

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B257856  
(Los Angeles County  
Super. Ct. No. DK03312)

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

PABLO D.,

Defendant and Appellant.

APPEAL from orders of the Superior Court for Los Angeles County,  
Stephen Marpet, Commissioner. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County  
Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and  
Respondent.

Pablo D. appeals from orders by a dependency court finding jurisdiction over his 20-month-old son, Randy D., and removing Randy from his custody, based upon allegations that Pablo sexually abused a female child to whom he was related. He contends there was insufficient evidence to establish that his inappropriate touching of the young girl placed Randy at substantial risk of sexual abuse or other physical harm, or that removal of Randy from his custody was necessary to protect Randy. We affirm the orders.

### **BACKGROUND**

In January 2014,<sup>1</sup> Pablo's 16-year-old niece, A.C., reported that Pablo had touched her vaginal area and kissed her breast, both through her clothes, on January 11, 2014. On January 13, police officers responded to A.C.'s house regarding a report of a sex crime against a child. A.C. told one of the police officers that on the afternoon of January 11, she was alone in her home. She was in her bedroom when Pablo walked in and closed the door behind him. Pablo approached her and put his hand over her mouth. He was shaking as though he was nervous. He began rubbing her vaginal area and kissing her breast over her clothes. After about 15 minutes, she heard the volume on the stereo in the living room being lowered, and Pablo let her go. Pablo left the bedroom and had a brief conversation with A.C.'s father before leaving the house.

In response to the police officer's questioning, A.C. reported that Pablo had molested her at her grandmother's house twice before, once when she was 12 years old, and again in December 2013. Both times, Pablo rubbed her vaginal area over her clothes; in December 2013 he also rubbed her breast. A.C. did not report any of the incidents to her parents because she was scared. Instead, she told her cousin

---

<sup>1</sup> All date references are to the year 2014 unless otherwise indicated.

Amalia about the most recent incident, and Amalia told Pablo's wife, Alicia. A.C. told the police officer that the day after the incident, on January 12, Pablo and Alicia came to her house to ask about the incident. When A.C. confirmed to Alicia that Pablo had touched her "private area," Alicia turned to Pablo and said, "See I know you[re] lying." Alicia told A.C. she was going to take Pablo to the Sheriff's station herself.

After speaking to A.C., the officer spoke to A.C.'s father. A.C.'s father said that when he came home from work on the afternoon of January 11, he noticed that the stereo in the living room was loud. After he lowered the volume, he heard the bedroom door open and saw Pablo walk out of the bedroom. Pablo looked surprised when he saw him. They talked for around five minutes, and then Pablo left. A.C.'s father was not aware of the incident that had just occurred.

Pablo was located by the police and arrested on charges of lewd and lascivious conduct toward a child, sexual battery, and annoying or molesting a child. The police also contacted the Department of Children and Family Services (the Department). A referral was generated on January 13 indicating that Pablo's son Randy was at risk of sexual abuse by Pablo in light of the report that Pablo had sexually abused A.C.

That same day a social worker from the Department met with Alicia (Pablo's wife and Randy's mother). Alicia told the social worker that she was aware of A.C.'s allegations against Pablo because A.C. texted one of her cousins that Pablo had "raped her." Alicia went to A.C.'s house and spoke to A.C. in A.C.'s mother's presence. At first, A.C. denied being raped, but then said that Pablo had "touched her," although she did not clarify what that meant. A.C.'s mother asked Alicia if she was going to call the police, and Alicia said she would not and that would be A.C.'s mother's responsibility.

Alicia told the social worker that she did not believe A.C.'s allegation. She said that Pablo was always with her during family gatherings and had never been alone with A.C. until a few days ago. She said that she never saw him act inappropriately with A.C., Randy, or any other child, and that A.C. never seemed nervous, scared, or withdrawn around Pablo at family gatherings. She was not sure why A.C. was saying these things, but she thought that Pablo's family was envious because she is helping Pablo get his immigration papers in order.

During her visit with Alicia, the social worker observed Randy. Randy appeared to be a healthy child, who was comfortable around his mother and maternal grandparents. He had no suspicious marks or bruises, and appeared to be developing age appropriately.

The social worker met with the maternal grandparents separately and spoke with the maternal uncle by telephone that same day. All three maternal relatives said they did not believe the allegations against Pablo, and that they never saw Pablo act inappropriately with Randy or any other child.

A few days later, the social worker in this case spoke to CSW Aguilar, the social worker who was investigating the related referral regarding A.C. CSW Aguilar had interviewed A.C., and reported that A.C. said that Pablo had touched her breasts and vagina over her clothes on three different occasions. The version of events that A.C. recounted to CSW Aguilar was consistent with the version she gave to the police. CSW Aguilar stated that he would be substantiating the sexual abuse allegations against Pablo.

This case's social worker spoke to Pablo several days later. Pablo denied that he was sexually abusing Randy, and denied touching A.C. inappropriately. Pablo told the social worker that he had gone to his cousin Letty's house on January 11 to ask if they needed anything for a party they were going to have for a family member. He knocked on the door several times, but no one answered. He

heard loud music inside the house, so he entered and called for Letty. He heard noises from one of the rooms, so he entered and saw A.C., Letty's daughter. He asked A.C. about where her mother was, and A.C. told him she was out. Within minutes, A.C.'s father arrived. Pablo talked to him for a few minutes and then left.

The following day, he and his wife were at a family gathering when a cousin approached his wife and said that A.C. told her that Pablo had raped her. Pablo and his wife then went to A.C.'s house to ask her why she was saying those things. A.C. denied that Pablo had raped her, but said that he had touched her. Pablo told the social worker that he did not know why his family was saying these things about him, but he noted that when his family found out that his wife was fixing his immigration papers they started telling his wife things to cause problems between him and his wife. Pablo told the social worker that he was innocent, but he understood the concerns about his son. He agreed to sign a safety plan stating that he was willing to stay out of the home pending further investigation and that his visits with Randy would be supervised.

The Department filed a petition under Welfare and Institutions Code section 300, subdivisions (b) and (d), alleging that Pablo's sexual abuse of A.C., and Alicia's knowledge of the abuse but failure to protect endangers Randy's physical health and safety and places him at risk of physical harm, damage, danger, sexual abuse, and failure to protect.<sup>2</sup> A detention hearing was held on February 3, at which the juvenile court made detention findings only against Pablo. The court ordered Randy released to Alicia, with monitored visitation for Pablo. The court ordered the Department to provide Alicia with family maintenance services and to

---

<sup>2</sup> The petition subsequently was amended to remove the allegations against Alicia after she submitted to jurisdiction and agreed to a case plan.

provide Pablo with family reunification services, and set the jurisdiction hearing for March 27.

A dependency investigator interviewed (separately) Pablo, Alicia, the maternal grandparents, and a maternal great aunt on March 22. Pablo denied the allegations against him, and Alicia said she did not believe anything that A.C. had reported. Pablo and Alicia each said that ever since Pablo's family found out that Alicia was helping him obtain legal residency in the United States, they have been trying to separate them by telling Alicia about Pablo's past romances. Both of them asserted that A.C. made up the allegations of sexual assault so her family could apply for legal residency through the U-Visa program. Pablo and Alicia also told the investigator that the district attorney had dismissed the case against Pablo. All of the maternal relatives interviewed told the investigator they did not believe the sexual abuse allegations, and said that Pablo had not shown any deviant behavior that would cause them concern.

In its jurisdiction/disposition report filed for the March 27 jurisdiction hearing, the Department recommended that Randy be declared a dependent child under section 300, subdivisions (b) and (d). The Department stated its belief that both parents would benefit from participation in individual counseling and marital counseling, that Alicia should participate in a sexual abuse awareness group, and that Pablo should participate in sexual abuse counseling. The Department recommended that Pablo not be allowed to return home until it is deemed appropriate.

The day before the scheduled jurisdiction hearing, Alicia submitted to the Department enrollment letters showing her and Pablo's participation in various programs. Those letters showed that Pablo enrolled in a sex offenders program on February 24 and had completed five sessions, Alicia started sexual assault awareness counseling on February 18 and had completed six sessions, and Pablo

and Alicia began parenting classes on February 22 and had attended five sessions to date.

The juvenile court continued the jurisdiction hearing to April 7, and ordered the Department to submit a brief supplemental report to include updated information and recommendations. In a last minute information for the court submitted on April 7, the Department reported that although Pablo had been arrested in connection with the sexual assault on A.C., the district attorney declined to prosecute based upon insufficient evidence, and a civil case filed in an attempt to get a restraining order was unsuccessful. The Department stated that it doubted Pablo's innocence, noting that the dependency investigator interviewed A.C., and her account of the incident was consistent with what she had told the police. In addition, the Department opined that Alicia's and Pablo's statements that Pablo's family made up the false charges so that they could apply for a U-visa does not seem credible, since A.C. and her siblings already were United States citizens. Finally, the Department recommended that the petition be sustained, but it recommended that Pablo be allowed to return home, because the Department did not believe that Pablo was a risk to Randy.

At the April 7 hearing, counsel for the Department reiterated the Department's recommendation that Pablo be allowed to return home, and asked that the matter be put over to address a possible settlement. The juvenile court agreed, and continued the jurisdiction hearing to May 22.

The Department filed another last minute information for the court on May 22, in which it stated that it could not consider a settlement because it received four different referrals on May 6 regarding sexual abuse of different young family members by Pablo. Although those referrals were still being investigated, it appeared that one of the referrals was being substantiated as to two children. Another referral indicated that some time ago, Pablo offered the child at

issue money to allow him to touch her; the child ran away from Pablo because he made her feel uncomfortable. The remaining referrals were still pending awaiting interviews with the family members. The Department reported that Pablo was arrested due to the referrals, but he was released when the district attorney rejected the case.

The Department also reported that both parents had completed parenting classes, that Alicia had completed a sexual abuse awareness program, and that Pablo was enrolled in a year-long sex offenders program and had attended 11 sessions so far. The dependency investigator spoke with the counselor for Pablo's program, who reported that Pablo denied the allegations of sexual abuse.

The Department recommended that Pablo enroll in individual counseling in addition to his sex offenders program, and that Alicia also enroll in individual counseling to address her issues of denial. The Department did not recommend removal of Randy from either parent's care, but instead asked to be given discretion to remove him if they failed to enroll in individual counseling.

The juvenile court continued the matter to July 10, and Randy remained released to his parents. In a last minute information for the court submitted on July 10, the Department reported to the juvenile court that one of the four referrals made on May 6 had been substantiated, but was not promoted to a case. That referral involved two sisters. One of the girls told the social worker (and later, two sheriff's deputies) that Pablo had touched her vagina and inserted his finger in her vagina, and that he had covered her sister's mouth and digitally penetrated her vagina. She said that the abuse occurred in maternal aunt Gloria's home sometime after Christmas. She also said that another incident of abuse took place at the same home while other relatives were gathered in the yard. She said that Pablo asked her not to say anything, and allowed her to play on his phone. Although Pablo was arrested based upon the girls' report, the district attorney did not file charges



because the children could not provide specific dates when the incidents took place.

The Department also reported that it held a meeting with Pablo, Alicia, and several of Alicia's family members on May 29 to discuss Pablo's behavior. The family members stated that the accusations against Pablo were false, and that he had never demonstrated any lewd behavior with any under age children. At the end of the meeting, Pablo agreed to move out of the family's home so Randy could remain in Alicia's care.

The Department expressed concern to the court about Pablo's behavior and Alicia's refusal to accept the substantiated allegation of sexual abuse. The Department also noted that Pablo's therapist reported that Pablo has not taken responsibility for his actions, and instead blames his family for creating problems out of jealousy. As a result of Pablo's and Alicia's behavior, the Department was concerned about Randy's safety, and recommended that Randy be declared a dependent of the court, that Pablo be ordered out of the home, that Randy remain in the care of Alicia, and that Pablo's visits with Randy be monitored.

At the July 10 jurisdiction hearing, the Department introduced into evidence the February 3 detention report, the March 27 jurisdiction/disposition report, the May 22 last minute information, and the July 10 last minute information. No other evidence was submitted by any party. Counsel for the Department asked the court to sustain the petition as amended and to order that Randy remain with Alicia but that Pablo not be allowed to reside in the home. Counsel for Randy joined in the Department's request, and counsel for Alicia submitted on the amended petition. Pablo's counsel argued that the allegations of sexual abuse were false, but that even if they were true, the court should dismiss the petition under a case (which had been depublished by the Supreme Court) in which the appellate court reversed the juvenile court's jurisdiction order, finding that a father's molestation of an

unrelated girl was not substantial evidence that the father's sons were at risk of sexual abuse. Counsel also contended that the facts in the present case were distinguishable from the facts in *In re I.J.* (2013) 56 Cal.4th 766, in which the Supreme Court held that evidence of a father's severe and prolonged sexual abuse of one of his children was sufficient to support dependency jurisdiction over all of his other children, regardless of their gender.

The juvenile court found there was sufficient evidence to sustain the amended petition, and declared Randy a dependent child of the court. The court also found by clear and convincing evidence that there was a substantial danger to the minor's physical and mental well being and there was no reasonable means to protect Randy without removal of the child from Pablo's care. Therefore, the court ordered Randy detained and placed with Alicia, with family maintenance services for Alicia, family reunification services for Pablo, and monitored visitation for Pablo. Pablo timely filed a notice of appeal from the juvenile court's jurisdiction and disposition orders.

## **DISCUSSION**

### **A. *Jurisdiction Order***

The juvenile court found jurisdiction over Randy under section 300, subdivisions (b) and (d). Under subdivision (b), a child may be adjudged to be a dependent child of the 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." (§ 300, subd. (b).) Under subdivision (d) the court has jurisdiction 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." (§ 300, subd. (d).)

On appeal, Pablo contends there was insufficient evidence to support the juvenile court's jurisdiction order because even if the allegations of the petition were true, the fact that he sexually abused A.C. does not establish that his son Randy is at risk of sexual abuse or other physical harm or danger. We disagree.

“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.” [Citation.] “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.] “[We] 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.]” [Citation.]” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

“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.*, *supra*, 56 Cal.4th at p. 773.) In this case, we focus on section 300, subdivision (d), the subdivision that most closely describes the situation involving Randy.

Pablo argues that the evidence does not support the finding that Randy was at risk of sexual abuse based upon Pablo's sexual abuse of A.C. because there was no evidence that Randy was ever sexually abused, that Randy could have witnessed Pablo's sexual abuse of A.C. since it occurred outside of the family home, or that Pablo had any sexual interest in male children. In making this argument, Pablo relies upon *In re Jordan R.* (2012) 205 Cal.App.4th 111. In that case, the juvenile court found that the daughter of the father at issue was a dependent of the court based upon the father's sexual abuse of his niece who was living in the home, but the court dismissed the dependency petition as to the father's son, finding the son was not at substantial risk of sexual abuse. On appeal by the father and cross-appeal by the San Diego County Health and Human Services Agency, the appellate court affirmed both rulings. In affirming the juvenile court's dismissal of the petition as to the son, the appellate court cited the juvenile court's reliance upon the absence of evidence that the father inappropriately touched his son or any other male in a sexual manner, or that the son was present during a sexual act committed by the father. (*Id.* at p. 138.)

Pablo's reliance on *In re Jordan R.*, *supra*, 205 Cal.App.4th 111 is misplaced for two reasons.

First, Pablo ignores the nature of an appellate court's review. In *In re Jordan R.*, the appellate court was reviewing the *dismissal* of a dependency petition as to the son, while in the present case we are reviewing the *sustaining* of the petition. In both cases, the appellate court must ““review the record in the light most favorable to the court's determinations,”” and must ““draw all reasonable inferences from the evidence to support the findings and orders of the dependency court.”” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) Thus, an appellate court's affirmance of an order finding no dependency jurisdiction under a certain

set of circumstances does not mean that a juvenile court hearing a case that presents similar circumstances *must* find there is no dependency jurisdiction.

Second, *In re Jordan R.* was decided before the Supreme Court issued its decision in *In re I.J.*, *supra*, 56 Cal.4th 766, which addressed the issue whether evidence of sexual abuse of a child of one gender justified assertion of jurisdiction over a child of the other gender. Before the Supreme Court decided *In re I.J.*, appellate courts were divided over this issue. Some courts had held, in essence, that any kind of “aberrant sexual behavior” by a parent places other children living with that parent at risk of aberrant sexual behavior, regardless of their gender. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1347; see also *In re Ana C.* (2012) 204 Cal.App.4th 1317, 1332; *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1414; *In re Karen R.* (2001) 95 Cal.App.4th 84, 90-91.) Other courts (including this one) had held that evidence of a parent’s sexual abuse of a female child is insufficient to support dependency jurisdiction over male children living in the home in the absence of evidence that the parent is likely to abuse a male child. (See, e.g., *In re Alexis S.* (2012) 205 Cal.App.4th 48, 53-56; *In re Maria R.* (2010) 185 Cal.App.4th 48, 63; *In re Rubisela E.* (2000) 85 Cal.App.4th 177, 198-199.) In *In re I.J.*, the Supreme Court disapproved the latter cases to the extent those cases held that sexual abuse of a female child may not, standing alone, support the jurisdictional finding that a male child was at risk of sexual abuse. (*In re I.J.*, *supra*, 56 Cal.4th at pp. 780-781.) Although the Court noted that it was “not holding that the juvenile court is compelled, as a matter of law, to assume jurisdiction over all the children whenever one child is sexually abused” (*id.* at p. 780), the Court indicated that, depending upon the circumstances surrounding the abuse, evidence of that abuse alone may be sufficient to assume dependency jurisdiction.

*In re I.J.* involved the juvenile court’s assumption of jurisdiction under section 300, subdivisions (b), (d), and (j) over the father’s eight- and 12-year-old sons, based upon the father’s sexual abuse (which included digital penetration of her vagina and forcible rape) of his 14-year-old daughter. (*In re I.J.*, *supra*, 56 Cal.4th at pp. 770-771, 778.) The Supreme Court held that, in determining whether the subject child of a dependency petition is at substantial risk of sexual abuse, the dependency court should consider “the circumstances surrounding, and the nature of,” the parent’s sexual abuse of the abused child. The Court explained: “Some risks may be substantial even if they carry a low degree of probability because the magnitude of the harm is potentially great. . . . Conversely, a relatively high probability that a very minor harm will occur probably does not involve a “substantial” risk. Thus, in order to determine whether a risk is substantial, the court must consider both the likelihood that harm will occur and the magnitude of potential harm. . . .’ [Citation.] In other words, the more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300. If the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.” (*Id.* at p. 778.)

In his appellant’s opening brief, Pablo argues that this case is distinguishable from *In re I.J.*, *supra*, 56 Cal.4th 766 because: (1) A.C. is not Randy’s sibling, she and Randy did not live in the same home, and the abuse did not take place in Randy’s home; and (2) this case does not involve a count under section 300, subdivision (j), which was the focus of the Supreme Court’s analysis in *In re I.J.*, and which, Pablo asserts, “permits the juvenile court wider latitude in assuming

jurisdiction over a child whose sibling has been sexually abused.” We find the reasoning in *In re I.J.* applies despite these differences.

First, the Supreme Court’s discussion of section 355.1, subdivision (d) in *In re I.J.*, *supra*, 56 Cal.4th at page 779, leads us to conclude that the fact that the person who was sexually abused is not a sibling of, and does not reside with, the dependent child is not determinative. As the Court explained, section 355.1, subdivision (d), “provides that a prior finding of sexual abuse (of anyone, not just a sibling) is prima facie evidence that the child who is the subject of the dependency hearing is subject to the court’s jurisdiction under section 300.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 779.) The Court noted that when the Legislature enacted that statute, it “found ‘that children of the State of California are placed at risk when permitted contact with a parent or caretaker who has committed a sex crime. Further, the Legislature finds that children subject to juvenile court dependency jurisdiction based on allegations of molestation are in need of protection from those persons.’ [Citation.]” (*In re I.J.*, *supra*, 56 Cal.4th at p. 779.) While the Court acknowledged that section 355.1 did not apply to the case before it because there was no finding in a prior proceeding that the father had committed sexual abuse, the Court found the statute “is relevant because it evinces a legislative intent that sexual abuse of someone else, without more, at least *supports* a dependency finding.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 779.)

Second, that fact that section 300, subdivision (j), allows a juvenile court “wider latitude” to assume dependency jurisdiction over a child whose sibling was sexually abused is not particularly relevant to the applicability of the Supreme Court’s analysis to this case. Subdivision (j) provides, in relevant part, that a child may be adjudged a dependent of the 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.” (§ 300, subd. (j).) As the Supreme Court explained, subdivision (j) was intended to expand the grounds for exercising jurisdiction as to children whose sibling has been abused or neglected as defined in section 300, subdivision (a), (b), (d), (e), or (i), by directing the juvenile court ““to consider whether there is a substantial risk that the child will be harmed under subdivision (a), (b), (d), (e), *or* (i) of section 300, notwithstanding which of those subdivisions describes the child’s sibling.”” (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.) In other words, under subdivision (j), the juvenile court may find, for example, that a child is at substantial risk of physical harm as defined in subdivision (b) based upon the circumstances surrounding acts of cruelty (as defined in subdivision (i)) directed at the child’s sibling. This expansion of grounds for dependency jurisdiction does not affect applicability of the Supreme Court’s reasoning in *In re I.J.* to this case, because in both cases the question is whether a parent’s sexual abuse of one child presents a substantial risk that the subject child in the dependency petition will be sexually abused.

In this case, there was evidence before the juvenile court that Pablo had sexually molested A.C. three times, including once when she was 12 years old, at A.C.’s home and at her grandmother’s home. There also was evidence that he had sexually molested two other young relatives on two occasions, during which he digitally penetrated both girls’ vaginas.<sup>3</sup>

---

<sup>3</sup> Pablo asserts in his appellant’s reply brief that this evidence should not be considered because the referral to which it relates “was neither promoted to a case, nor the subject of criminal charges.” He is mistaken. First, the Department stated that the allegations of the referral were substantiated. The fact that the Department did not institute a dependency case from the referral simply means that the Department concluded that the victims were not presently at substantial risk of further abuse; and, as explained by the Department, criminal charges were not filed because the children could not provide specific dates when the abuse took place. Second, the rules of appellate review require us to review the record in the light most favorable to the juvenile court’s



We acknowledge that the abuse described by A.C. and the other relatives is not as severe as the abuse in *In re I.J.* But the fact that the abuse in this case involved multiple victims, over a period of several years, provides a sufficient basis for the juvenile court to conclude there is a substantial risk that Randy will be sexually abused.

B. *Disposition Order*

Pablo argues that even if there was sufficient evidence to support the jurisdiction order, the disposition order removing Randy from Pablo's care must be reversed because there was not clear and convincing evidence that there was a substantial danger to Randy's health and safety if Pablo were to remain in the home. We disagree.

"Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. [Citations.] . . . The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances. [Citation.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

In arguing there is insufficient evidence to support the disposition order, Pablo emphasizes that an order removing a child from the custody of a parent must be supported by clear and convincing evidence. We note, however, that "[t]he 'clear and convincing' standard is for the edification and guidance of the juvenile

---

order and draw all reasonable inferences to support the court's findings and orders. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

court. It is not a standard for appellate review. [Citation.] ““The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.” [Citations.]’ [Citation.] ‘Thus, on appeal from a judgment required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.” [Citation.]’ [Citation.]” (*In re J.I.* (2003) 108 Cal.App.4th 903, 911.)

In this case, substantial evidence supports the disposition order. There was evidence that Pablo sexually abused three young relatives on multiple occasions, over the course of several years. Moreover, even though Pablo had been cooperative with the Department and participated in services, he continued to deny the allegations against him. Pablo argues that he did not present a danger to Randy because the Department had at one time recommended that Randy be returned to and/or remain in Pablo’s care, even after additional allegations of sexual abuse had been made. However, by the time of disposition hearing, the Department had substantiated those additional allegations as to two victims, and had learned from Pablo’s therapist that Pablo still had not taken responsibility for his actions. As a result, the Department expressed concern about Randy’s safety and changed its recommendation.

In short, we conclude the juvenile court reasonably found, supported by substantial evidence, there was no reasonable means by which Randy could be protected without removal from Pablo’s care.

**DISPOSITION**

The jurisdiction and disposition orders are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.