether he heard someone tell his siblings what to say about the allegations, Jake stated that he remembered one occasion, “but it’s a little bit blurry.” The child described sitting with his siblings in a gray car on a sunny day in 2010 and hearing a familiar female voice talking to Joseph and N. about what to say. He thought that Mother may have been in the car, but he did not recall what she said. Jake testified that he was not afraid of Father and wanted to live with both parents.

During his testimony, Father denied the allegations in the section 300 petition. He specifically denied that he ever physically abused any of the children and stated that the two prior dependency cases in San Bernardino County were based on misunderstandings. It was Father’s belief that the current dependency case was the result of Mother coercing the children into making false accusations so that she could regain custody. Father noted that the paternal grandmother owned a gray car as described by Jake and that she drove Mother and the children to retrieve their belongings from Father’s home while he was incarcerated. Father further testified that Mother was physically abusive toward him during their marriage which led to Father filing for a divorce and obtaining a restraining order against her. According to Father, Mother severed all ties with the family after Father obtained the restraining order and refused to attend any visits with the children. Father acknowledged, however, that he required that Mother’s visits with the children be supervised by him and that he monitored all of the children’s telephone conversations with Mother.

On cross-examination, Father admitted that he previously had been arrested for impersonating an officer and possession of a firearm, and had a recent federal conviction for possession of a United States identification card without authorization. He also admitted that he falsely claimed he had been awarded a Purple Heart, but maintained that

he had served in the military and had been honorably discharged three times. Father denied that he impersonated an attorney during Jake's delinquency case to gain access to his son or had any other unmonitored contact with the children during the current dependency case.

At the conclusion of the jurisdiction hearing, the juvenile court sustained an amended section 300 petition pursuant to subdivisions (a), (b), (d), and (j) of the statute. The court specifically found that the children were at substantial risk of physical harm under section 300, subdivisions (a) and (j) because Father had physically abused each child by engaging in such conduct as repeatedly hitting the children's bodies with his fists resulting in bruises, striking Jake in his head causing him to lose consciousness, and firing blank shots at Jake's head leaving him with difficulty hearing. The court also found that the children were at substantial risk of sexual abuse under section 300, subdivisions (b), (d), and (j) because Father had sexually abused six unrelated female children by fondling them and engaging in sexual intercourse with one such child, Emily D. Finally, the court found that the children were at substantial risk of serious physical harm under section 300, subdivision (b) because Father and Mother had a history of engaging in violent altercations that included Father physically assaulting Mother and threatening to kill her.

In sustaining the section 300 petition, the juvenile court noted: "In spite of doing this for almost 15 years, there are still cases that the behaviors over such a long period of time are still semi-shocking and this is one that . . . basically this family has been tortured over a long period of time." With respect to the sexual abuse allegations, the court stated: "It is rare that you see a parent . . . so entitled that he believes that he can do anything to anyone and get away with it. [¶] And that is what I believe happened with these . . . four, five young teenage girls. And there is absolutely no doubt in my mind that [if] he felt the desire, he would sexually abuse any of his children and believe he could get away with that as well. And they are just as much at risk. Whatever he wants to do, he does and believes that he will get away with it."

The disposition hearing was held on June 23, 2011. The juvenile court declared the children dependents of the court under section 300, subdivisions (a), (b), (d), and (j) and ordered them removed from the custody of Father and placed in the home of Mother. The court granted family maintenance services to Mother, but denied reunification services to Father. The court noted that the children previously had been removed from Father's custody based on substantiated allegations of physical abuse and that reunification services for Father were not in the children's best interests. The court granted Father monitored visitation with the children one hour per week. The court also issued a three-year restraining order against Father prohibiting him from having any contact with Mother or the children apart from the weekly DCFS-monitored visitation. Father filed a timely notice of appeal.

DISCUSSION

I. Exclusion of Telephonic Testimony at the Jurisdiction Hearing

On appeal, Father argues that the juvenile court abused its discretion in refusing to allow the paternal grandmother to testify telephonically at the jurisdiction hearing. Based on the record before us, we see no abuse of discretion in the juvenile court's ruling.

On the first day of testimony at the jurisdiction hearing, Father requested that the paternal grandmother be permitted to testify by telephone because she had relocated to Arkansas. Counsel for Father advised the court that the paternal grandmother would testify that Mother coached the children to make false accusations against Father. The juvenile court denied the request, reasoning as follows: "Given that I would not even be able to see this person or judge her credibility, the court would not be willing to do testimony over the phone, but you can have her present." At the close of testimony, Father renewed his request for the paternal grandmother to testify by telephone, which the court again denied.

A juvenile court's refusal to allow telephonic testimony at a dependency hearing is reviewed for abuse of discretion, and its ruling will not be disturbed absent an

arbitrary, capricious or patently absurd determination. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1176.) As our Supreme Court has observed, “[o]ral testimony of witnesses given in the presence of the trier of fact is valued for its probative worth on the issue of credibility, because such testimony affords the trier of fact an opportunity to observe the demeanor of witnesses. [Citation.] A witness’s demeanor is “‘part of the evidence’” and is ‘of considerable legal consequence.’ [Citations.]” (*Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1358; see also *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1513-1514 [“In a contested hearing, the precise words and demeanor of a witness during direct as well as cross-examination bears on the credibility and weight the trier of fact accords the witness’s testimony.”].)

In this case, Father requested that the paternal grandmother be allowed to testify telephonically on a matter that depended on her credibility. Specifically, Father wanted to call the paternal grandmother to substantiate his claim that Mother had coerced the children into falsely accusing Father of abuse. The reports submitted to the court by the DCFS demonstrated that the paternal grandmother had made conflicting statements about her knowledge of the children’s allegations. The paternal grandmother told investigating officers that she first learned that Father had been physically abusing the children while he was incarcerated and that the children felt safe disclosing the abuse to her at that time because Father was in custody. However, she later told the DCFS that she had no knowledge of the allegations being made by the children and that she believed Father always disciplined the children in an appropriate manner. Under these circumstances, it was reasonable for the juvenile court to conclude that it could not reliably assess the paternal grandmother’s credibility as a witness unless her overall demeanor was observable. There is simply nothing in the record to suggest that the court acted outside the bounds of reason in denying Father’s request.³

³ Notably, when it initially appeared that Father also would be unavailable to testify in person at the jurisdiction hearing due to his work schedule, the court indicated that it would permit Father to testify by telephone because the court had seen Father and was familiar with his demeanor. Father ultimately was able to testify in person.

Father reasons that the paternal grandmother should have been allowed to testify telephonically because he had a due process right to present a defense. However, “in dependency proceedings, a parent’s right to due process is limited by the need to balance the ‘interest in regaining custody of the minors against the state’s desire to conclude dependency matters expeditiously and . . . exercise broad control over the proceedings. . . .’ [Citation.]” (*In re Nada R.*, *supra*, 89 Cal.App.4th at p. 1176.) Moreover, “[t]he due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court. [Citation.]” (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817.) Here, Father was not precluded from offering the testimony of the paternal grandmother at the jurisdiction hearing, “but only restricted in the manner of its presentation.” (*In re Nada R.*, *supra*, at p. 1176.) Additionally, because the court had expressed legitimate concerns about its ability to evaluate the paternal grandmother’s credibility over the telephone, such testimony would not have significant probative value at the hearing. The juvenile court accordingly did not abuse its discretion or deny Father due process in refusing to allow the paternal grandmother to testify by telephone.

II. Sufficiency of the Evidence Supporting the Jurisdictional Findings

On appeal, Father also challenges the sufficiency of the evidence supporting portions of the juvenile court’s jurisdiction and disposition orders. Father does not contest the jurisdictional findings made pursuant to section 300, subdivisions (a) and (j) that the children had suffered or were at substantial risk of suffering serious physical harm as a result of Father’s physical abuse of each of them. Rather, Father contends that the evidence was insufficient to support the jurisdictional findings that (1) the children were at substantial risk of sexual abuse under section 300, subdivisions (b), (d), and (j) based on Father’s prior sexual abuse of six unrelated female children, and (2) the children were at substantial risk of serious physical harm under section 300, subdivision (b) based on Father’s history of domestic violence against Mother. Father asserts that these specific findings must be reversed because there was no evidence that Father ever

sexually abused any of his own children and because Father's domestic violence against Mother was too remote in time to pose a current risk of harm to the children.

“[T]he juvenile court's jurisdiction may rest on a single ground.” (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127; see also § 300 [“Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court . . .”]; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045 [“Section 300, subdivisions (a) through (j), establishes several bases for dependency jurisdiction, any one of which is sufficient to establish jurisdiction.”].) “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. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; see also *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72 [where one basis for dependency jurisdiction is supported by substantial evidence, the court does not need to consider the sufficiency of the evidence to support another basis]; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 [“[t]he reviewing court may affirm a juvenile court judgment if the evidence supports the decision on any one of several grounds”].)

Here, the juvenile court's uncontested findings that Father's physical abuse of the children placed them at a substantial risk of serious harm provide an independent basis for affirming the exercise of dependency jurisdiction over each of the children. Consequently, Father's challenges to the sufficiency of the evidence supporting the court's other jurisdictional findings are moot. (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451; *Randi R. v. Superior Court*, *supra*, 64 Cal.App.4th at p. 72; *In re Dirk S.*, *supra*, 14 Cal.App.4th at p. 1045; *In re Jonathan B.*, *supra*, 5 Cal.App.4th at p. 875.) Father nevertheless asks this Court to address the sufficiency of the evidence supporting the sexual abuse and domestic violence findings, emphasizing the serious nature of sexual abuse allegations in a dependency proceeding.

Certainly, there may be circumstances in which it would be appropriate to review a jurisdictional finding of sexual abuse notwithstanding the propriety of jurisdiction on other grounds. (See *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1754 [“The hearing on a contested petition alleging child sexual abuse is . . . extraordinarily important. . . . Allegations of child molestation are *serious*; they merit more than a rubber stamp.”].) In this case, however, the evidence of Father’s physical abuse of the children was overwhelming and amply supported the juvenile court’s exercise of jurisdiction and removal of the children from Father’s custody. Indeed, the record on appeal reflects that Father’s physical abuse of the children was pervasive, ongoing, and severe; it left the children deeply traumatized and in fear for their lives. Because the juvenile court’s uncontested jurisdictional findings clearly warranted the exercise of dependency jurisdiction in this case, we need not consider the sufficiency of the evidence supporting jurisdiction on any other grounds.

DISPOSITION

The juvenile court's jurisdiction and disposition orders are affirmed.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.