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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re H.K., a Person Coming Under  
the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Appellant,

v.

S.K.,

Defendant and Appellant.

B286572

(Los Angeles County  
Super. Ct. No. CK88303)

APPEAL from orders of the Superior Court of Los Angeles County. Etan Lorant, Juvenile Court Referee. S.K. appeal dismissed. Affirmed in part and reversed with directions.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Appellant.

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

S.K. (Father) appeals from the juvenile court's orders declaring his daughter H.K. to be a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (d),<sup>1</sup> and removing her from his custody. Father's appointed counsel filed an opening brief pursuant to *In re Sade C.* (1996) 13 Cal.4th 952 and *In re Phoenix H.* (2009) 47 Cal.4th 835, Father raises no issues. We therefore dismiss Father's appeal.

The Los Angeles County Department of Children and Family Services (DCFS) cross-appeals from the same orders, contending the juvenile court erred when it dismissed the allegations that Father failed to adequately supervise or protect H.K. DCFS argues the evidence mandated Father be found an offending parent whose failure to protect caused H.K. to suffer harm. We reverse the juvenile court's jurisdictional findings on this ground, but affirm all remaining jurisdictional findings and dispositional orders.

### **FACTUAL AND PROCEDURAL HISTORY**

H.K. was born in 2010 to Father and J.K. (Mother). In 2011, H.K. was declared a dependent of the juvenile court. The court sustained domestic violence allegations against Father, including that Father repeatedly abused and raped Mother in H.K.'s presence and falsely imprisoned Mother in the home. Additionally, the court found Father violently shook H.K. and

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<sup>1</sup> All further section references are to the Welfare and Institutions Code.

threw her on the bed. The court also sustained allegations that Father abused opium and alcohol while in the home with H.K.<sup>2</sup>

Mother and Father divorced and Mother moved to an undisclosed location in Los Angeles County. Father was initially prohibited from visiting H.K., but was subsequently permitted twice-monthly supervised visitation at DCFS's offices. The juvenile court terminated jurisdiction in November 2012, granting Mother full physical custody and monitored visits for Father. The family court subsequently granted Father 30 percent custody with three overnight weekend visits per month and holidays. Mother has remarried and now lives in the San Fernando Valley. Father lives in Orange County with his parents and his brother's family. Father's brother has two sons, a 10 year old and an 8 year old.

#### *The Detention Report*

On February 21, 2017, DCFS received a referral to its hotline that H.K. was being sexually abused by her 10-year-old cousin. A children's social worker interviewed H.K., who was then six years old, at her school. H.K. told the children's social worker she was scared to visit Father's house because Father frequently hit her and her cousins. She stated both cousins touched her "pee pee" with their fingers. According to H.K., the 10-year-old cousin began to put his "pee pee" inside her "pee pee" in December 2016 and it hurt. She showed the case social worker with her hand what "inside" meant. H.K. also described her cousin's penis and stated he pulled her pants down as well as his own. H.K. said her cousin had put his "pee pee" inside hers five

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<sup>2</sup> Further details regarding the 2011 dependency proceeding are contained in our previous opinion (*In re H.K.* (July 24, 2013, B244308) [nonpub. opn.]).

times since Christmas. In the most recent incident, H.K. stated she and her two cousins were locked in the paternal grandparents' bedroom to play after they attended a funeral on Sunday, February 19, 2017. H.K. stated that paternal grandmother warned H.K. to keep secret everything that happens when H.K. visits Father.

Mother reported H.K. began to express fear about visiting Father in July 2016 and often returned from Father's house feeling sick. In November, she accused her cousins of touching her private area. When Mother confronted Father about it, he dismissed them as accidents that happened when they were playing. Mother called DCFS in November when she noticed redness on H.K.'s vagina, but the report was closed. She again called DCFS in December, but Father denied the claims and assured the social worker he would supervise H.K.

Mother reported to the children's social worker that she noticed redness on H.K.'s vagina after she visited Father's home the weekend of the funeral. When Mother asked her about it, H.K. stated, "[Older cousin] is doing this again." H.K. told Mother that he penetrated her vagina with his finger. On February 21, 2017, Mother took her to the doctor, who told Mother H.K. was bleeding in the vaginal area. In the medical notes, the doctor observed "[i]rritation to R labia minora but no obvious tear or bleeding or discharge." The doctor assessed H.K. to be a suspected victim of sexual abuse and referred the matter to DCFS. A maternal aunt confirmed H.K. had complained about the sexual abuse, but that Mother's efforts to report the incidents had been unsuccessful.

A social worker, Ajita Gupta, who worked with the family for over a year during the 2011 dependency case, believed H.K. was at high risk of abuse during visits with Father. She also expressed concern that Father and his family were capable of hurting H.K. and of covering up her abuse. Another social worker, Angali Sing, who also worked on the 2011 dependency case, confirmed that Mother gets very emotional when it comes to H.K. and gets flustered due to language barriers since Mother does not speak English. Both social workers recalled Mother suffered tremendous trauma as a result of her life with Father and his family.

DCFS investigated Mother's referrals from October, November, and December 2016, and concluded they were unfounded for lack of evidence and H.K.'s inconsistent accounts. An emergency response social worker who investigated the referrals recalled that H.K.'s story changed with each referral, which harmed her credibility. Mother was also very emotional, and the social worker suspected she was coaching H.K. because she wanted to move to Fresno. The social worker believed Father, who denied the 2016 allegations, and observed the two cousins presented well. The referrals were closed when Father agreed to supervise H.K. during visits and not leave the children in a room by themselves.

Father denied any sexual abuse occurred. He believed Mother was manipulating the system. He accused her of causing H.K.'s vaginal injuries in an attempt to damage his relationship with H.K. so Mother could move to Fresno with her new husband. He stated he had done everything he could to maintain his relationship with his daughter and had worked very hard to progress from supervised visits to receiving 30 percent custody.

He asserted to the children's social worker that the children were supervised at all times by the five adults in the household. On the Sunday in question, he reported there were eight children in the house and other adults were present with the children if he was not. After a forensic exam at UCLA, the nurse practitioner reported H.K. had no physical findings of abuse, but had self-reported penetration by a penis more than five times by the paternal cousin.

On March 7, 2017, DCFS filed a petition under section 300, subdivisions (b) and (d), alleging two counts, b-1 and d-1.<sup>3</sup> Both counts contained the same allegations: H.K. had been inappropriately sexually touched by her cousin, and Father and Mother failed to protect or supervise H.K. adequately. At the detention hearing, the juvenile court found a prima facie case had been made. H.K. was detained from Father and released to Mother.

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<sup>3</sup> Section 300, subdivision (b)(1), empowers a juvenile court to assert dependency jurisdiction if a 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 [the parent] to adequately supervise or protect the child . . . ." (§ 300, subd. (b)(1).) Recently, the California Supreme Court has held that subdivision (b)(1) authorizes dependency jurisdiction without a finding that a parent is at fault or blameworthy for his or her failure or inability to supervise or protect a child. (*In re R.T.* (2017) 3 Cal.5th 622, 624.) Section 300, subdivision (d), empowers a juvenile court to assert jurisdiction if a child has suffered sexual abuse by the parent or a member of the child's household, or if a parent "failed to adequately protect the child from sexual abuse when the parent . . . knew or reasonably should have known that the child was in danger of sexual abuse." (§ 300, subd. (d).)

### *The Jurisdiction/Disposition Report*

In preparation for the jurisdictional hearing, DCFS conducted additional interviews with Mother, Father, and H.K., who reiterated the basic facts from their previous interviews. H.K. further claimed her younger cousin had pulled her pants down and he touched her vagina when she was four. As to the incident with her older cousin, she was unable to give specific details of the actual penetration, stating only that her cousin put his “pee pee” inside of her and it hurt. She could not remember whether she was facing her cousin or turned away when he pulled her pants down. H.K. equivocated about whether she told Father about this incident, initially stating she did not say anything at the time because she was afraid and “didn’t know what to do.” She then stated she intended to tell Father and Mother, but forgot. She also said she might have told Father, but he “didn’t believe her.” She later stated she did not tell anybody because they would not believe her.

When the dependency investigator asked H.K. if she was afraid of her father, she initially replied no, but after thinking a moment, said, “oh, I am scared of my father.” H.K. then recounted that Father had slapped her multiple times on different occasions.

Father did not believe the sexual abuse allegations to be true. He believed Mother was coaching H.K. in order to destroy his relationship with her. He claimed an investigator for the Orange County Family Court testified in those proceedings that H.K. admitted to the investigator that Mother coached her.<sup>4</sup>

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<sup>4</sup> During the jurisdictional hearing, Father unsuccessfully attempted to admit into evidence the investigator’s report to the family court. The juvenile court ruled it would allow it into

He stated he had participated in 52 weeks of parenting classes as a result of the 2011 dependency proceedings and had supervised visits for one and one-half years with a private monitor. His visitation was liberalized by the family court, and his relationship with Mother was relatively stable from 2012 until October 2016, when Mother began to complain about H.K. coming home sick after visits with him. During this time, Mother threatened to move to Fresno with her new husband and take H.K. with them. He said Mother then began to cancel visits and began to accuse him of violence and neglect against H.K.

Mother reported she suffered severe abuse during her arranged marriage to Father and that his family did nothing to stop it. She believed they would protect him at all cost. She clarified that she tried to give H.K. a shower in October 2016, but H.K. would not open her legs and complained of pain. H.K. then disclosed that both of her cousins touched her with their fingers above her underwear as she was lying down in the paternal grandmother's room. Mother noticed H.K.'s "private area" was red. H.K. complained about another incident in November when the 10-year-old cousin touched her with his penis.

In interviews with the dependency investigator, Father's family, including his father, mother, brother, brother's wife, and nephews, all denied any abuse occurred. The two cousins reported they were not left alone with H.K. and only watched

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evidence only for impeachment purposes. The investigator testified she was asked by the family court to conduct an expedited investigation to determine whether H.K. was in immediate risk of harm. The family court did not change its visitation or custody orders after it received the investigator's report.



television with her. They asserted they loved H.K. and would not harm her. H.K.'s therapist reported H.K. was reluctant to talk about the sexual abuse, but did tell her once that her cousin touched her "pee pee." H.K. also told her therapist she was afraid of Father.

DCFS concluded, "[a]t this time it is difficult to ascertain whether or not this allegation is true." The DCFS dependency investigator indicated H.K.'s statements were inconsistent and she failed to make a compelling case regarding the abuse. The investigator, however, acknowledged H.K. was six years old, which made it difficult for her to discuss this sensitive subject multiple times with different people.

On April 18, 2017, a forensic interview was conducted with H.K. During the interview, H.K. detailed two instances of sexual abuse. In one, she explained that her 10-year-old cousin penetrated her vaginally. H.K. stated she was leaving her grandfather's bedroom when he pushed her back in and locked the door. He put her in the bed and pulled both their pants down. She described her cousin's genitalia as "like a square," forming her hands into a diamond shape. She said his penis was the same as his skin color and it was "like a soft thing but it hurted a lot though." Her cousin stopped his assault when they heard the paternal grandmother calling them from another part of the house.

In the second incident, H.K. said she was lying between her cousins on the bed when "they touched my pee like super duper long." She indicated they removed her clothing and digitally fondled her vaginal area. H.K. stated her heart beat fast when the contact occurred. The touching stopped when her grandmother called them to eat lunch. She stated she was afraid

to say anything happened because she was “super duper scared” and did not think they would believe her. The forensic evaluator concluded that H.K. “provided a compelling episodic account of the two incidents. She also appeared visibly affected by the nature of her disclosure, as she described her heart racing during the sexual contact, and by describing how her body felt (‘hurting’ and ‘weird’).” As a result, the evaluator had serious concerns regarding Father’s ability to properly supervise and protect H.K. from future sexual contact since she was at his home when the incidents occurred.

On the night of July 13, Father sent a number of profane and “somewhat incoherent texts” to the dependency investigator, Jeff Steinhart. Among the texts were statements such as: “I don’t give a fuck about your, fuck your court;” “write that down and basically tell them to fuck themselves;” “write that down as a DI fuck you;” “so fuck you and the rest of you motherfuckers;” “I do not give a fuck about you or your fucking department;” and “Sorry I’m going to give up I’m gonna walk away I’m tired of it.” The same night, Father left numerous voicemails for a children’s social worker who had previously worked on the case, Nahid Alikhan, which were also incoherent and laced with profanity. The dependency investigator suspected Father was intoxicated when he sent the texts and made the calls.

#### *The Contested Jurisdictional Hearing*

At the contested jurisdictional hearing on October 16, DCFS called Mother, Father, and H.K. to testify. Mother denied ever planning to move to Fresno. She testified neither she nor her husband had any personal or business reason to move to Fresno.

Father testified he became aware H.K. accused his nephews of touching her inappropriately in November 2016, when a social worker called him. He also told his family about the allegations and spoke to his nephews, but “there was really nothing to talk about,” because the social worker told him H.K. had said it was an accident. He questioned H.K. about the allegations in front of the entire family, including the nephews. She told him that when she was four years old, her cousin slept with her in the same bed and rolled over and accidentally touched her private parts.

When he briefly questioned H.K. while they were alone in his car, she reported that Mother had “magic eyes” and told her to say all of this. As a result, he believed Mother was coaching H.K. to make the allegations. Father recalled Mother had told him she planned to move to Fresno because her husband is from there and her family was planning to move there from overseas. He considered, but rejected the idea that he move out of the home he shared with his nephews. In later testimony, he indicated he would move out of the house if necessary to help H.K.

Father testified he was told by the emergency social worker in December 2016 and the family court in February 2017 that he was required to provide close supervision of H.K. while she visited him. He said he complied with this requirement and she was never out of his sight for more than 15 minutes after that. During the funeral in February, for example, he explained H.K. was only out of his sight for 15 minutes while he went to get milk. She was with him the entire day until approximately 10:30 p.m.

He acknowledged that he used to work on Saturdays in 2015, so his mother babysat H.K. for him when she came for her visits. But, he testified he no longer worked on Saturdays and spent as much time with H.K. as possible during her visits. He stated that H.K. slept in his bedroom, but on a separate bed, when she visited him and his nephews have their own bedroom.

Seven-year-old H.K. testified in chambers and confirmed she knew the difference between the truth and a lie. She testified that her cousin “was putting his private part in my private part.” She stated she would feel bad if she had to live with Father and she did not want to visit him because he would not do anything to stop her cousin from touching her. She also said her grandmother asked her to say her cousin touching her was an accident.

She explained that she and her older cousin slept with her grandmother in the same bed when she visited. She confirmed she did have a bed in Father’s room, but she only slept in it once. Father and paternal grandfather slept in their own rooms and her younger cousin slept with his parents in their room. She confirmed that Mother does not “help” her remember things that happen and she would not lie simply to make Mother happy.

After DCFS rested its case in chief, Father moved to dismiss the petition in its entirety under section 350, subdivision (c), for DCFS’s failure to prove its case by a preponderance of the evidence. Alternatively, Father moved to strike the allegation that he failed to protect H.K. The juvenile court denied the motion. It explained, “I tend to believe the minor. I’m not saying that the Father did anything to her, the Father was at fault for anything, but I do tend to believe that something did happen in this household and she’s afraid of being there.”

During Father's presentation of his case, the parties stipulated that Father's sister-in-law and cousin would testify that the boys were well-behaved and Father was with H.K. the entire day of the funeral. Father testified on his own behalf and confirmed he completed a case plan consisting of 52 weeks of parenting classes, 52 weeks of domestic violence classes, 10 random drug tests, and individual counseling in connection with the 2011 dependency proceedings.

Father further testified he believed the two social workers interviewed in the detention report, Gupta and Sing, attend the same temple as Mother and that they were biased against him as a result. However, he did not know how often either of them attended temple or whether they were in contact with Mother while there. He was aware that the police investigation and the family court's investigation were closed without any action having been taken. Though he never said anything about it before, at the hearing Father accused Mother's nephew of abusing H.K. He testified H.K. told him on New Year's Eve 2016 that Mother's nephew threatened her, but he did not report it to anyone.

During closing arguments, DCFS urged the juvenile court to sustain both counts of the petition as pled. H.K.'s counsel asked the court to sustain the section 300, subdivision (d) count, because it allowed the court to find that sexual abuse occurred without having to find Father at fault. H.K.'s counsel also argued, however, that Father was not credible and was inconsistent in his testimony. She noted he failed to even attempt to help H.K. feel safe in his home. Instead, he blamed others for her problems, including Mother and Mother's nephew. Mother argued in favor of striking her name from the petition,

but otherwise joined with DCFS in arguing that the petition should be sustained on both counts. Father urged the court to dismiss the petition in its entirety, claiming that Mother coached H.K., and citing to her inconsistent statements.

*The Jurisdictional Findings and Dispositional Orders*

The juvenile court adjudged H.K. to be a dependent of the court and granted physical custody to Mother. The court struck Mother's and Father's names from the allegations as to both counts in the petition, amended the allegations to conform to proof, and sustained them as amended. In doing so, the court found Father to be nonoffending.

The court also found by clear and convincing evidence pursuant to section 361, subdivisions (a) and (c),<sup>5</sup> that "[i]t is reasonable and necessary to remove the child from the father, as such removal is defined in 45 CFR 1356.21(k)(1)(ii), and the care, custody, and control of the [parent] from whom the child

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<sup>5</sup> Section 361, subdivision (c)(1) provides a child may not be taken from the custody of her parent unless the juvenile court finds clear and convincing evidence that: "(1) There 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 or guardian's physical custody. . . . The court shall consider, as a reasonable means to protect the minor, each of the following:

"(A) The option of removing an offending parent or guardian from the home.

"(B) Allowing 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."

is . . . being removed because there is a substantial danger to the physical health, safety, protection, or physical or emotional well-being, and special needs, if applicable, of the child, and there are no reasonable means by which the child's physical health can be protected, without removing the child from the home and the care, custody, and control of [Father]. [¶] The Court further finds that it would be detrimental to the safety, protection, or physical or emotional well-being, and special needs, if applicable, of the child to be returned to or placed in the home or the care, custody, and control of [Father].”

The juvenile court ordered Mother and Father to attend parenting classes, including high conflict classes. Father was ordered to attend individual counseling to address “case issues.” The court further ordered Father to have monitored visits in a therapeutic setting with H.K. when recommended by a therapist. However, DCFS was ordered to notify the court before liberalizing visitation. The court also ordered individual counseling for H.K. and specified she should have no contact with her cousins and no visits at the paternal grandparents’ home.

Father timely appealed from the juvenile court’s orders, and we appointed appellate counsel. DCFS also cross-appealed from the juvenile court’s findings and dispositional orders.

## **DISCUSSION**

### **I. Father’s Appeal**

Father’s appointed counsel filed an opening brief in accordance with the procedures outlined in *In re Phoenix H.*, *supra*, 47 Cal.4th 835. We notified Father by letter dated March 23, 2018, that he could submit any issues he wished us to consider. Father did not respond to our letter. Because no colorable claim of reversible error or other legal defect has been

raised for review, Father's appeal is dismissed. (*In re Sade C.*, *supra*, 13 Cal.4th 952; *In re Phoenix H.*, *supra*, at p. 835.)

## **II. DCFS's Cross-Appeal**

DCFS filed a cross-appeal contending the order dismissing the allegations against Father for his failure to protect H.K. was not supported by substantial evidence. We conclude the factual findings made by the juvenile court compelled the court to take jurisdiction based on Father's failure to protect H.K. Thus, it should not have dismissed the allegations against Father.

### **A. Justiciability**

First, we consider whether DCFS's cross-appeal is justiciable. DCFS acknowledges its cross-appeal will not impact the juvenile court's jurisdiction over the family since jurisdiction was properly taken under subdivisions (b) and (d) of section 300 without a finding of fault as to either Mother or Father. " 'When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' "

[Citation.]" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Here, the juvenile court asserted jurisdiction over H.K., which was what DCFS, Mother, and H.K. wanted. DCFS does not contend jurisdiction was improper, only that the juvenile court should have additionally asserted jurisdiction based on Father's failure to protect. DCFS contends that the juvenile court's decision to strike the allegations against Father



constitutes prejudicial error because the court ordered a treatment plan and services for Father which included individual counseling. According to DCFS, the sustained allegations will impact his treatment because DCFS was ordered to provide his therapist with a copy of the petition. If there are no allegations sustained against Father, DCFS contends, it is unlikely he will understand his part in the issues facing H.K. since Father continues to deny he did anything wrong. Father asserts this is pure speculation. We find DCFS has the better reasoned argument.

The record shows the court ordered Father to participate in individual counseling to address “case issues.” We are unsure whether the “case issues” referred to include the issues raised by DCFS. If the therapist is only provided with the sustained petition to determine what needs to be addressed in Father’s counseling, we agree it may provide too narrow a scope of issues which need to be addressed. Therefore, we consider the merits of DCFS’s cross-appeal.

**B. The Trial Court’s Findings Compel The Conclusion That Father Was An Offending Parent**

DCFS contends the juvenile court prejudicially erred when it dismissed the allegation that Father failed to protect H.K. because substantial evidence does not support a finding that Father is nonoffending. We agree the sustained allegations compel a finding that Father failed to protect H.K.

In reviewing a juvenile court’s findings for dependency jurisdiction, we typically assess whether substantial evidence supports those findings. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) However, “[i]n the case where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did

not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment.” (*In re I.W.*, *supra*, 180 Cal.App.4th 1517, 1528.) “Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’ ” (*Ibid.*)<sup>6</sup>

We agree with the court in *In re I.W.* that it would be misleading to apply a substantial evidence standard of review to this case. The juvenile court concluded DCFS did not meet its burden to demonstrate Father failed to protect H.K. under subdivisions (b) and (d) of section 300. In a case involving such a failure of proof, we utilize the standard enunciated in *In re I.W.*, that is, we determine whether the evidence compels a finding in favor of the appellant as a matter of law. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) We conclude it does.

Here, the juvenile court sustained the following factual allegations relating to subdivisions (b) and (d) of section 300: “On at least one prior occasion, a member of the child [H.K.’s] father’s household, her minor paternal first cousin inappropriately sexually touched [H.K.], including inserting his finger and penis into [H.K.’s] vagina. The cousin had continued

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<sup>6</sup> Both parties acknowledge this alternate standard of review may be applied as well as the substantial evidence standard. DCFS asserts its argument has merit under either standard.

access to the child [H.K.], even after this conduct was reported the first time. Such conduct by the cousin, and his continued access to [H.K.] places her at risk of physical and/or emotional harm and additional sexual abuse.”<sup>7</sup> Father’s counsel proposed the juvenile court strike the sentence, “The cousin had continued access to the child [H.K.], even after this conduct was reported the first time.” The juvenile court denied that proposal.

The juvenile court further found by clear and convincing evidence it was necessary to remove H.K. from Father because there is a substantial danger to her “health, safety, protection, or physical or emotional well-being,” and “there are no reasonable means by which the child’s physical health can be protected, without removing the child from the home and the care, custody and control of [Father].” Having made these findings, the juvenile court was compelled to take jurisdiction over this family on the additional ground that Father failed to protect H.K.

Father argues substantial evidence supports a finding that he is not offending because the facts were contradicted and there were inconsistencies in both Mother’s and H.K.’s testimony. Father asserts the juvenile court was not obliged to accept H.K.’s testimony in its entirety. Indeed, Father concedes it was unclear what exactly happened to H.K., “other than the obvious fact that the child had been traumatized by activities initiated by her cousins outside the presence and knowledge of the adults in the household.” Thus, Father acknowledges something happened to H.K., but suggests neither he nor any of the adults in the household knew about it.

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<sup>7</sup> The facts alleged are the same for both the section 300, subdivision (d) and subdivision (b) allegations.

Father misses the point. Father's counsel asked the juvenile court to delete the reference in the petition to his knowledge by striking the sentence, "The cousin had continued access to the child [H.K.], even after this conduct was reported the first time." The juvenile court declined to do so. Father does not claim the juvenile court erred when it denied his request. Thus, the finding that Father knew about the conduct is not in dispute. Given this, the juvenile court could not conclude that Father was nonoffending and dismiss the failure to protect allegations against Father.

### **DISPOSITION**

Father's appeal is dismissed. The juvenile court's finding that Father is a nonoffending parent is reversed. The court's remaining jurisdictional and dispositional orders are affirmed in all respects. The cause is remanded to the juvenile court with directions to continue the dependency proceeding in accord with the finding that Father failed to adequately supervise or protect H.K. pursuant to section 300, subdivisions (b) and (d).

BIGELOW, P. J.

We Concur:

RUBIN, J.

GRIMES, J.