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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re G.P., a Person Coming Under the  
Juvenile Court Law.

B236256  
(Los Angeles County  
Super. Ct. No. CK86172)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARIA L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Terry T. Truong, Referee. Affirmed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel for Plaintiff and Respondent.

Mother Maria L. appeals the dependency court's dispositional order, challenging the court's jurisdictional findings and removal order. Her severely autistic children G.P. and Jorge L. were removed from her care due to the conduct of her live-in boyfriend Edwin E., who exposed himself in front of the children. She contends that insufficient evidence supports the dependency court's finding under Welfare & Institutions Code section 300, subdivision (b),<sup>1</sup> that she placed her children at serious risk of physical harm by leaving them with her live-in boyfriend, and for this reason insufficient evidence supports the removal order. We affirm.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On November 17, 2010, DCFS received a referral regarding G.P., born 1996, who is severely autistic. G.P.'s school reported that she had been showing unusual behavior since November 2, 2010, when she arrived at school with scratches all over her body. G.P. tried to hit herself in the head with her fists, and had bouts of hysteria. On November 4, 2010, G.P. appeared to be having her menstrual period, although she had had it two weeks earlier. On November 4, 5, 8, and 9, 2010, G.P.'s behavior was "of such severity [with] self-inflicted blows to her head that she needed to be held in seated restraints; she would have bouts of hysterical crying; she was refusing food which [was] very unusual behavior for her." G.P., who was normally affectionate, refused to permit anyone to touch her.

The social worker went to G.P.'s home and met with Edwin and Mother. Mother was very upset and said she was tired of dealing with DCFS, asked the social worker to leave, but calmed down and permitted the social worker to speak with Edwin. Edwin denied the allegations of the referral, stating that G.P. received the scratches from fights with her sibling Jorge, born in 2003. Mother and Edwin denied any domestic violence, denied a criminal history, and denied mental health problems. The social worker observed the home was messy and disorganized, and that there were dirty clothes on the

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<sup>1</sup> All statutory references herein are to the Welfare and Institutions Code unless otherwise noted.

floor, dirty dishes in the sink, and cockroaches on the walls, sink and floor of the kitchen and in the living room. At a return visit November 24, 2010, the social worker observed both children were clean and appropriately dressed, and did not display any signs of abuse. The house was clean. Mother told the social worker she had been working the day of the previous visit when she had not had a chance to clean the house. The children were nonverbal.

After several attempts to visit the home again in December 2010, the social worker made an unannounced visit to the home on December 30, 2010, but Mother was not in. The social worker spoke to a neighbor, who related that Mother attended school in the evening and would leave the children with Edwin. The children would play outside without supervision.

On December 14, 2010, G.P.'s school reported that G.P. was attempting to kiss a male student, touching herself inappropriately, and laughing hysterically. Although G.P. had a history of touching herself, she had previously not done so while trying to get a boy's attention. On January 10, 2011, the social worker spoke to Mother about possible sexual abuse of G.P. On January 11, 2011, the social worker spoke with G.P.'s community integration worker, Irma G., who told the social worker that she had been in the home early in the morning and observed that G.P. woke up wearing only underwear and a shirt, and Jorge was naked. Mother told Irma G. that the children slept with Edwin. Irma G. had observed Edwin in November 2010 naked on the couch masturbating himself. Jorge, who was naked, was sitting on the couch next to him. Since that time, Jorge was observed playing with himself. In addition, Mother only gave G.P. a shower once a week, and G.P. smelled bad. When confronted with Edwin's behavior, Mother responded that she could not ask Edwin to move out because he worked for the family and she was pregnant and could not work. Mother did not believe Edwin had been masturbating.

A prior referral dated July 2010 reported that the behavioral analyst from Regional Center visited the home to see Jorge and conduct a therapy session, and the analyst

observed Edwin was naked in the house. The allegations of general neglect were closed as inconclusive.

The petition filed January 20, 2011 contained allegations under section 300, subdivisions (b), (d), (g)) and (j) based upon Edwin's conduct and Mother's failure to protect the children from Edwin's conduct.

The detention report filed January 20, 2011 stated that the children were detained and placed in the foster home of Imelda M. Both children were clients of Regional Center; G.P. had been diagnosed with autism and mild mental retardation; Jorge had been diagnosed with autism. The children had undergone sexual abuse examinations, which were inconclusive. Jorge's exam did not confirm or negate sexual abuse, while G.P. refused to be examined.

At the hearing, Mother testified that the children's father was Jorge P., Sr., (Father), who did not pay child support for the children. Father had not visited with the children for three years. The court ordered the children detained, and requested DCFS to evaluate the children's maternal aunt for placement.

The jurisdictional report stated that Father's whereabouts were unknown. Mother denied the allegations, stating that Edwin loved the children and took very good care of them. Edwin denied masturbating in front of Jorge, claiming he was in a pair of pajamas and got up to answer the door wrapped in a sheet. Irma G. told the social worker she had worked for the family since August 2010, and stated that when she saw Edwin naked on the sofa, he had a small blanket over him, and Jorge was not sitting next to him.

James King, director of SEEK, an educational and behavioral service that contracts with Regional Center to provide in-home services, told DCFS that there were ongoing complaints about Mother not being at home, missing appointments, or canceling appointments. Although she did not speak, G.P. could understand much of what was said to her. King believed that G.P.'s self-touching was beyond that normally done by autistic children, and was learned behavior. Katrina Villalta, the behavior therapy worker, described incidents where G.P. would be watching television with Edwin and would try

to get up from the couch, but he would not let her. Villalta observed that Jorge was “almost always naked” and the house was very dirty. There were never sheets on the bed. DCFS visited the family on January 31, 2011, and G.P. performed a “strip tease” when she overheard allegations of sexual abuse.

Mother received \$1,200 in social security for the children and \$800 per month per child from In Home Support Services. Mother was born in Mexico, was 33 years old, and had come to the United States in 1995. She was from a small village and had a happy childhood. Her father died when she was one month old. Her mother worked and read the Bible to Mother. Mother completed some high school, and is able to read. Mother lived with the children’s father for nine years, but left him because of his inability to provide for the family. She and Edwin earn money at swap meets. Mother was rarely at home, and left the children with Edwin.

G.P. was diagnosed with autism at age three, and Jorge and at one and one-half. Mother denied any sexual abuse of the children. Both children engaged in repetitive self-stimulating behavior such as flapping, shaking their hands, snapping their fingers, and lacked social skills. The children were enrolled in school during the first week of February 2011.

DCFS stated, “there is ample evidence that [Edwin] has been extremely physically inappropriate with the children. The witnesses . . . are professional people and do not have any personal agenda with the family, yet on two separate occasions, two different professionals observed [Edwin] in a state of nudity or near nudity when the children were clearly present in the home. As noted, one of those witnesses said that the children sleep with [Edwin] in the adults’ bed and that when they get up in the morning, Jorge is naked and G.P. has on only panties and a brassiere.” DCFS noted that because it was not possible to know whether actual physical molestation of Jorge and G.P. had occurred because the children could not communicate, DCFS would request Regional Center for an evaluation by a professional skilled in working with children.

DCFS's last minute information for the jurisdictional hearing, filed March 9, 2011, stated that Father had been located. Father told DCFS that he saw the children every four or five months, that he did not trust Edwin around the children, and that Mother would not listen to him. Father claimed he had been paying support to Mother, and he had begun visiting with the children.

At the March 9, 2011 jurisdiction/disposition hearing, the court ordered a 730 evaluation of Mother, and continued the matter to April 13, 2011 pending receipt of the 730 evaluation.

DCFS's April 13, 2011 progress update report stated that the children were placed in Regional Center homes. Mother was "on a campaign of constantly contacting Regional Center and DCFS staff to complain about the care and placement of her children, and [was] also making intrusive visits to schools and placement homes." Mother was showing up for visits without scheduling them, and brought inappropriate food for Jorge. DCFS did not understand Mother's behavior given that "by her own admission and by the factual observations of Regional Center In-Home staff members, mother was never home with the children and spent as little as '1 hour' a day with them." Mother continued to live with Edwin, denied the allegations, "staunchly" defended Edwin, and was pregnant with his child. On March 30, 2011, Jorge attempted to take his clothes off while riding on the school bus, and was hitting himself.

DCFS's last minute information for the April 13, 2011 hearing stated that Mother had made threats against Irma G., one of the witnesses, and Irma G. had gotten a restraining order. Mother had suffered a miscarriage of her child.

At the hearing, the court found Jorge P., Sr., to be the presumed father of the children, and ordered Mother to have monitored visitation with the children at DCFS. The court ordered further reporting on G.P.'s placement, and ordered DCFs to interview Father.

DCFS's report prepared for the May 13, 2011 progress hearing stated that Father had produced proof that he had paid some child support for the children, but that he had

not been involved with children on a consistent basis. Father had complained about G.P.'s treatment in her placement. He wanted to take care of her, but had no stable living arrangements. G.P. was receiving occupational therapy, speech, therapy, special school services, and was regularly seen by a psychiatrist. Although G.P. was overweight when she came to her placement, she was eating more healthy foods now. G.P.'s foster mother was overwhelmed with caring for her needs as G.P. required constant supervision. Jorge was in a group home.

G.P. presented with the full spectrum of autism behaviors, including lack of social reciprocity and interest in others; delays in language; self-stimulating, repetitive behaviors; impairment in nonverbal behavior, including eye contact; and failure to develop peer relationships. G.P. was touching herself and taking her clothes off in the foster home, had been having tantrums, crying, yelling, and rocking back and forth. G.P. was having difficulty adjusting at her school. Jorge also had the full spectrum of autism behaviors, and was essentially nonverbal. Although Jorge had attempted to bite his sister and a previous caregiver, he had not done so in his current placement.

Mother had entered a sexual abuse awareness program. Her attendance had been consistent. However, she remained defensive about the allegations against Edwin, and although Mother indicated she would be willing to separate from Edwin, the social worker was skeptical because Mother and Edwin ran a swap meet business together.

DCFS had concluded that both parents' complaints about G.P.'s placement were unfounded. Mother was attending her monitored visits for two hours twice a week without incident. During visits with Mother, Jorge would respond to his mother and giggle when she spoke to him. DCFS found Father was "essentially non-offending."

At the May 13, 2011, hearing, the court continued the matter to June 6, 2011 pending receipt of the children's evaluations. Dr. Michael Maloney evaluated the children, and concluded Mother should not be provided with reunification services because she did "not fully appreciate the extent and severity of [the children's] disorder nor the demands required for their care. Moreover, she is not able to accept or appreciate

the negative [e]ffects [Edwin's] behavior has on these children.” Dr. Maloney recommended monitored visitation for Mother and no contact with Edwin under any circumstances. Dr. Maloney noted that Mother was very supportive of Edwin and adamantly denied the allegations against him, even in the face of the witnesses' reports. Dr. Maloney observed that Jorge exhibited repetitive movements, such as rolling his fingers, tapping the walls, and echolalia. Jorge interacted well with Mother, but Jorge's behavior was no different with Mother than with his caretaker. Dr. Maloney observed that G.P.'s symptoms of autism were more severe than Jorge's symptoms.

Dr. Maloney found that although on the surface Mother appeared motivated to regain custody of the children as evidenced by her participation in her reunification services and regular visitation, “her lack of insight and poor decisions seriously compromise the safety of her children.” Although Edwin had reportedly moved out of the house, Mother continued to have an intimate relationship with him and expected to continue to do so. “[Mother's] ability to care for [two] special needs children is unlikely. She acknowledged working many hours out of the home and that she does not have enough time to care of her children. . . . [¶] Another significant concern is her inability to protect her children. Many agencies and professionals that have been involved with this family have witnessed and documented [Edwin] exposing himself. It has not been confirmed that the children were sexually abused, but regardless, the children being exposed to the mother's boyfriend openly masturbating and walking around naked is abusive and inappropriate.”

At the June 6, 2011 hearing, the court set August 2, 2011 for adjudication; the hearing was later rescheduled to August 3, 2011.

In June 2011, Mother was evaluated by Dr. Alfredo Crespo, a psychologist. Mother reported that she dated Edwin for five or six months before they began cohabiting. Mother had discussed the allegations with Edwin, and he denied them. She claimed she had not had contact with Edwin for several months. Mother also claimed that G.P.'s self-touching behavior had started before she met Edwin, as it had been



documented by G.P.'s school and other therapists, and provided voluminous documentation from the Los Angeles Unified School District to support her contention.<sup>2</sup> Dr. Crespo concluded that while Mother might be capable of caring for her children, she had taken an unnecessary combative stance with DCFS. As a result, he recommended therapy for Mother to address her combative approach.

In April 2011, Mother commenced individual therapy. She had been attending once a month and had attended four sessions as of August 1, 2011. Mother was enrolled in school and attending five days a week.

At the August 3, 2011 hearing, Irma G. testified that she knew Mother from the swap meet where they both worked. She worked in Mother's home babysitting G.P. three days a week from 3:00 p.m. to 7:00 p.m. Irma G. observed Edwin wiping G.P. after she used the restroom, and mistreated her by calling her a "son of a bitch" when she cried. Irma G. often observed Edwin naked on the sofa watching television. One time when she came to the house to drop off G.P., Irma G. saw him masturbating. Mother told Irma G. that Edwin liked to go naked because he was more comfortable without clothes. The home was dirty, with cockroaches all over. G.P. was rarely given a bath, and Mother complained that she did not have the time. Irma G. never observed Edwin bathing her. G.P. would touch herself, and would try to kiss Irma G. on the mouth. Jorge also touched himself and was naked "all the time." Although Irma G. had no special training to care for autistic children, Mother told her it was not necessary and was a "waste of time."

Angela Avelar of San Gabriel Pomona Regional Center was the service coordinator. The center provided respite services for G.P. for 30 hours a week and community integration services after school. She worked with G.P. to improve her self-care skills, social skills, behaviors, communication and interaction. Jorge received the same program at Regional Center. Avelar visited Mother's home twice over the course

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<sup>2</sup> The court refused to admit G.P.'s IEP (individualized education plan) reports from the LAUSD, as well as letters and other documents from persons treating G.P. on the grounds they were not properly authenticated and were not produced until trial. The court did not permit Dr. Crespo to testify at trial concerning the IEP report.

of a year. She found it to be in “decent” condition. Although the Regional Center treatment plan required Mother’s presence, she was rarely there. Mother terminated the services because she did not have time to attend. Avelar never witnessed any inappropriate behaviors by the children.

James King of Seek Education supervised persons who provided services to G.P. and Jorge. Both children had communication and behavioral problems. G.P. had tantrums, but they decreased with treatment. King had no knowledge of any “out of the ordinary” behavior. Seek Education had difficulty scheduling appointments with the children. The children’s participation at Seek terminated in July 2010 because one of the therapists (Villalta) witnessed Edwin exposing himself at the children’s home. King told DCFS that the children’s sexualized behavior was learned or experienced behavior rather than typical autistic behavior.

Karina Villalta, a behavior technician at Seek Education, worked with Jorge for about two months. She helped Jorge learn to stop engaging in repetitive behavior. In July 2010, Villalta observed Edwin naked in Mother’s home. She had arrived for a session, and took Jorge to the pool. When they returned from the pool, they waited outside the front door after knocking. Villalta could see G.P. through the window, but she would not answer the door. Villalta went around to the back of the house and G.P. opened the door for them. Edwin, who was naked, came downstairs. Although he did not seem embarrassed, Edwin, who was hostile towards her, quickly got out of her eyesight and asked Villalta to go into the kitchen and get him a towel. She refused. She observed that the home was very messy and dirty. The kitchen trash was always overflowing, there were dishes in the sink, the furniture was falling apart, there were no sheets on the bed, and roaches were visible. Often when Villalta arrived to pick up Jorge, he would not be wearing any clothes.

Breanna Tupper was the case manager at G.P.’s school. She developed plans for G.P.’s behavior problems, and met with G.P.’s aide once a week for 30 minutes to evaluate G.P.’s progress or lack of progress and formulate a plan. Tupper worked in

G.P.'s classroom, and saw her every day during the period 2009 through 2010. G.P. would sometimes touch herself in inappropriate ways, which was typical for autistic children. However, G.P. tried to kiss another student, which Tupper thought was unusual because autistic children do not have social relationships with their peers, and thus would not comprehend that another child was of the opposite gender, or that male-female relationships existed, and would not know how to kiss. G.P.'s menstrual period was very regular, but one time she had her period three times in a six-week period; on another occasion, she went a couple of months without a period. Tupper filed a report with DCFS due to G.P.'s irregular periods, her behavior, and the amount of time G.P. was missing school. During a meeting with Tupper, Edwin and Mother responded to the report and stated they would file a report with the police. Tupper observed during this meeting that Edwin was controlling of G.P.

Dr. Crespo testified that he administered psychological tests to Mother on June 30, 2011. In his opinion, Mother was defensive, cynical, and prone to engage in conflict with others. He believed Mother was capable of protecting the children, given that she obtained an IEP for G.P.

Pedro Limon from California Psychcare worked as a behavior intervention program coordinator. He worked with G.P. personally to modify her behavior during the period 2001 to 2005 and 2006 to 2007; during that time, he also worked with Jorge. When he first saw her, G.P. was making noises, coming naked out of the restroom, eating dirt, touching herself, and throwing tantrums. At the time, she was four or five years old.<sup>3</sup> In his opinion, autistic children can engage in self-touching from age three to age 22. Jorge also exhibited self-stimulatory autistic behavior. He observed that Mother was very active in working with her children. Although he had not seen Jorge in the last year and G.P. for four years, he believed the children would be better off with Mother.

The court sustained the petition on count (b)(1) as conformed to proof, and dismissed the other allegations of the petition. The court amended count (b)(1) to state,

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<sup>3</sup> He also testified he worked with her when she was eight or nine years old.

“[Edwin] exhibited sexually inappropriate conduct, including walking around the home naked and masturbating in the home in the presence of the child [G.P.]. [¶] The children [ ] have each been diagnosed with autistic disorder and have been displaying sexually inappropriate behavior, including self-touching. [¶] The mother knew or should have known of [Edwin]’s sexually inappropriate conduct and of her children’s propensity to engage in sexually inappropriate behavior and failed to protect her children from [Edwin]’s conduct, including leaving the children in the care of [Edwin]. [¶] Such failure to protect the children by the mother endangers the children’s physical and emotional health and places the children at risk of harm.” The court stated, “I do believe that [Mother] placed the children at serious risk, given the children’s behavior. And she knew, she was aware that the children engaged in sexual behavior, and yet she left the children with a person who she also knew or should have known was acting [in a] sexually inappropriate [fashion]. Those two combinations together are dangerous. . . .”

The court declined to place the children with Father, but stated the removal order was not against him. The court ordered reunification services for both parents. Mother was ordered to take sexual abuse awareness counseling, individual counseling, parenting for special needs children, and to participate in the children’s Regional Center services. Father was given unmonitored visitation, and Mother was given monitored visitation. The court ordered that Edwin would have no visitation.

## **DISCUSSION**

Mother asserts that insufficient evidence supports the court’s jurisdictional order under section 300, subdivision (b) finding that the children are at substantial risk of future harm. She argues the record only contains two instances of improper conduct on Edwin’s part—masturbating on the couch while Jorge sat next to him, and confronting Villalta while he was naked on the occasion when she brought Jorge back from the pool. She also contends insufficient evidence supports the removal order because Mother had eliminated Edwin from her life, she had shown in the past she could be a powerful

advocate for her children by getting them the necessary services, and she had a strong bond with her children.

### ***1. Sufficient Evidence Supports Jurisdiction***

At a jurisdictional hearing, the juvenile court determines whether the allegations in the petition that the child comes within section 300 are true, and thus the child is within the juvenile court's jurisdiction. The findings must be supported by a preponderance of evidence. (§ 355; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.) The purpose of the dependency statutes "is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.)

The circumstances under which the juvenile court may take jurisdiction of a child are narrowly defined. Subdivision (b) of section 300 authorizes dependency jurisdiction when "[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 . . . to adequately supervise or protect the child, or the willful or negligent failure of the child's parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left . . . ." (Italics added.) On appeal, we review the juvenile court's jurisdictional findings under the substantial evidence test. (*In re J.K.*, *supra*, 174 Cal.App.4th at p. 1433.) Substantial evidence is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]" (*Ibid.*)

In *In re Rocco M.* (1991) 1 Cal.App.4th 814, the court stated "[w]hile evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm" and "[t]hus the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; '[t]here must be some reason to believe the acts may continue in the future.' [Citations.]" (*Id.* at p. 824, fn. omitted.)

*In re Rocco M.*, *supra*, 1 Cal.App.4th 814 was rejected by *In re J.K.*, *supra*, 174 Cal.App.4th 1426. As *In re J.K.* explained, since *In re Rocco M.*, the statutory scheme has been altered materially. (*In re J.K.*, at p. 1436.) Subdivision (b) of section 300 now allows for jurisdiction when “[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 . . . to adequately supervise or protect the child.” (Italics added.) “[T]he use of the disjunctive ‘or’ demonstrates that a showing of prior abuse and harm is sufficient, standing alone, to establish dependency jurisdiction under these subdivisions.” (*In re J.K.*, at pp. 1434–1435, fn. omitted.)

However, *In re J.N.* (2010) 181 Cal.App.4th 1010 disagreed with *In re J.K.*, *supra*, 174 Cal.App.4th 1426, to the extent *J.K.* concluded that subdivision (b) of section 300 authorized dependency jurisdiction based on a single incident resulting in harm, absent current risk. (*In re J.N.*, at p. 1023.) There, the mother and father were involved in an automobile accident after drinking where two of their three children were injured. The parents denied alcohol abuse problems, and there was no evidence of such abuse. (*Id.* at pp. 1014–1018.) *In re J.N.* found insufficient evidence supported jurisdiction based upon this one incident because there was an absence of current risk. (*Id.* at p. 1026.) *J.N.* did not hold, however, that dependency jurisdiction could never be based on a single incident: “In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent’s current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident. The nature and circumstances of a single incident of harmful or potentially harmful conduct may be

sufficient, in a particular case, to establish current risk depending upon present circumstances.” (*Id.* at pp. 1025–1026.)

Here, sufficient evidence supports jurisdiction based on more than two incidents of witnessed exposure by Edwin, and demonstrates a very real risk of future harm. The record established that Edwin was more likely than not to be naked around the home in front of both children; Jorge rarely wore clothing at home; G.P. was dressed inappropriately when she woke up in the morning; the children slept with Edwin in the apartment’s single bed, which rarely had sheets on it; Edwin helped G.P. with her toilet needs in an inappropriate fashion; the children were displaying sexualized behavior that was in excess of that normally displayed by autistic children; and the home was in filthy condition. In addition, Mother was rarely at home, instead leaving the children with Edwin, who was an inadequate caretaker for such special needs children; Mother was in denial that Edwin’s behavior was a problem or that it even existed; and her denial was unwavering throughout the proceedings. The ongoing problems in Mother’s home were not the result of a couple of isolated incidents; rather, the problems in the home were consistent, severe, and unacknowledged—yet Mother preferred to put her needs before that of her children by being consistently absent from the home and refusing to confront Edwin’s proclivities.

## ***2. Sufficient Evidence Supports Removal Of G.P. and Jorge from Mother’s Home Under Section 361, Subdivision (c)***

Section 361, subdivision (c)(1), provides children shall not be removed from the home in which they are residing at the time of the petition unless there is clear and convincing evidence of a substantial danger to the children’s physical health, safety, protection, or physical or emotional well-being and there are no reasonable means by which the children can be protected without removal. (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288.) “After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing” and “decide where the child will live while under the court’s supervision.” (*In re N.M.* (2011) 197 Cal.App.4th 159,

169.) “A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent’s past conduct as well as present circumstances. [Citation.]” (*Id.* at pp. 169–170.) If the court finds by clear and convincing evidence that the child’s welfare requires removal due to a substantial danger, or risk of danger, to the child’s physical health if he or she is returned home, and there are no reasonable alternatives to protect the child, the court may issue a removal order. (§ 361, subd. (c)(1).) “Whether the conditions in the home present a risk of harm to the child is a factual issue. Again, we apply the substantial evidence test.” (*In re N.M.*, at p. 170.)

Here, substantial evidence supports the removal of G.P. and Jorge from Mother’s home to avert further harm. Both children suffered from severe autism; G.P. was further handicapped by mild retardation. Edwin’s inappropriate behavior in the home exacerbated the children’s autistic behaviors; further, Mother was unable to protect the children because she was rarely home and consistently denied that Edwin’s behavior was a problem.

### **DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.