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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re L.D., a Person Coming Under the Juvenile Court Law

DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CAROLINE D.,

Defendant and Appellant.

B287718

(Los Angeles County Super. Ct. No. DK11683)

APPEAL from orders of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Affirmed.

Serobian Law and Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant. Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Peter Ferrera, Principal Deputy County Counsel for Plaintiff and Respondent.

Caroline D. (mother) appeals from jurisdictional and dispositional findings and orders of the juvenile court. She contends there is insufficient evidence to support the jurisdictional findings; the juvenile court erred by failing to make removal findings pursuant to Welfare and Institutions Code¹ section 361, subdivision (c); and the court improperly delegated to the child's therapist authority to determine whether mother would be permitted visitation with the child. We find no error, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Craig D. (father) are the parents of L.D., who was born in June 2011. Mother and father were married briefly, but have lived apart since 2012. Prior to these proceedings, they shared legal and physical custody of L.D.

I.

Prior Dependency History

The family previously was involved with the Los Angeles County Department of Children and Family Services (DCFS) in 2015, when the juvenile court sustained a petition alleging that mother and father engaged in violent altercations in L.D.'s presence, and mother had mental and emotional problems, including depression and paranoid thoughts, that rendered her unable to care for L.D. L.D. was removed from mother's custody

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

and placed with father. After mother underwent a psychological evaluation, attended mental health counseling, and took a parenting class, the juvenile court granted the parents joint legal and physical custody; the court then terminated its jurisdiction.

II.

Current Abuse Reports

Physical abuse report. In November 2016, mother brought L.D. to a police station to report that the child had returned from a visit with father with bruises on his legs. L.D. told the police officer that he and his friends hit each other with hands and other hard things at school, but he did not know how he got the bruises. L.D. said father never hit him. Mother "got really upset and started yelling at [L.D.] stating, 'Who did this to you? Did your dad do this to you?' [L.D.] stated yes. [Mother] then stated, 'When did he do this?' [L.D.] stated 'I don't remember' as he was crying." When mother left the room, an officer asked L.D. how he got the bruises, and L.D. said, "'at my dad's, I run a lot around the house and maybe hit my leg on something hard.' [The officer] asked if [father] caused the bruises[, to] which [L.D.] stated 'no.' [L.D.] said [father] never hit him." The officer observed that during the interview, L.D. "was very hyper and had hit his own head a couple of times on the bench. [He] could not sit still and appeared to [be] very unfocused."

Mother told a children's social worker (CSW) that father lived with his new wife, Sarah, and L.D.'s two-year-old stepsister, Emma. Mother was concerned that father did not pay enough attention to L.D., and that Sarah yelled at him. The CSW observed that L.D. had several dime-sized bruises on his leg, which he said he got when he was running in father's house. L.D.

said Sarah was an "'evil woman'" because she pretended to be his mom, and that he had a sister named Emma who was "'a little bit nice.'"

Father told the CSW that he lived alone with L.D., he was not remarried, and "Sarah" and "Emma" did not exist. He said L.D. had fallen the prior weekend while playing outside. Father described mother as mentally ill, and said L.D. had become more aggressive since he began splitting his time between his parents' homes.

A day after mother's interview, she left a message for the CSW instructing her to tell father "to stick to the court order. He is to be at the West Hollywood police station at 10 AM to pick up his child and if he is not, I will get a police report that he was not there. I did not agree to this. A[fter] the corruption that I saw happen last night, I don't trust anything. I'm sticking with the court order and just to let you know I've been on the phone all night and all morning. This is not over and don't be surprised if you lose your job. You left my son in danger and I want to know why. I want to know why and I filmed everything. Get ready to be famous!"

In January 2017, mother told the CSW she was unhappy L.D. had not been detained from father and said she would go to "'the powers'" with documentation of physical abuse. The interview ended when mother pointed her finger in the CSW's face and called her a "'county cunt.'"

Sexual abuse report. DCFS received two additional referrals regarding L.D. in January 2017. A caller reported that L.D. had disclosed he play[ed] "the 'butt game'" with father and his babysitter, Alex, in which "someone put[s] their finger in your

butt and wiggle[s] it." Shortly thereafter, another caller reported that L.D. had been sexually abused by Ian C., a family friend.

L.D. told officers that "Ino" (Ian) had "tickle[d] my penis" and punched mother in the face. L.D. said mother had told him to say this. L.D. was examined at Children's Hospital on January 23; a social worker reported that L.D.'s sexual abuse exam was normal, but that mother presented as paranoid, stating that "everyone is failing her and no one is helping her child."

Father denied L.D. had been sexually abused. Father said Alex had cared for L.D. in the past, but had stopped working for the family nearly a year earlier after mother threatened her. Father had last spoken to Alex in March 2016. Father said the sexual abuse allegations were "'utter rubbish,'" noting that L.D. had told police officers in January 2017 that mother told him to say that Ian C. touched his penis.

Alex said she had cared for L.D. from January 2015 to March 2016. She described L.D. as a sweet boy, but said he would get angry and seemed to have been traumatized. She denied sexually abusing L.D.; she said she was a survivor of sexual abuse and therefore went out of her way to be respectful and protective of children.

Other issues. In January 2017, the CSW spoke to a man whom mother had asked to stay in her home while she was traveling to make sure that father did not break in. The man reported that mother had removed all the smoke detectors in her apartment because she thought they were bugged, and that she wore a small camera during custody exchanges at the police station. He believed mother presented a danger to L.D. Mother told the CSW that because her home had been broken into, she put baking powder on her floor to see if anyone had entered the

home while she was gone. She said she removed the smoke alarms because the alarms and her phones were "tapped."

The principal of L.D.'s school told the CSW that mother and father had a very contentious relationship and complained about each other in front of L.D. Mother wanted to do the right thing and was tender and loving with L.D., but was unstable and lacked parenting skills. The principal worried that L.D. "displays PTSD behavior[,] is hyper and aggressive in class[,] . . . yells at his friends, [and] is verbally and physically aggressive."

L.D.'s therapist reported that she had not seen him behave aggressively, and L.D. had not disclosed sexual abuse to her. The therapist had no concerns regarding L.D.

On January 23, 2017, mother came to DCFS's office to "reiterate" that L.D. had been sexually abused by father and physically abused by Alex. Mother said she had just returned from a trip in which she presented a 10-page letter to the Attorney General. She delivered the letter instead of mailing it because "'[m]y computer is hacked.'" She said that when she spoke to the CSW by phone the previous day, she and L.D. had been hiding in an alley because she believed she was being followed by father and a private investigator.

L.D. told the CSW that Sarah and Emma lived at father's house; that Alex bruised his legs by squeezing them; that he played the "butt game'" with father, which is "hard to understand, hard to talk about'"; and that he was afraid of his dad because "he always puts robbers at my mom's house.'" He had never seen the robbers, but he thinks there was a girl robber because "'girls are evil sometimes.'" During a subsequent forensic interview, L.D. variously said that Alex "tickle[s] his butt," that his clothes were on when this happened, and that Alex

tickled him "'[n]owhere.'" The interviewer observed L.D. "put up his fingers and was counting off to six to make sure he told her the six things he had to say."

DCFS concluded that it had "serious concerns in regards to mother's inability to control her emotional response to others and ability to exercise good judgment to support the safety and wellbeing . . . of the child," and it recommended that the court declare L.D. a dependent child. DCFS explained: "Mother has subjected the child to three physical examinations for physical and sexual abuse. The findings of these examinations have failed to evidence abuse. In fact, the child disclosed recently to LAPD that mother instructed him to say his father had physically abused him.

"Mother's behaviors are strikingly similar to those described in previous DCFS investigations that led to the court ordered removal of the child from mother in 2015.... In less than six months since mother reunified and termination of court jurisdiction, the concern over mother's behavior and judgment that led to the child's removal in 2015 have returned. . . . $[\P]$. . . [¶] DCFS has found that mother can appropriately provide for many of the child's needs. However, the risk of emotional harm caused by repeated exposure to mother's volatile interactions with others, unreasonable actions, subjecting the child to physical examinations and numerous interviews with clinicians, law enforcement and DCFS social workers raises significant concern. . . . [M]other reported that she had stopped taking her medication after the court case closed. DCFS is concerned that without continued participation in previous court ordered services, mother's ability to exercise reasonable judgment and control her emotional responses will progressively worsen."

III.

Petition, Detention, and Subsequent Reports

The juvenile dependency petition, filed February 17, 2017, alleged: (b-1) Mother has mental and emotional problems that render her incapable of providing regular care of L.D.; and (c-1) Mother emotionally abused L.D. by forcing him to provide false reports of physical and sexual abuse by father and two other adults.

A detention hearing was held February 17, 2017. The child's counsel and father requested that L.D. be detained from mother; DCFS and mother's counsel recommended that L.D. remain with both parents. The court ordered L.D. detained from both parents, noting it was concerned that mother had mental health issues and that L.D. had returned from father's with bruises on his legs for which there had been inconsistent explanations. Father was granted unmonitored visits with L.D., and mother was granted monitored visits.

On March 10, 2017, L.D. was released home to father. Thereafter, mother went for an intake interview at the Ness Center, a professional monitor. Mother said she would not have visits at the monitor's facility because the room was filthy and "I am Christian, and . . . the agency is Jewish, and you don't know who the Lord is." In April 2017, DCFS reported that it had made repeated efforts to interview mother, but mother had not been responsive. Mother had not had any visits with L.D. because she had refused either to provide an approved monitor or to have monitored visits at the Ness Center.

IV.

Jurisdictional and Dispositional Hearing; Exit Order

A jurisdictional and dispositional hearing began on April 6, 2017, and was continued over several months. At mother's request, L.D. was questioned briefly in chambers, but the court excused L.D. after several minutes, stating that the child could not be qualified as a witness.

On April 27, mother's attorney asked to be relieved as counsel of record. Counsel said mother had fired him and had said she would sue him for malpractice and report him to the State Bar.

In June 2017, DCFS recommended that the case be closed with a family law order giving father sole legal and physical custody of L.D. DCFS further recommended that mother's visits with L.D. be suspended because it had serious concerns about her mental health. It reported: "Mother's behavior during her monitored visits at DCFS is emotionally abusive to the child. Mother's inappropriate comments towards the child and visitation monitor are causing the child to become upset to the point that the child asks the mother to stop being mean to the monitor. Mother tells the child that he is coming home with her to be with his 'real family' and she refuses to let go of the child at the end of visits. The visitation monitor has had to request the assistance of the DCFS security guard to step in and end mother's visits. Per the visitation monitor . . . , mother yelled out in the presence of the child and alleged child endangerment in the presence of the child.

"Mother has repeatedly made inappropriate and crude comments about DCFS staff before, during and after her monitored visits with the child. The child cried during and after his visit with his mother on June 26, 2017 due to his mother's behavior. The child also was visibly stressed (heavy breathing . . . as if he was going to hyperventilate while sitting in the car seat on the way to the visit) prior to the visit with his mom, but he said he wanted to visit, so the visit went forward."

On June 29, the court continued the hearing because mother's counsel was ill, but said it was "appalled" by mother's behavior, and that mother would not be allowed to visit L.D. if she did not find a different way to communicate. The court said: "In my view the Department's staff is a reflection of what goes on in this court. So I don't expect you to curse at me, raise your voice, slam [down] the phone. I don't expect you to do it to the Department. [¶] And my view is, if you can't be appropriate, then it's not in your son's best interest to see you act in this manner in which you have been acting. [¶] So at this point, I'm going to order that you confirm your visits 48 hours in advance. [¶] If you don't confirm them 48 hours in advance, they're not happening. And if you raise your voice, you use inappropriate language, you make a scene, you're rude to anybody involved and they feel you're not appropriate, they have my authority to terminate your visits on the spot."

On August 30, the juvenile court found counts b-1 and c-1 of the petition true as alleged. It then issued an exit order placing L.D. in father's sole legal and physical custody. The court explained: "The court's view is that the court's job is to find a secure parent . . . a child can remain with and ensure that the risk he is currently exposed to that causes this court to take jurisdiction is alleviated. [¶] It's the court's profound view that keeping this case open continues to place [L.D.] at risk. [¶] The

court finds that the mother's behavior has not been consistent or stable. [¶] The Department's last minute emails indicating that on occasion [mother] refuses to contact the social worker, to communicate with the social worker — I understand that these are emotional issues, but parents have to be parents and adults, and there are a lot of people that we have to deal with in life that we don't want to talk to, we would rather not. You still have to.

"The court is convinced that by keeping this case open, providing services to the mother, [mother] is not going to get better. She's not going to participate in services. And instead what is going to happen is . . . we're going to continue to subject [L.D.] to the trauma of the social worker contacting him on a regular basis, in addition to therapy, in addition to school, all of the things he needs to do, we don't need to provide a second form of re-trauma to this child."

On September 22, 2017, the court signed a custody order that provided sole legal and physical custody of L.D. to father, and granted mother twice-monthly monitored visits with L.D. in a therapeutic setting. Mother timely appealed.

DISCUSSION

Mother contends: (1) the juvenile court's jurisdictional findings were not supported by substantial evidence; (2) the juvenile court failed to make the removal findings required by section 361, subdivision (c) (hereafter, section 361(c)); and (3) the visitation order improperly delegated to L.D.'s therapist the power to determine when mother's visits with L.D. would occur.

T.

Standard of Review

Several different standards guide our review of mother's appellate claims. We review jurisdictional findings for

substantial evidence. (*In re M.M.* (2015) 240 Cal.App.4th 703, 720.) "In considering a claim of insufficient evidence to support a jurisdictional finding, we review the evidence most favorably to the court's order—drawing every reasonable inference and resolving all conflicts in favor of the prevailing party—to determine if it is supported by substantial evidence. [Citation.] If it is, we affirm the order even if other evidence supports a contrary conclusion." (*In re N.M.* (2011) 197 Cal.App.4th 159, p. 168. "We do not consider the credibility of witnesses or reweigh the evidence." (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 138.)

We review de novo mother's claim that the juvenile court committed an error of law by failing to make findings required by statute. (N.S. v. D.M. (2018) 21 Cal.App.5th 1040, 1047 [interpretation of a statute is a legal issue, which we review de novo].) "'"When we interpret a statute, '[o]ur fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." "(National Lawyers Guild v. City of Hayward (2018) 27 Cal.App.5th 937, 945.)

We review for abuse of discretion mother's challenge to the visitation order. (Los Angeles County Dept. of Children & Family Services v. Superior Court (2006) 145 Cal.App.4th 692, 699, fn. 6.) "'Under this test, we must uphold the trial court "ruling if it is correct on any basis, regardless of whether such basis was actually invoked." '[Citation.] Generally, reversal is only

warranted 'if there is no reasonable basis upon which the trial court could conclude that its decision advanced the best interests of the child.' " (*Ed H. v. Ashley C.* (2017) 14 Cal.App.5th 899, 904.)

II.

The Juvenile Court's Jurisdictional Findings Were Supported by Substantial Evidence

Mother asserts the evidence is insufficient to sustain the juvenile court's jurisdictional findings. She claims there is nothing in the record to support the conclusion that L.D. has suffered or is in danger of suffering serious physical harm (§ 300, subd. (b)), or that he is suffering or is at substantial risk of suffering serious emotional damage (§ 300, subd. (c)). "We address only the latter, since the juvenile court's jurisdiction may rest on a single ground." (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 83.)

Section 300, subdivision (c) provides that a child is within the jurisdiction of the juvenile court if he or she "is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent."

Mother contends there is no evidence that she was anything other than "a worried parent" or that L.D. "experienced demonstrable symptoms of serious emotional damage" as a result. We disagree. The evidence before the juvenile court supports the juvenile court's conclusion that mother pressured L.D. to make false reports of sexual and physical abuse; as a result, L.D. was interviewed about sensitive topics by law enforcement officers and social workers, was subjected to invasive

physical examinations, and was briefly placed in foster care. Mother also exposed L.D. to her volatile interactions with others, including by accusing DCFS of child endangerment in L.D.'s presence and refusing to let go of him at the end of visits. And, mother frequently told L.D. damaging things about father that were demonstrably false—that father had remarried, followed mother and L.D., and broke into their apartment. As a result, L.D. appeared to have difficulty distinguishing truth from fiction: He at times described an apparently non-existent stepmother and stepsister, and once reported that he was afraid of father because "'he always puts robbers at my mom's house.'"

For the juvenile court to assert jurisdiction, mother's conduct need not have caused L.D. serious emotional damage; it is enough that her conduct put him *at risk* of suffering serious emotional harm. There can be no doubt that the conduct we have described put L.D. at risk of serious emotional damage. Indeed, the evidence suggested that he had begun to manifest such harm: L.D. was described as hyperventilating before visits with mother, and as crying both during and after such visits; several witnesses commented on L.D.'s hyperactivity; father and L.D.'s principal reported that L.D. was aggressive at home and school; and both L.D.'s former babysitter and his school principal reported he showed signs of trauma.

Mother's reliance on *In re Brison C*. (2000) 81 Cal.App.4th 1373 is misplaced. As in the present case, the child in *Brison* was caught in the middle of a dispute between his parents. As relevant here, the court discussed whether the child was in danger of suffering serious emotional damage if jurisdiction was not assumed. The court concluded he was not in such danger, characterizing Brison as a "remarkably resilient child" who "did

not exhibit behavioral abnormalities or difficulties." (*Id.* at p. 1380.) The court also noted that "[b]oth parents have recognized the inappropriateness of their past behavior and of commenting to Brison about the other" and had "expressed a willingness to change their behavior patterns and to attend counseling and parenting classes." (*Id.* at p. 1381.)

In contrast to the child in *Brison*, six-year-old L.D. has begun to exhibit behavioral difficulties, including hyperactivity and aggression. Significantly, unlike the parents in *Brison*, mother has not recognized her behavior as inappropriate or expressed a willingness to change it. To the contrary, she continued to exhibit "erratic and bizarre behavior" for which she was not receiving treatment.

For all of these reasons, we thus conclude that substantial evidence supported the juvenile court's jurisdictional finding under section 300, subdivision (c).

111.

The Court Was Not Required to Make Removal Findings Under Section 361(c)

Mother contends the juvenile court made an error of law when it failed to make findings under section 361(c). We disagree.

As relevant here, section 361(c) provides that a dependent child "shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances, [including] . . . [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no

reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's ... physical custody." (§ 361, subd. (c)(1).) As a reasonable means to protect the minor, the court shall consider "removing an offending parent or guardian from the home" and "[a]llowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm." (*Id.*, subds. (c)(1)(A)–(B).)

Mother's contention that the juvenile court erred in failing to make the findings required by section 361(c) assumes that the court's granting of sole custody to father constituted a "removal" from mother within the meaning of section 361(c). It did not. The first clause of section 361 refers to "parents" (plural), not to "parent" (singular); it thus suggests that if a child lived with both parents prior to the filing of the petition, section 361 is implicated only if the court orders the child removed from the custody of both parents. This conclusion is reinforced by subdivisions (c)(1)(A)–(B), which state that the court must consider, as a "reasonable means to protect the minor," the options of removing an offending parent from the home or allowing a nonoffending parent to retain physical custody. In other words, allowing a child to remain in the custody of one of two custodial parents is not a "removal" within the meaning of the statute. To the contrary, it is an alternative to removal—or, in the language of the statute, a "reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (Italics added.)²

Of course, the fact that a court *need not* order a child removed from one custodial parent pursuant to section 361(c)

Accordingly, because L.D. was not "removed" from mother within the meaning of section 361(c), the court was not required to make findings under that section. Its failure to do so, thus, manifestly was not an abuse of discretion.

IV.

The Juvenile Court Did Not Improperly Delegate Power to L.D.'s Therapist

The juvenile court's visitation order, signed September 22, 2017, stated as follows:

"[Mother] shall have monitored visitation in a therapeutic setting.

"Visits are to occur two times per month. Date, time, and duration for each visit shall be as arranged by Mother, Father, and therapist. Visits shall be a minimum of one hour.

"Mother must give confirmation of her intent to attend visits 48 hours prior to each visit via email, phone, or text to the therapist, and via 'OurFamilyWizard' to Father. . . . [¶] Mother shall be responsible to pay the cost of each therapeutic session in advance or as otherwise arranged between Mother and the therapist."

Mother contends this order improperly delegated authority to father and L.D.'s therapist to determine whether mother would be permitted visitation with L.D. We do not agree. As mother concedes, the juvenile court may delegate to a third party the responsibility to manage the details of visitation, including time,

does not mean that it *may not* do so: As another division of this court recently held, a juvenile court is not "precluded as a matter of law from considering the alternative of removal" where a child is placed in the custody of just one parent. (*In re Michael S.* (2016) 3 Cal.App.5th 977, 984.)

place and manner. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374.) "'Such matters as time, place and manner of visitation do not affect the defined right of a parent to see his or her child and thus do not infringe upon the judicial function.' [Citation.] Only when a visitation order delegates to the probation office or county welfare department the absolute discretion to determine whether any visitation occurs does the order violate the statutory scheme and separation of powers doctrine." (*Ibid.*)

Contrary to mother's contention, the juvenile court's order did not delegate to father or L.D.'s therapist the power to determine whether mother will have visits with L.D. The order requires that mother be permitted twice-monthly visits, of at least one hour, in a therapeutic setting. Thus, while the order permits the therapist to decide *where* and *when* the visits will take place, it does not allow him or her to decide *if* visits will occur. It therefore does not run afoul of the statutory scheme.

Mother contends that she is left without the certainty of visits because the court ordered visits with "the child's therapist," but L.D.'s therapist has "refus[ed] to monitor mother's visits." In fact, the court did *not* specify that mother's visits were to be supervised by L.D.'s therapist—it ordered only that visits occur "in a therapeutic setting." L.D.'s therapist's unwillingness to supervise mother's visits, therefore, has no bearing on mother's ability to visit L.D.

³ Curiously, mother concedes that a visitation order may lawfully require visits to take place "in a therapeutic setting."

DISPOSITION

The jurisdictional and dispositional findings and orders are affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.