Filed 6/29/12 In re I.J. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re I.J. et al., Persons Coming Under the Juvenile Court Law.	B237271 (Los Angeles County Super. Ct. No. CK 59248)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.J., Defendant and Appellant.	

APPEAL from orders of the Superior Court for the County of Los Angeles. Timothy R. Saito, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Emery El Habiby, Deputy County Counsel, for Plaintiff and Respondent.

SUMMARY

J.J., the father in this juvenile dependency proceeding, seeks reversal of the juvenile court's jurisdictional orders adjudging his five children dependents of the juvenile court. Father contends that substantial evidence does not support the court's findings that he sexually abused his 14-year-old daughter I.J., and further contends that I.J.'s three brothers (12-year-old twins and 8-year-old D.J.) and 9-year-old sister were not at substantial risk of being sexually or otherwise abused by their father. We disagree and affirm the orders.

FACTS

Early in August 2011, I.J.'s mother took her and her four siblings to a police station because she thought I.J. had been sexually abused by her father. A few days later, the Los Angeles County Department of Children and Family Services filed a petition alleging all of the father's five children were dependents under Welfare and Institutions Code section 300, subdivision (b) (failure to protect), subdivision (d) (sexual abuse), and, as to I.J.'s four siblings, subdivision (j) (abuse of sibling).[1]

The juvenile court ultimately sustained allegations that, on August 2, 2011, and on previous occasions for the past three years, father sexually abused I.J. "by fondling the child's vagina and digitally penetrating the child's vagina and forcefully raped the child by placing the father's penis in the child's vagina. On a prior occasion, the father forced the child to expose the child's vagina to the father and the father orally copulated the child's vagina. On a prior occasion, the father forced the child to watch pornographic videos with the father. [I.J.] is afraid of the father due to the father's sexual abuse of [I.J.]. The sexual abuse of [I.J.] by the father endangers [I.J.'s] physical health and safety and places the child and the child's siblings . . . at risk of physical harm, damage, danger,

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise stated.

sexual abuse and failure to protect." These allegations were sustained under subdivisions (b), (d) and (j) of section 300.[2]

The Department's detention report described separate interviews with the mother and the five children.

The mother reported that in 2009, I.J. told her that father was touching her inappropriately, and mother immediately called the police. But three days later, I.J. recanted and the case was dismissed. Then, a few weeks before the events that precipitated this proceeding, mother noticed that father's behavior started to change drastically. Father began to drink alcohol abusively, and started to become angrier at times. Father always wanted mother to take her son L.J. with her on errands and to leave I.J. at home. On August 2, 2011, father asked mother to go to the market to get ice cream. Mother felt something was wrong, so she turned on the web camera on the family computer, hid an MP3 player and started its recorder. When she returned from the market, the web camera had been turned off, but the MP3 player was still on.

When mother listened to the recording, "she heard the father asking the child [I.J.] if she [would] move in with him, if he left the home, heard the father tell the minor that she can have male friends but [cannot] have sex with them." Mother was unable to hear other things on the tape because the recording was not clear. She decided to question I.J.,

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[2] As relevant here, a child is within the juvenile court's jurisdiction if "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" (Welf. & Inst. Code, § 300, subd. (b)); if "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" (Welf. & Inst. Code, § 300, subd. (d)); or if "[t]he child's sibling has been abused or neglected, as defined in [Welfare and Institutions Code section 300,] subdivision (a) [serious physical harm inflicted nonaccidentally], (b), (d), (e) [serious physical abuse of child under five years old], or (i) [acts of cruelty], and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions." (Welf. & Inst. Code, § 300, subd. (j).) (Pen. Code, § 11165.1 defines sexual abuse as sexual assault or sexual exploitation, and further defines those terms.)

and told her about the web camera and the recording. I.J. then told mother that father had been touching I.J. inappropriately and having sex with I.J. Mother took the children to the police the next morning, telling father they were going to the clinic for school shots. Mother did not want a confrontation with father in the presence of the children. In the past, father "became irate with denial" when mother had asked him about abuse.

In a second interview, when asked why she turned on the web camera and recorder, mother said father had been "acting strange and since she always had a suspicion, she turned the devices on." She also said that father was very sexually active and they would have sex every day, but "for the past couple of weeks the father was not seeking for sex." Mother said that a couple of days earlier, she "went through [father's] internet browser and she saw that he has visited many incest websites." Mother said father had never hit her, but is "verbally aggressive, he yells at her all the time, he is easily irritable and he throws things in the home when he's upset."

I.J. was taken to a medical center for an examination. The results of the genital examination showed only one small abrasion; the assessment of the findings was that the examination was "consistent with history."[3]

When she was interviewed on August 3, 2011, I.J. told the social worker that "on a regular basis her father forced her to have sex with him on every Tuesday while mother went to pick up her siblings from school." I.J. said she arrives home from school before her siblings on Tuesdays only. The most recent incident of abuse was the day before, when father asked mother to go to the market with one of her twin brothers (S.J., who was always "[l]ooking around seeing what everybody in the home is doing"). Her father called I.J. upstairs into his room, went downstairs to see what her other siblings were doing, and then returned. "He then told her to pull down her paints [*sic*], her panties, to

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[3] The Department's jurisdiction/disposition report, after noting that I.J. had a forensic examination at the Rape Treatment Center, stated that the social worker "consulted with the Public Health Nurse, . . . who provided insight as to the forensic report and who was able to identify the report's reflection of physical findings. The . . . forensic report . . . indicates that the physical findings are consistent with child's history."

bend over and he put his penis in her vagina from behind." I.J. denied that her father ever had sex with her in her buttocks or forced her to have oral sex on him, but said the father did perform oral sex on her. One time father asked her "to look at a pornographic videos [*sic*] on the family computer that portrayed a father having sex with his daughter."

I.J. told the social worker that she never disclosed the abuse to her mother until the incident with the web camera and recorder, when her mother questioned her about why the camera was off and told I.J. that she had heard the father saying sexual things to I.J. on the MP3 player. I.J. said that her father saw that the camera was turned on, and asked her to turn it off (because father did not know mother's password but I.J. did). I.J. said neither she nor father knew mother also had an MP3 player recording. I.J. "admitted to the mother that the father had been abusing her sexually for approximately three years." I.J. told the social worker that "her father has told her if she has sex with him he would allow her to have male friends, she can wear the type of clothes she wants to wear and he would allow her to participate in her 15th (Quinceanera)." She said her father "normally used condoms but the last two times he did not."

When asked about the previous sexual abuse case in 2009, I.J. "stated that the father was abusing her at that time but she was afraid that her father will go to jail and she did not want him to go to jail," so she lied about the abuse. I.J. told the social worker that "she feels she has done the right thing because she did not want this to happen to her [sister] as [her sister] will be 11 years old soon and that was the age the abuse started with her."

The other children uniformly reported to the social worker that they felt safe in the home, liked living with their parents, and were never touched inappropriately or in a sexual manner by their father or anyone else. None of the children saw their parents using any drugs or alcohol and none observed any domestic violence. All of them said that neither I.J. nor any other sibling had ever told them that father or anyone else had touched them inappropriately. The three boys all said that they had never told their mother that I.J. and the father had been in the parents' room alone. I.J.'s sister said that on August 2, 2011, she heard her father and I.J. arguing in the parents' room, and when

she went into the parents' room, she "saw her sister behind the room door and the father at the computer doing homework." She said I.J. "did not look angry and her clothes were on." Except for that occasion, she never observed I.J. and the father in the room alone.

Father was interviewed and denied that he or any one else ever touched any of his children inappropriately. Later attempts to contact father were unsuccessful, and father did not respond to a letter asking him to contact the Department.

Three weeks after the children were detained, they were interviewed again about the allegations in the petition. The Department's jurisdiction/disposition report shows that I.J. then recanted her previous statements, saying the abuse allegations were not true. She said, "I wanted him [father] out of the house and I wanted to get him off my back." I.J. explained that she "began spending time with the EMO crew and was told that she needed to start cutting herself and getting into fights to fit in," and her father found out and she "then got into trouble." I.J. said she lied to the social worker about being sexually abused "because she was angry with her father because he is strict." She said, "I did it when I was 11 years old and got away with it. So, I just did it again."

The interviewing social worker did not see any fresh cuts on I.J., and observed that she "could not maintain a complete thought pattern," "appeared confused and . . . appeared to avoid the subject matter." When asked about the web camera and the MP3 player, I.J. said that none of those things occurred, and that "[m]y mother would never say those things." I.J. denied that mother recorded the conversation, denied that she told mother she was sexually abused by her father, and denied any conversation with her father about being able to wear the clothing of her choice and have male friends so long as she would agree not to have sex with them. I.J. denied ever being alone with father, and "then nonchalantly stated that her boyfriend was pressuring her to have sex with him and on a Tuesday she told her boyfriend that she was ready to have sex." She said that she and her boyfriend had sex in one of the stalls in the boys' bathroom, but she could not describe the boys' bathroom. When asked for contact information for her boyfriend and his parents, she "became quiet" and said something was wrong with her boyfriend's telephone.

The later interviews with I.J.'s four siblings were consistent with the earlier interviews. The children all denied being touched inappropriately, and said they were not afraid of their parents. One of the 12-year-old twin brothers said he had never witnessed any verbal or physical altercations between his parents. The twins said they had not seen I.J. and their father spend time alone in a room. One of them could not recall a time when I.J. and father were alone at home, and had never witnessed any strange behaviors between father and I.J. The other twin said he had not witnessed father mistreat I.J. I.J.'s sister said she knew that I.J. and her father were arguing; she did not understand why but she heard them screaming. She said they were upstairs when they were arguing, and she said she had never witnessed father and I.J. spend time alone in a room, and that I.J. and father did not spend time alone at home. The youngest boy had never witnessed father and I.J. alone in a room and had not seen father mistreat I.J. or witnessed any argument between them.

In another interview, when again asked why she had placed the recorder and web camera in the room, mother said that "lately father would become very upset with [I.J.] for anything that she would do wrong"; that father would not allow mother to take I.J. with her when she went out; that I.J. had been cutting herself and when mother asked I.J. about it, I.J. said she was doing so to fit in with friends at school.

In addition to the 2009 incident, in 2005 father's niece accused him of sexually abusing her when she was 14 years old and was living with the family. According to the Department's jurisdiction/disposition report, "although [the niece] recanted her story and the criminal charges were dropped, the allegations were substantiated." When mother was asked about these allegations, mother became defensive and said that the niece was lying; the niece ran away from home and when mother reported the niece as a runaway, the niece made the allegations against father.

At the jurisdiction and disposition hearing, the Department offered into evidence the Department's detention and jurisdiction/disposition reports with attached documents, and these were admitted without objection. No party offered any testimony at the hearing. Father's counsel stated that father "continues to adamantly deny that this

occurred," and that father's "belief is the Department failed to meet its burden of proof, and he's requesting the court to dismiss those three counts."

The court stated:

> "The court finds, by a preponderance of the evidence, that in this case – with regards to (b)(1), (d)(1) and (j)(1) [the counts quoted, at pp. 2-3, *ante*], the court finds there is substantial evidence to sustain those counts in this case. [¶] With regards to the allegations, the child gave an extremely detailed statement with regards to the time and manner the abuse took place, even how the father had sex with her in this case, telling her she could have certain privileges if she kept having sex with him, that she could have a boyfriend and a Quinceanera party. [¶] The timing was very significant in this case; when the child was confronted by the mother, that there was a recording in the room, indicating he [*sic*] admitted to the abuse. Her statements were consistent with the law enforcement report, as well as . . . the forensic report in this case."

The court declared the children dependents of the court and found, "by clear and convincing evidence, . . . that there is a substantial danger to the children, if returned to the home, to the physical health, safety, protection, physical, emotional well-being of the children, and there are no reasonable means by which the children's physical health can be protected without removing the children from the father's custody in this case." The court removed all the children from father's custody, and ordered them placed with mother under the supervision of the Department. The court ordered monitored visits for father (and that mother was not to monitor the visits), and father's court-ordered case plan called for sex abuse counseling for perpetrators and family counseling.

Father filed a timely appeal.

DISCUSSION

Father asks us to reverse the juvenile court's jurisdictional and dispositional orders, contending the evidence was insufficient to support the court's finding that he sexually abused I.J., and there was no evidence her siblings were at risk of being sexually abused. We reject both contentions.

In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted

or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] '"[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate]."' [Citation.]" (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

As to the sexual abuse of I.J., father appears to think that substantial evidence does not exist because I.J. had recanted by the time of the jurisdictional hearing, telling the social worker that none of the allegations were true. There is, of course, no authority for that proposition. There was ample evidence from which the juvenile court could conclude – as the Department did – that I.J.'s initial reports were true and her recantation was not. We will not again recount the evidence, which appears above in sufficient detail to make it obvious that, under the principles of appellate review, there is no basis for overturning the juvenile court's finding that father sexually abused I.J.

Father next argues that I.J.'s siblings did not suffer any abuse and were not at risk of suffering any abuse, as the evidence showed all the siblings were happy at home and were treated well by the father. He points out that the juvenile court "did not make any factual findings regarding how or why the siblings were at risk of sex abuse by their father," and describes the risk of sexual abuse of I.J.'s sister or her brothers as speculation, relying on *In re Rubisela E.* (2000) 85 Cal.App.4th 177 (*Rubisela E.*), *In re Maria R.* (2010) 185 Cal.App.4th 48 (*Maria R.*), and *In re Alexis S.* (2012) 205 Cal.App.4th 48 (*Alexis S.*).

We first reject the notion that, merely because younger siblings of a sexually abused girl are treated well by the abusing parent, they are therefore not at substantial risk that they will be sexually abused (§ 300, subd. (d)) or will suffer "serious physical harm

or illness" as a result of the parent's failure to protect them (§ 300, subd. (b)). I.J. too may well have been happy and well-treated by her father until she reached the age of 12, when her father began the sexual abuse. The oldest of her younger siblings were of comparable age (12) or younger (9 and 8 years old) at the time of the court's findings. So their current good treatment has no bearing on their risk of future harm if they remain in their father's custody.

Next, as to I.J.'s younger sister, nine years old at the time of the court's orders, there can be no legitimate dispute that the evidence places her at substantial risk of sexual abuse as she approaches her sister's age. While all accusations were eventually recanted, this is the third time that father has been accused of sexually abusing a child: I.J. in 2009, when she was 12; father's niece in 2005, when she was 14; and I.J. again (and apparently continuously) at the age of 14. (The Department's jurisdiction/disposition report, finding a pattern of sexual abuse, also notes that father began dating mother when he was 21 and she was 14, and mother gave birth to I.J. when she was 16 years old.) The evidence is more than substantial that I.J.'s sister is at substantial risk of sexual abuse. (See *Rubisela E., supra*, 85 Cal.App.4th at p. 197 ["The circumstances surrounding the abuse of Rubisela support a finding under section 300, subdivision (j) as to her sister"; it was "reasonable for the juvenile court to determine that in Rubisela's absence, Father's sexual offenses were likely to focus on his only other daughter"].)

Finally, we come to father's claim there was no evidence that I.J.'s brothers were at risk of "serious physical harm or illness" as a result of father's failure to protect them (§ 300, subd. (b)), and no evidence they were at risk of being sexually abused (§ 300, subd. (d)). He relies on a number of cases concluding that evidence of sexual abuse of a daughter does not support a finding that sons are at risk of sexual abuse. (See, e.g., *Rubisela E., supra*, 85 Cal.App.4th at pp. 197-199 ["[s]exual abuse of one[] sibling can support a trial court's determination that there is a substantial risk to the remaining siblings," but there was no evidence of suspicious conduct by father with respect to minor son and, while a showing of harm from knowledge of sibling molestation or from other circumstances is possible, in *Rubisela E.* there was no demonstration by the department

of a substantial risk to the sons]; *Alexis S., supra*, 205 Cal.App.4th at pp. 49-50, 52, 55 [evidence that the father inappropriately touched the adolescent half sister of his two sons (fondling her breasts and buttocks and kissing her on the mouth) "did not support that the boys were at risk of sexual abuse"; there was "no evidence that the boys were in any way aware of [father's] actions" and any risk of emotional injury from being in a home where sexual abuse was occurring "had been eliminated, as [father] had moved out of the family home and was in compliance with an order prohibiting further contact with [the abused half sister]"; there was "no evidence of any proclivity on [father's] part to abuse or molest sexually immature children or males of any age, or to expose them to inappropriate sexual behavior"].)

Father also relies on *Maria R., supra*, 185 Cal.App.4th 48. There, the court observed that brothers of molested girls may be harmed by the fact of molestation occurring in the family, but "in the absence of evidence demonstrating 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 subdivision (d) of section 300 of the Welfare and Institutions Code. (*Maria R., supra*, at p. 67.) This is because, *Maria R.* explained, 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.)

The *Maria R.* court also held, however, that the subdivision (j) ground of jurisdiction based on abuse of a sibling "does not limit the grounds of dependency adjudication for a child whose sibling has been abused to the same subdivision of section 300 that applies to that sibling. Rather, the plain language of section 300, subdivision (j), directs the trial court to consider whether there is a substantial risk that the subject child will be abused or neglected, as defined in section 300, subdivision (a), (b), (d), (e), *or* (i)." (*Maria R., supra*, 185 Cal.App.4th at p. 53; see *id.* at p. 63 ["[t]hus, the basis for taking jurisdiction of [the son] under subdivision (j) is not limited to a risk of sexual abuse, as that term is defined by subdivision (d)" and the Penal Code].) The court

found that findings of sexual abuse of a boy's sisters "constitute prima facie evidence that [the son] is a child described by section 300, subdivision (a), (b), (c) or (d) and that he is at substantial risk of abuse or neglect" (*Maria R.*, *supra*, 185 Cal.App.4th at p. 69), but that the agency had only pursued the allegation that the son was at risk of being sexually abused.[4] The court remanded the matter with directions to detain the son in protective custody and "order the Agency to assess any harm that [the son] may have suffered, or any risk to him that may exist, under section 300." (*Maria R.*, at p. 70.)

We respectfully disagree with the constraints placed by these cases on a juvenile court's ability to take jurisdiction over male siblings whose father has "forcefully raped" their sister. We agree instead with *In re P.A.* (2006) 144 Cal.App.4th 1339 (*P.A.*) and *In re Andy G.* (2010) 183 Cal.App.4th 1405 (*Andy G.*).

In *P.A.*, the court found two male siblings were at risk of harm by reason of the father's sexual abuse of their sister ("touching [her] vagina under her clothes on top of her underwear"), even though both brothers indicated they had not observed any inappropriate touching of their sister by the father, and there was no evidence father had ever engaged in homosexual conduct. (*P.A.*, *supra*, 144 Cal.App.4th at pp. 1343, 1345.) The Court of Appeal rejected the father's effort to set aside the finding that his sons (eight and five years old, respectively) were at risk of sexual abuse, observing that the juvenile court had "found P.A.'s brothers were at risk of harm because they were

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[4] The court cited section 355.1, subdivision (d)(3), which provides that: "Where the court finds that . . . a parent . . . who resides with, or has the care or custody of, a minor who is currently the subject of the petition filed under Section 300 . . . 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." While there was no finding in a "prior dependency proceeding" in this case, the same appears to have been so in *Maria R.*, where the court makes no reference to any prior proceeding.

approaching the age [(nine)] at which father had begun to abuse P.A. and father had access to the boys because he routinely awoke during the night to cover them." (*Id.* at p. 1345.) The court relied on *In re Karen R.* (2001) 95 Cal.App.4th 84, 90-91 (*Karen R.*), where the court concluded: "[A] father who has committed two incidents of forcible incestuous rape of his minor 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." The *P.A.* court, observing that the abuse in *P.A.* was "concededly . . . less shocking than the abuse in *Karen R.*," was "convinced that where, as here, a child has been sexually abused, any younger sibling who is approaching the age at which the child was abused, may be found to be at risk of sexual abuse. As we intimated in *Karen R.*, aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior." (*P.A.*, *supra*, at p. 1347.)

P.A. further found its conclusion consistent with section 355.1, subdivision (d), which provides that when a parent has been found in a prior dependency hearing to have committed an act of sexual abuse, that finding is prima facie evidence that the "subject minor . . . is at substantial risk of abuse or neglect." (§ 355.1, subd. (d)(3); *P.A.*, *supra*, 144 Cal.App.4th at p. 1347.) The court observed that, although there was no prior dependency proceeding, the provision "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." (*P.A.*, *supra*, at p. 1347.)

Andy G. is to like effect. Agreeing with *P.A.*, the court found the juvenile court could properly conclude that a father's aberrant sexual behavior with the 12- and 14-year old half sisters of his 2-year-old son placed the son at risk of sexual abuse. (*Andy G.*, *supra*, 183 Cal.App.4th at p. 1415.) In *Andy G.*, the father's sexual abuse of the girls (who were not his children) consisted of touching the breast of one of the girls (on top of her shirt), trying to touch the vagina of the other girl while she was in bed, exposing his penis, exposing one of the girls to a pornographic video and masturbating in her presence. (*Id.* at p. 1408.) *Andy G.* observed that the only difference from *P.A.* was that Andy was

only two and one-half years old, and so was not "'approaching the age at which [his half sisters were] abused.'" (*Andy G.*, at p. 1414.) But other factors convinced the court the evidence was sufficient to support the findings that Andy was at substantial risk of sexual abuse: "While Andy may have been too young to be cognizant of A.G.'s behavior, A.G. exposed himself to Janet while Andy was in the same room (albeit apparently facing in the other direction). Indeed, the court could infer, as the Department suggests, that [the father] used Andy to get Janet to approach him so he could expose himself to her, by asking her to take Andy to the store and holding out the money to do so. This evinces, at best, a total lack of concern for whether Andy might observe his aberrant sexual behavior." (*Ibid.*) In addition, the father believed he should not have to undergo sexual abuse counseling for perpetrators. (*Id.* at pp. 1414-1415.)

In this case, we adhere to the sound principle stated in *P.A.*: "aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior." (*P.A.*, *supra*, 144 Cal.App.4th at p. 1347.) Here, father's behavior was aberrant in the extreme: he sexually abused his own daughter "by fondling the child's vagina and digitally penetrating the child's vagina and forcefully raped the child by placing the father's penis in the child's vagina." We recognize that his sons were completely unaware of his behavior at the time, but it is not possible for that unawareness to continue. The three boys are at risk of learning to become a sexual predator like father and of learning from father that it is appropriate to manipulate others who are more vulnerable.

We find the observations in *Rubisela E.* telling: "We do not discount the real possibility that brothers of molested sisters can be molested [citation] or in other ways harmed by the fact of the molestation within the family. Brothers can be harmed by the knowledge that a parent has so abused the trust of their sister. They can even be harmed by the denial of the perpetrator, the spouse's acquiescence in the denial, or their parents' efforts to embrace them in a web of denial." (*Rubisela E.*, *supra*, 85 Cal.App.4th at p. 198.) We cannot, however, agree with *Rubisela E.* that it would be "problematic" to uphold jurisdiction under subdivision (j) as to the sons simply because there is currently

no evidence of any "suspicious" contact by the father with the sons. (*Rubisela,* at p. 198.) Likewise, we reject the criticism in *Maria R.* that cases such as *P.A.* and *Andy G.* have not "cited any scientific authority or empirical evidence to support the conclusion that a person who sexually abuses a female child is likely to sexually abuse a male child." (*Maria R., supra,* 185 Cal.App.4th at p. 68.)

It is of course impossible to say what any particular sexual predator – and here a predator who has raped his own daughter – is likely to do in the future in any particular instance. But in our view that very uncertainty makes it virtually incumbent upon the juvenile court to take jurisdiction over the siblings, at least until such time as the offending parent produces evidence that the siblings are *not* at substantial risk of sexual abuse or other harm. (Cf. § 355.1, subd. (d) [where a parent 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" and that evidence "constitutes a presumption affecting the burden of producing evidence"]; *In re Kieshia E.* (1993) 6 Cal.4th 68, 76-77 ["When a parent abuses his or her own child . . . the parent also abandons and contravenes the parental role."].)

In short, nothing in *Rubisela E.*, *Maria R.*, or *Alexis S.* persuades us to depart from the principles stated in *P.A.*, *Karen R.* and *Andy G.* The rape by a father of his minor 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." (*P.A.*, *supra,* 144 Cal.App.4th at p. 1346, quoting *Karen R.*, *supra*, 95 Cal.App.4th at pp. 90-91.) Evidence of sexually aberrant behavior of that magnitude is sufficient to support the juvenile court's finding that the sexual abuse of I.J. "places the child and the child's siblings . . . at risk of physical harm, damage, danger, sexual abuse and failure to protect." The juvenile court is mandated to focus on "ensur[ing] the safety, protection, and physical and emotional well-being of children who are at risk" of physical, sexual or emotional abuse. (§ 300.2.) That is what the court did here.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

GRIMES, J.

I concur:

BIGELOW, P.J.

FLIER, J., Concurring and Dissenting

For the reasons explained by the majority, substantial evidence supports jurisdiction over I.J. and her nine-year-old sister.

In contrast, no substantial evidence supports jurisdiction over I.J.'s three brothers S.J. (age 12), L.J. (age 12) and D.J. (age 8) (collectively the brothers). The brothers repeatedly denied that father touched them inappropriately, wanted to live with father, and were unaware of father's abuse of I.J. No evidence showed that they were at risk of physical harm or sexual abuse, and no other basis for jurisdiction was alleged.

To assume jurisdiction, the juvenile court must find by a preponderance of the evidence that the child is a person described by Welfare and Institutions Code section 300.[1] (§ 355, subd. (a).) The Los Angeles County Department of Children and Family Services (DCFS) carries the burden of proof. (*In re Ashley M.* (2003) 114 Cal.App.4th 1, 7, fn. 3; *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.)[2] To affirm the juvenile court's finding of jurisdiction, our record must contain "'"'substantial' proof of the essentials which the law requires."' [Citation.]" (*In re B.T.* (2011) 193 Cal.App.4th 685, 691.) The juvenile court sustained allegations that the brothers were dependents of the juvenile court under section 300, subdivisions (b), (d), and (j).

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[1] All undesignated statutory citations are to the Welfare and Institutions Code.

[2] Although section 355.1, subdivision (d) contemplates burden shifting where a parent "has been found in a prior dependency hearing or similar proceeding in the corresponding court of another state to have committed an act of sexual abuse," that statute is inapplicable here because there is no previous finding that father sexually abused I.J. (or anyone else).

1. Section 300, Subdivision (b)

Section 300, subdivision (b) provides that a child is a dependent of the juvenile court if "[t]he 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."

With respect to the brothers, there was no evidence they were at risk of serious physical harm as a result of father's failure to supervise or protect them. The only evidence was that the brothers felt safe with father and wished to continue living with him. The brothers denied any abuse, and no evidence suggested their denials were inaccurate or made to protect father. No other evidence suggested the brothers were at risk of abuse. Additionally, DCFS did not allege that father failed to provide them with adequate food, clothing, shelter, or medical treatment. The juvenile court therefore erred in taking jurisdiction under section 300, subdivision (b). (See *In re B.T., supra,* 193 Cal.App.4th at p. 692, italics omitted [to support jurisdiction under this section, there must be evidence that "'at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm . . . .'"].)

2. Section 300, Subdivision (d)

Section 300, subdivision (d) provides that a child is a dependent of the juvenile court if "[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, 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." Penal Code section 11165.1 "refers to specific sex acts committed by the perpetrator on a victim, including child molestation . . . and does not include in its enumerated offenses 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." (*In re Maria R.* (2010) 185 Cal.App.4th 48, 67-68 (*Maria R.*).)

There is a split of authority whether a male child is at risk of sexual abuse when his female siblings have been sexually abused. *In re Karen R.* (2001) 95 Cal.App.4th 84, *In re P.A.* (2006) 144 Cal.App.4th 1339, and *In re Andy G.* (2010) 183 Cal.App.4th 1405 concluded that a male child was at risk when his female siblings had been abused. *Karen R.* explained that "a father who has committed two incidents of forcible incestuous rape of his minor 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." (*Karen R.*, *supra*, at pp. 90-91.) *Maria R.* rejected these holdings, concluding instead that there was no evidence "that a perpetrator of sexual abuse of a female child is in fact likely to sexually abuse a male child." (*Maria R.*, *supra*, 185 Cal.App.4th at p. 68.) Similarly, in *In re Rubisela E.* (2000) 85 Cal.App.4th 177, 199 (*Rubisela E.*), the court held that the father's abuse of his daughter did not constitute substantial evidence his sons were at risk of sexual abuse. More recently, *In re Alexis S.* (2012) 205 Cal.App.4th 48, 55-56, concluded that no evidence supported removing male children from a father's legal custody after the juvenile court sustained allegations that the father touched their half sister inappropriately.

Here, no evidence supported the finding that the brothers were at risk of sexual abuse. There was no evidence father had an interest in engaging in sexual conduct with a male child. Speculation that a father may sexually abuse a male child is insufficient to support jurisdiction. Instead, there must be evidence such that the court reasonably could find the child to be a dependent of the court. (*In re Sheila B.* (1993) 19 Cal.App.4th 187,

198-199.) The court erred in taking jurisdiction over the brothers under section 300, subdivision (d). (*Maria R., supra*, 185 Cal.App.4th at p. 68.)

3. Section 300, Subdivision (j)

Section 300, subdivision (j) provides that a child is a dependent of the juvenile court if "[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."

The allegations with respect to the brothers under section 300, subdivision (j) are the same as those under section 300, subdivision (d) and lack evidentiary support for the same reasons. Although subdivision (j) is broader than subdivision (d), DCFS alleged no other harm to the brothers as a result of the sexual abuse of I.J. The fact that in general a male child may be harmed by "knowledge that a parent has so abused the trust of their sister," or other consequences of sexual abuse of a sibling (*Rubisela E., supra*, 85 Cal.App.4th at p. 198), does not show jurisdiction was proper in this case because DCFS did not allege the brothers suffered any specific harm as a result of I.J.'s abuse and the record contains no evidence showing the brothers suffered such harm.

I would reverse the juvenile court's assumption of jurisdiction over the brothers, and affirm jurisdiction over I.J. and her sister.

FLIER, J.