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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re FAITH M., a Person Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JEFFREY M.,

Defendant and Appellant.

B284172, B289622

(Los Angeles County  
Super. Ct. No. CK62768)

APPEALS from orders of the Superior Court of Los Angeles County, Robert S. Draper, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

In his first appeal, case No. B284172, appellant Jeffrey M. (Father) challenges the court's April 26, 2017 order sustaining an amended dependency petition finding that Father sexually molested his daughter, Faith M. (Neither Megan M. (Mother) nor Father have appealed the court's earlier order sustaining the original petition.) Father argues that Faith's hearsay accounts of sexual abuse cannot constitute substantial evidence supporting the court's finding. We exercise our discretion to consider the issue, but disagree and, accordingly, affirm the order.

In his second appeal, case No. B289622, Father appeals the court's April 2, 2018 order terminating Father's parental rights.<sup>1</sup> Father's appointed counsel advised the court that there were no arguable issues in this appeal. Father filed a supplemental letter brief, which fails to identify any legally cognizable error in the juvenile court's order. Accordingly, we affirm the court's order terminating Father's parental rights. (See *In re Phoenix H.* (2009) 47 Cal.4th 835, 845 (*Phoenix H.*).

### **APPEAL FROM JURISDICTIONAL FINDING (CASE NO. B284172)**

We first address Father's appeal from the jurisdictional finding of sexual abuse, case No. B284172.

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<sup>1</sup> Over a month after Father's attorney timely filed this appeal on Father's behalf, Father and Mother personally executed separate notices appealing the order. This court dismissed the appeals these untimely notices initiated, but permitted Father's initial timely appeal, now before us, to proceed.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Family Background**

Faith is the now 8-year-old daughter of Father and Mother. Father and Mother have an older daughter, Grace M., who was the subject of earlier dependency proceedings. These proceedings ultimately terminated Father's and Mother's parental rights over Grace, based on "[s]evere neglect" (boldface omitted), including an incident in which, while drinking alcohol, Father "dropped [three-month-old Grace] about 3 or 4 feet on her head."

Father has a criminal record that includes convictions for driving under the influence and weapons-related offenses. Some of these resulted from a domestic violence altercation with Father's ex-wife and their two children. During this altercation, Father held his ex-wife and two children hostage at gunpoint until a SWAT team arrived.

Father and Mother lived together with Faith before she was removed as a result of the dependency proceedings underlying this appeal.

### **B. Original Dependency Petition**

On September 30, 2015, the Department of Children and Family Services (DCFS) received a "child abuse hotline" referral regarding Faith, then five years old.<sup>2</sup> The caller stated that

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<sup>2</sup> This was not the first time DCFS intervened regarding Faith's well-being. When Faith was less than one month old, DCFS received a referral based on her "mother and father's history with substances, potential domestic violence, and prior parental rights terminat[ion]." After Father and Mother voluntarily participated in training and random drug testing, DCFS determined there were "no current child safety issues at

Father cared for Faith while Mother worked. The caller stated that she was concerned for Faith's safety, because Father had a history of domestic violence and alcoholism, and because she believed him to be mentally unstable. She further reported that Father had guns in the home while Faith was present, and referenced Facebook posts by Father depicting, for example, Father pointing a gun at the camera while resting his arm on Faith's head.

Emergency response social workers investigated the referral. When they interviewed Faith, she described domestic violence between her parents, and stated that her father drank alcohol. Faith denied that anyone had ever touched her "private parts," or that she had ever touched someone else's "private parts." She likewise denied that anyone at home or at school was "hurting her," or that she was afraid of her mother, father, or returning home. The social workers concluded that Faith knew the difference between the truth and a lie.

DCFS filed a juvenile dependency petition on October 13, 2015. At a December 10, 2015 hearing, the court sustained the petition as to Welfare and Institutions Code section 300, subdivisions (b)(2) and (b)(3),<sup>3</sup> based on Father and Mother's "history of engaging in violent altercations in the presence of the child," as well as on Father's alcoholism and alcohol abuse, which

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home." Almost three years later, however, a mandated reporter informed DCFS that Father was a long-time alcoholic, that he threatened to hit Mother, and that Mother repeatedly had black eyes. Father and Mother denied any domestic violence, and denied that Father drank while he cared for Faith. The referral was ultimately "[i]nconclusive."

<sup>3</sup> Further statutory references are to the Welfare and Institutions Code.

rendered him “incapable of providing the child with regular care and supervision.”

Neither parent challenged the order sustaining this original petition.

**1. *Amended Dependency Petition Alleging Sexual Abuse by Father***

The original dependency petition did not allege sexual abuse or inappropriate sexual behavior in any way. On November 9, 2016, however, DCFS filed an amended petition describing sexual abuse by Father as an additional basis for dependency jurisdiction under both section 300, subdivisions (d) (sexual abuse) and (b)(1) (serious physical harm). Specifically, the petition provided that “when [Faith] was five years old . . . [F]ather told the child to remove [her] clothing and . . . [F]ather fondled the child’s breasts and vagina,” that “[F]ather exposed [his] penis to [Faith], and touched [her] vagina with [his] penis.”

**2. *Faith’s Statements Regarding Sexual Abuse by Her Father***

The amended petition relied on Faith’s various accounts of Father’s alleged sexual abuse over the course of the investigation.<sup>4</sup> Because the specific differences between these accounts are integral to Father’s arguments on appeal, we discuss them in some detail:

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<sup>4</sup> DCFS also interviewed Mother and Father regarding the sexual abuse allegations, which both parents denied. Father offered the alternative explanation that he and Mother were often nude in the home, and that he had told Faith not to tell anyone about this, as it might be misunderstood.

**a. *Initial report of sexual abuse***

In September 2016, social workers learned that Faith had alleged Father sexually abused her. These allegations surfaced in the context of DCFS investigating reports that, while Faith was in foster care, another foster child had asked Faith to see her vagina. Faith denied that the other foster child had touched her vagina. After being interviewed, however, Faith's foster mother observed Faith crying. Faith's foster mother asked Faith whether anyone else had ever touched her vagina, to which Faith responded "sort of, kind of." When asked who had done so, Faith replied "my dad." Faith's foster mother reported these statements to DCFS, at which time she also noted that Faith had previously described Father forcing Faith to watch pornographic movies.

**b. *September 4, 2016 statements to police***

Faith spoke privately with a police officer at her foster home on September 4, 2016. The officer "confirmed that Faith understood the difference and importance of telling the truth [versus] a lie." According to the officer's police report, when he asked Faith about being touched in an inappropriate manner, "[w]ithout hesitating, Faith nodded her head up and down while advising [the officer] it was true." Faith "explained that it actually happened twice and that it was [Father] who had touched her." The report further states that Faith provided the following details regarding the touching: She woke up on the couch "to find that [Father] had lowered her pajama bottoms and underwear and was rubbing her vagina with his hand" and "some kind of jelly like substance," and that Father stated he was applying "medicine." The report states Faith denied that her father had ever asked her to touch his "private parts." Faith reportedly told the officer that she had only

ever seen Father without his clothes on while he was showering and unaware of her presence.

**c.     *September 12, 2016 interview with  
social worker***

According to an interview report from CSW Jamie Fowler, Faith made the following statements during an interview approximately one week later: Faith identified her “private areas” by gesturing to her chest, vagina, and buttocks. When asked whether anyone had ever touched her private areas, she replied “one time[,] my dad.” Later in the interview, Faith stated she thought Father had touched her private areas twice, and that it happened when she was five years old. When asked which areas Father touched, Faith pointed to her chest and vagina stating “here and here.” Faith indicated this had occurred while she was lying down and trying to sleep. Faith stated Father had taken his shirt off, and had instructed her to take off her clothes but not her underwear. When CSW Fowler asked Faith whether she had ever seen Father’s private area, Faith responded, “[Y]es, it was disgusting.” Faith stated Father had touched her vagina with his penis once and that “he did it softly so he wouldn’t hurt me.” When asked why she did not tell Mother, Faith explained that Father had told her not to do so, and that he would “get really mad” were she to tell. More than once throughout the interview, Faith said, “[Y]ou aren’t going to tell him[,] right . . . he can’t hurt me, right?” Faith also spontaneously offered statements that “it’s only because he use[d] to smoke and drink” and that Father would not do it again because he was going to be a better man.

***d. October 25, 2016 statements to therapist***

In October 2016, Monica Neris, Faith's therapist spoke with Faith regarding the sexual abuse allegations. Neris asked whether Father had ever "penetrated her, used oral sex, shown her pornographic images, or touched her inappropriately," to which Faith reportedly responded, "My dad did all of those things to me." Neris believed Faith to be telling the truth, though Neris also acknowledged that some of her questions may have been "leading or the child could have been trying to please her."

***e. November 13, 2016 statements to forensic examiner***

During an unannounced interview, forensic examiner Marilyn Stolz asked Faith to "tell [her] about other things that happened with [her] dad," to which Faith reportedly responded "when he drinks that bad stuff—[¶] . . . [¶] . . . he kind of acts weird around me." When Stolz asked how so, Faith stated that she "forgot[,] mostly." Faith stated she felt "nervous" and "weird, complicated" talking about Father. Stolz reportedly asked whether Father did anything that she did not like, and Faith responded, "[N]o."

Stolz then asked increasingly specific questions regarding possible abuse by Father and possible sexual abuse, in response to which Faith either stated she could not remember, did not want to say, or did not want to say because it made her "nervous." Ultimately, Faith stated someone had touched her "privates" outside the context of bathing, and that "his name is Jeff." When Stolz asked, "Is he your dad?" Faith responded affirmatively. In this context, Stolz asked whether anyone had ever told Faith "not to tell about things at home" and she stated, "[M]y dad." At various



points throughout the interview, Stolz praised Faith for sharing her feelings and answering questions.

**f.      *November 26, 2016 statements to Father***

A DCFS monitor reported that during a visit with Father, Father asked Faith “why she reported that he had sexually abused her” and that Faith responded, “[M]aybe it was something she had dreamed.”

**3.      *Hearing on Amended Petition***

At the hearing on the amended petition, Father’s counsel challenged the reliability of Faith’s sexual abuse allegations, based largely on variations in her statements and the context in which the allegations first arose. In considering these arguments, the court noted as an “important point” that Faith never recanted her allegations. The court further observed that the DVD of the forensic interview reflected a “girl that’s just kind of terrified about saying what happened.” On these bases, on April 26, 2017, the court sustained the petition, with interlineations.<sup>5</sup> Father filed a timely notice of appeal.

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<sup>5</sup> The court struck the portion of the amended petition stating that Mother had known about the abuse.

## II. DISCUSSION

### A. This Court Will Exercise Its Discretion to Address Father's Appeal

Father claims insufficient evidence supports the court's jurisdictional finding that Faith is a child described in section 300, subdivision (d), based on Father's sexual abuse. But Father does *not* challenge the court's additional jurisdictional finding that Faith is a child described in section 300, subdivision (b)(1), based on the serious risk of harm from Father's alcoholism, domestic violence, and sexual abuse. Where a court sustains multiple bases for jurisdiction alleged in a dependency petition, only one need be supported by substantial evidence for the reviewing court to affirm. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) Thus, Father's appeal is moot in the sense that, even if Father successfully challenges the court's finding of jurisdiction under section 300, subdivision (d), we would still affirm the court's jurisdictional order. (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) We retain discretion to address such challenges, however, if they could have consequences beyond jurisdiction, or if it might prejudice the appellant in current or future dependency proceedings. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.) Both could be the case here. Findings regarding sexual abuse “carr[y] a particular stigma” (*In re M.W.*, *supra*, 238 Cal.App.4th at p. 1452), and could serve as *prima facie* evidence in future dependency proceedings regarding other children. (See § 355.1, subd. (d).) Assuming the challenged jurisdictional finding could prejudice Father in future proceedings, we will exercise our discretion to consider his challenge.

**B. Substantial Evidence Supports the Finding  
That Faith Is a Child Described in Section 300,  
Subdivision (d), Based on Father’s Sexual Abuse**

Reports of Faith’s statements that Father sexually abused her constitute the only evidence supporting the juvenile court’s subdivision (d) jurisdictional finding. These reports are inconsistent in many respects. (See part I.B.2, *ante*.) Father contends that such reports are unreliable and inadmissible hearsay and, thus, cannot constitute substantial evidence without corroboration. We disagree.

Uncorroborated hearsay may support a jurisdictional finding where the “hearsay declarant is a minor under 12 years of age who is the subject of the jurisdictional hearing.” (§ 355, subd. (c)(1)(B).) Section 355 requires corroboration only if there is a “timely objection” and “the objecting party establishes that the statement was unreliable because it was the product of . . . undue influence.” (§ 355, subd. (c)(1)(B).) Because Father failed to timely object to Faith’s statements as hearsay, he has waived any hearsay arguments based on statute.<sup>6</sup> (See *In re S.C.* (2006) 138 Cal.App.4th 396, 406.) Nor do courts have any general *sua sponte* duty to exclude evidence. (*People v. Montiel* (1993) 5 Cal.4th 877, 918.)

Father contends he cannot waive his hearsay arguments because DCFS has the burden of proof. But which party must offer evidence has no bearing on whether or not the evidence offered is admissible. The cases Father cites hold only that a litigant need

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<sup>6</sup> Father does not expressly argue that this statutory exception applies, though he raises general arguments suggesting Faith’s statements were the product of undue influence. As he failed to timely object, however, such arguments would fail in any event.

not expressly object to the sufficiency of evidence at trial in order to preserve an appellate argument that the evidence was insufficient. Consistent with this, Father *has* challenged the sufficiency of the evidence presented to the juvenile court, despite not having objected on this basis below. But he must support this challenge without resorting to admissibility arguments already waived.

Father next urges that Faith's statements are insufficient to support a jurisdictional finding under the "child dependency exception." Under this line of cases, if a child hearsay declarant is incapable of knowing the difference between the truth and a lie, constitutional due process may require "special indicia of reliability" in order for such hearsay to form the sole basis for a jurisdictional finding. (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1247-1248.) Social workers and a police officer interviewing Faith all concluded that she "understands the difference . . . [between] telling the truth [versus] a lie." Father does not dispute this. Thus, the child dependency exception is inapplicable and does not require Faith's statements contain special indicia of reliability or corroboration.

Faith's duly admitted hearsay statements support a reasonable inference that Father sexually abused Faith. (See *In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598 [testimony of a single witness may constitute substantial evidence].) It was well within the discretion of the juvenile court to find Faith's statements credible, despite slight variations in Faith's accounts. (*In re I.J.* (2013) 56 Cal.4th 766, 773 ["issues of fact and credibility are the province of the trial court"].) Such variations are "often the case" with children's testimony. (See *In re Rubisela E.* (2000) 85 Cal.App.4th 177, 195.) Moreover, as the juvenile court noted, in

all Faith's accounts "the essence of the offense . . . did not change."<sup>7</sup> (*Ibid.*) Because we review the challenged order for substantial evidence, we need not consider the alternative explanations Father offers for the inconsistencies in Faith's accounts. (See *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Under the deferential standard of review we must apply, we find that it was not unreasonable for the court to rule as it did in light of the whole record. (See *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394.) We affirm the challenged jurisdictional finding.

### **APPEAL FROM THE TERMINATION OF PARENTAL RIGHTS (CASE NO. B289622)**

The dependency proceedings discussed above ultimately resulted in an order terminating Father's parental rights over Faith. In a second appeal, case No. B289622, Father challenges that order.

### ***Phoenix H.* Briefing Related to Appeal**

On April 24, 2018, Father filed a timely notice of appeal from the order terminating his parental rights. On June 19, 2018, Father's appointed counsel filed a *Phoenix H.* brief regarding Father's appeal, stating counsel had found no arguable issues on appeal, and requesting Father be permitted personally to file a

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<sup>7</sup> While Faith's statements need not reflect any special indicia of reliability to be admissible, and while it is not our place to reweigh the evidence, it bears mention that Faith's accounts involve what courts have deemed to be signs of reliability under similar circumstances, including "use of terminology unexpected of a child of a similar age"—such as Faith saying that Father would "be a better man"—and a "lack of motive to fabricate." (See *In re Cindy L.* (1997) 17 Cal.4th 15, 30.)

supplemental brief. On July 19, 2018, Father filed a letter, signed by both Father and Mother, in support of his appeal.

We have considered Father's supplemental brief and understand Father's legally cognizable argument<sup>8</sup> to be that terminating his parental rights is detrimental to Faith under the parent-child relationship exception. For the reasons discussed briefly below, we disagree.

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<sup>8</sup> We do not address the arguments Father makes in his supplemental brief that involve no legally cognizable basis for an appeal, such as that Father has been "unjustly treated" by DCFS. Nor do we consider arguments in the supplemental brief that Father has no standing to raise, such as those against the termination of Mother's parental rights, or based on services provided to Mother. (See, e.g., *In re Carissa G.* (1999) 76 Cal.App.4th 731, 736–737 [parent lacks standing to challenge orders not affecting parent's legal rights].)

## **I. FACTUAL BACKGROUND**

### **A. Family Reunification Efforts**

Beginning in late 2015, DCFS facilitated Father's monitored visits with Faith, provided Father with reunification services, and assisted him in complying with the court-ordered case plan.<sup>9</sup> Father's visitation with Faith was inconsistent. He repeatedly blamed his missed visits on DCFS-generated scheduling complications, and DCFS staff reported Father "threatening harm to support service staff" and social workers as a result.<sup>10</sup>

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<sup>9</sup> These efforts were pursuant to a December 10, 2015 order that DCFS provide family reunification services and impose a case plan, which required Father, inter alia, participate in a 26-week domestic violence program, drug and alcohol testing, a 12-step program, individual counseling, and a psychiatric assessment. The court first ordered visitation on October 27, 2015.

<sup>10</sup> For example, on February 24, 2016, Father "reportedly stated that he was cleaning out his rifle and made threatening statements about plans to shoot the CSW on the case and himself over missed visits with his daughter." A December 10, 2015 Last Minute Information describes what a DCFS worker understood as threats by Father. Specifically, Father told the worker he had "‘researched’ her," mentioned her two children, asked her if she ever had to "‘kill people,’" and stated that he has killed people.

Father often had difficulty complying with the court's orders related to family reunification efforts as well. While Father ultimately completed the training ordered by the court, this did not translate into "transformative behavior" or an "understand[ing] [of] [the parents'] part in why [Faith] is not in their home." For example, less than two weeks after completing a domestic violence training program, police arrested Father for assaulting Mother. Following this incident, Mother obtained a five-year restraining order against Father.

On April 26, 2017, the court terminated reunification services for Father and returned Faith to the custody of Mother, on the condition that parents abide by the restraining order. Days later, DCFS workers reported numerous signs that Father continued to live in the family home with Mother. As a result, on June 5, 2017, the court terminated reunification services for both parents, and set a permanency planning hearing to free Faith for adoption. Father has not challenged the termination of reunification services.

### **B. Permanency Placement Hearing**

The court conducted a permanency planning hearing for Faith on April 2, 2018. Father did not attend, but was represented by appointed counsel. The court found that, although Father and Mother had received "multiple chances" to address the issues initially justifying removal, these conditions persisted. The court noted that Faith's maternal cousin and his wife, with whom Faith had been living for over six months, "ha[d] expressed their commitment to adopt [Faith]." Court personnel reported that Faith was "very happy and is desiring to be adopted." The court therefore found it in Faith's best interest to terminate Father and Mother's parental rights and pursue adoption with Faith's current caregivers.



The court rejected Father’s counsel’s argument that Father had “a very strong close bond to Faith,” such that it would be “detrimental to Faith to . . . sever” her parental relationship with Father. The court further found that, to the extent any parental bond existed, all benefits therefrom would be outweighed by the continued danger Father posed to Faith.

## II. DISCUSSION

### ***Father’s Appeal Presents No Meritorious Issues***

At a permanency placement hearing, “in order to terminate parental rights, the court need only make two findings: (1) that there is clear and convincing evidence that the minor will be adopted; and (2) that there has been a previous determination that reunification services shall be terminated.” (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249–250.) If, as was the case with Faith, the child is going to be adopted, termination of parental rights “will be relatively automatic” (*ibid.*, citations omitted), unless one of several statutorily enumerated circumstances exists. (§ 366.26, subd. (c)(1).)

For example, a court may choose not to terminate parental rights at a section 366.26 hearing where the parent shows he has “maintained regular visitation and contact with the child and the child would benefit from continuing the [parent-child] relationship.” (§ 366.26, subd. (c)(1)(B)(i).) This benefit must present a “compelling reason” not to terminate parental rights, meaning it promotes the well-being of the child “to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) Father raised this exception at the section 366.26 hearing, and we understand many of the arguments raised in his letter brief as speaking to this argument as well.

To meet his burden of establishing that the parent-child relationship exception applies, Father must show “*more* than frequent and loving contact, an emotional bond with the child, or pleasant visits—the parent must show that he or she occupies a parental role in the life of the child.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527, italics added.) There is nothing in the record to suggest Father played such a “parental role” in Faith’s life, and there is conflicting evidence regarding whether or not the two even enjoyed “an emotional bond” or “pleasant visits.” (See *ibid.*)

Substantial evidence supports the juvenile court’s conclusion that Faith was adoptable, that adoption was in her best interest, and that no exception to terminating parental rights applied. Accordingly, the judgment terminating Father’s parental rights is affirmed. (See *Phoenix H.*, *supra*, 47 Cal.4th at p. 845.)

### **DISPOSITION**

With respect to case No. B284172, the court's finding of jurisdiction under section 300, subdivision (d) is affirmed.

With respect to case No. B289622, the order terminating Father's parental rights is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

CHANEY, J.

CURREY, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.