

Filed 11/29/17 In re David M. CA2/8

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 EIGHT

In re DAVID M. et al., Persons  
Coming Under the Juvenile Court  
Law.

B280755

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. DK18853)

Plaintiff and Appellant,

v.

M.P. et al.,

Defendants and Respondents.

APPEAL from an order of the Superior Court of Los Angeles County. Nichelle Blackwell, Commissioner. Affirmed.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Appellant.

Aida Aslanian, for Defendant and Respondent M.P.

Mitchell Keiter, for Defendant and Respondent S.M.

---

The Los Angeles County Department of Children and Family Services (DCFS) challenges a juvenile court order dismissing a petition brought under Welfare and Institutions Code section 300.<sup>1</sup> We affirm the juvenile court order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On July 9, 2016, DCFS received an expedited referral alleging S.M. (Father) sexually abused Casandra H., C.C., and M.C. Casandra is M.P.'s (Mother) adult daughter, and C.C. and M.C. are Mother's nieces. Father is not related to the alleged victims.

Casandra lived with Mother until she was nine years old, at which point she went to live with a teacher who later became her legal guardian. Although Mother and Father were in a relationship while Casandra lived with Mother, it is not clear whether Father ever lived in the same house as Casandra.

At the time of the referral, Mother and Father were living with their son, David (10 years old), and daughter, Roxana (one year old), in a studio apartment. Mother's sister, E.P., and her two daughters, C.C. (17 years old) and M.C. (15 years old), also lived in the apartment. All seven individuals slept in the apartment's living area. Mother, Father, and Roxana shared one bed, E.P., C.C., and M.C. shared a separate bed, and David slept in his own bed. Father owned a sewing business, at which Mother, E.P., and C.C. worked.

According to DCFS's investigation, one morning in early July 2016, Mother and C.C. had an argument about C.C. not wanting to wake up and go to work, and Mother threw an object at her. Sometime later, C.C. filed a report that Mother physically

---

<sup>1</sup> All future undesignated statutory references are to the Welfare and Institutions Code.

abused her. The police interviewed Mother in connection with the report, after which Mother and C.C. had another argument.

According to C.C., after her arguments with Mother, she disclosed to M.C. that Father sexually abused her. M.C. responded that Father sexually abused her as well. The sisters then spoke to Casandra, who informed them she too had been sexually abused by Father. Casandra, C.C., and M.C. reported the abuse to the police, who arrested Father.

After learning of the accusations against Father, DCFS detained David and Roxana and placed them in foster care. David and Roxana showed no physical signs of abuse or neglect. David reported feeling safe at home, and denied any domestic violence, physical abuse, or sexual abuse. He also denied being awoken during the night by odd noises, or witnessing anyone sleeping in the wrong bed.

#### *Accusations Against Father*

According to the police report, Casandra stated Father sexually abused her on three occasions when she was approximately seven years old. During the first incident, Father had her sit on his lap in his car, grabbed her by the waist, and moved her back and forth against him. The second time, Father placed her on the bed, stood over her, and rubbed his hands along her legs over her clothing. On the third occasion, Father took her into a closet at home and rubbed his hands along her legs over her clothing.

Casandra subsequently told a DCFS social worker Father began sexually abusing her when she was five years old. Father would pick her up from school and take her back to the house, where he would rub himself and his penis against her. The abuse

stopped when Casandra was nine years old and she went to live with her teacher.

According to Casandra, Mother once walked in on Father sexually abusing her, but Father moved out of the way and acted like nothing happened. Casandra believed Mother knew what Father was doing, but they did not discuss it. Casandra denied disclosing the sexual abuse to anyone prior to July 2016.

According to the police report, C.C. stated Father would touch her legs, breasts, vagina, and buttocks over her clothing as she slept. This began when she was 11 years old and would occur approximately twice a week. The most recent incident occurred three months earlier.

C.C. told a DCFS social worker she recently disclosed the abuse to a friend, but had not reported it to anyone else prior to July 2016. She subsequently told a dependency investigator the abuse occurred three to four times per week, either in the middle of the night or after E.P. left for work in the morning.

According to the police report, M.C. stated Father started abusing her when she was approximately seven or eight years old. Father would stand over her while she slept and touch her arms and legs over her clothing. When she turned nine years old, Father began to touch her vagina, breasts, and buttocks over her clothing, and would insert two fingers into her vagina over her clothing. These incidents increased from once per week to three times per week, but stopped approximately three weeks earlier.

M.C. told a DCFS social worker Father began sexually abusing her when she was in eighth grade. Father would touch her over her clothes in the evening when everyone was asleep, and inserted his fingers into her vagina on at least three occasions.

In a subsequent interview with a dependency investigator, M.C. stated the first incident of sexual abuse occurred when she was six years old. She reported Father took her into a closet and placed her hand on his penis, and then inserted two fingers into her vagina over her clothing. According to M.C., the abuse became more frequent when she was eight years old, and occurred at night and in the early morning. M.C. also recalled that sometimes she would wake up to Father touching her. Father would become startled and say he was trying to wake her.

*Additional DCFS Interviews*

In interviews with a DCFS social worker and dependency investigator, Father denied sexually abusing the three accusers, and denied ever being alone with any of them. Father believed C.C. and M.C. fabricated the accusations because they were upset with Mother, possibly because she would not allow them to move in with Casandra. Father reported that, during a recent argument, C.C. told Mother she was going to “get her where it hurts.”

Mother initially indicated to a DCFS social worker that she believed Casandra, but did not know how the abuse could have happened. According to Mother, she never left Casandra alone with Father. In a subsequent interview, Mother reported that shortly before the accusations, she had an argument with C.C. about her stealing from the sewing business. Mother accused C.C. of “scamming” her and Father by taking money from a designer without disclosing it. Mother believed C.C. and M.C. fabricated the sexual abuse allegations to spite her, and because they wanted to move out of the apartment and live with Casandra. She also stated that Casandra recently received an inheritance, and speculated that C.C. and M.C. might be able to

receive some of that inheritance by falsely accusing Father of sexual abuse.

E.P. told a DCFS social worker she was not aware of the sexual abuse until her daughters recently disclosed it to her. Her daughters told her Father touched them in the morning while E.P. was outside moving her car. E.P. indicated this would usually take 15 minutes, but Mother would have been in the apartment with the daughters during that time.

*Petition*

On August 18, 2016, DCFS filed a dependency petition asserting David and Roxana were persons described by section 300, subdivisions (b)(1),<sup>2</sup> (d),<sup>3</sup> and (j).<sup>4</sup> The petition alleged

---

<sup>2</sup> Under section 300, subdivision (b)(1), the juvenile court may assert dependency jurisdiction over a child 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 or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.”

<sup>3</sup> Under section 300, subdivision (d), the juvenile court may assert dependency jurisdiction over a child when “[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused . . . .”

Father sexually abused Casandra, C.C., and M.C. over the course of several years. It further alleged Mother knew Father was sexually abusing Casandra, yet failed to protect her. According to DCFS, Father's past sexual abuse, and Mother's failure to protect the children's sibling, Casandra, endangered the children's physical health and safety, and placed them at risk of serious physical harm, damage, and sexual abuse.

*Jurisdiction Hearing and Order*

The court conducted the jurisdiction hearing on December 15, 2016. No witnesses testified at the hearing.

After argument by counsel, the juvenile court dismissed the petition without prejudice, finding DCFS failed to meet its burden of proving the allegations by a preponderance of the evidence. The court determined Casandra, C.C., and M.C. fabricated the sexual abuse allegations against Father in retribution for Mother confronting C.C. about stealing money from the sewing business. In finding the accusations not credible, the court pointed to numerous inconsistencies in the accusers' statements to the police and DCFS, including discrepancies as to when the abuse began, its frequency, when and where it took place, and the manner of abuse. The court noted some of the inconsistencies indicated C.C. and M.C. were attempting to "up the ante" and accuse Father of more frequent and severe sexual abuse than they originally reported. The court also found the accusations were not credible due to the lack of witnesses and the fact the accusers waited several years to report

---

<sup>4</sup> Under section 300, subdivision (j), the juvenile court may assert dependency jurisdiction over a child when "[t]he child's sibling has been abused or neglected . . . and there is a substantial risk that the child will be abused or neglected . . . ."

the abuse. The court found it “noteworthy” that Father had no criminal history prior to his recent arrest, asserting it was “very rare in this dependency court that I see absolutely nothing on this man’s rap sheet to indicate that he has at all any kind of criminal history.” The court continued, stating, “[t]here’s no arrest of any other behavior showing this is repeated abhorrent conduct on his part; that there has ever been any type of criminal conduct done by him. I mean, I’m just shocked that I have this [rap sheet] that has absolutely nothing on him, other than this arrest.” After finding a total lack of credibility in the accusations against Father, the court dismissed the petition in its entirety and ordered the children returned to Mother.

DCFS filed a timely appeal.

### **DISCUSSION**

DCFS contends the juvenile court’s findings underlying its dismissal order were based on inferences and assumptions not supported by the evidence. We disagree.

DCFS and Mother urge us to review the juvenile court’s order for substantial evidence. Generally, “[w]e affirm a juvenile court’s jurisdictional and dispositional findings if they are supported by substantial evidence. [Citation.] ‘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.]” (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1103.) We must accept the juvenile court’s credibility determinations and resolve any inconsistencies in favor of the lower court’s order, unless the evidence supporting the court’s finding is “physically impossible”



or “inherently improbable.” (*People v. Thornton* (1974) 11 Cal.3d 738, 754, disapproved on another ground in *People v. Flannel* (1979) 25 Cal.3d 668, 685.) We do not reweigh the evidence or exercise our independent judgment, and “ ‘must uphold the trial court’s findings unless it can be said that no rational factfinder could reach the same conclusion. [Citation.]’ [Citation.]” (*In re Athena P.* (2002) 103 Cal.App.4th 617, 628–629; see *In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

Father counters that, because DCFS had the burden of proof to show the children were persons described by section 300 (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185), substantial evidence is not the proper standard of review. In support of Father’s position, “[a] court has said that when the trier of fact has 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.’ [Citation.] ‘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.” [Citation.]’ ” (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 967, citing *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528; see *In re Jordan R.* (2012) 205 Cal.App.4th 111, 138 [“(a)bsent evidence no reasonable trier of fact could have rejected, we must affirm the juvenile court’s determination the Agency did not meet its burden

of proof to show that [the child] was at substantial risk of sexual abuse”]; but see *In re Roberto C.* (2012) 209 Cal.App.4th 1241, 1254 [reviewing juvenile court’s dismissal of a section 300 petition for substantial evidence]; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199 [same].)

We need not decide this issue because, under either interpretation of the standard of review, we affirm the juvenile court’s order.

Given the conflicts in the evidence, an order sustaining the petition was not compelled as a matter of law. The petition was premised entirely on allegations that Father sexually abused the children’s sibling and cousins, which created a risk of harm to the children. DCFS’s evidence in support of the petition consisted of statements from Casandra, C.C., and M.C. indicating that Father sexually abused them. There were no witnesses to the abuse, aside from the alleged victims, nor was there physical evidence corroborating the accusations. DCFS’s evidence was directly contradicted by Father’s statements that he never inappropriately touched the accusers and was never alone with them. These statements alone were sufficient to support dismissal of the petition. (See *In re Sheila B.*, *supra*, 19 Cal.App.4th at p. 200 [“testimony of a single witness is sufficient to uphold a judgment”].) In any event, Father’s assertions were supported, in part, by Mother’s statements that she never left Father alone with Casandra.

Further, there was substantial evidence supporting the juvenile court’s finding that the accusations against Father were fabricated. Without such accusations, there was no evidence supporting the petition, and the juvenile court was required to dismiss it. The juvenile court reached its conclusion by drawing

inferences from evidence showing inconsistencies in the accusations, the lack of witnesses to the abuse, the delays in reporting the abuse, and a motive for making the false accusations. As we discuss, these inferences were reasonable based on the evidence before the court.

DCFS does not directly challenge the court's findings with respect to the inconsistencies in the sexual abuse allegations. Nevertheless, because such findings were integral to the court's decision, we discuss the numerous discrepancies in the various reports of Father's alleged sexual abuse.

Casandra told the police Father first abused her when she was seven years old, but told a social worker the abuse began when she was five years old. Further, she disclosed to a social worker that Father rubbed his penis against her, but did not report this incident to the police.

C.C. initially reported the abuse occurred twice per week, but later stated it occurred three to four times per week. She also gave somewhat inconsistent statements about when Father would abuse her. She told the police the abuse occurred at night or early morning, informed E.P. it occurred while she moved her car in the morning, and told a social worker it occurred in the middle of the night or in the morning after E.P. left for work.

During various interviews, M.C. indicated the abuse began when she was six years old, seven or eight years old, and in eighth grade. In addition, she disclosed to the dependency investigator that Father placed her hand on his penis while in a closet, yet did not disclose this incident to the police or during a prior interview with a social worker.

Although there may be numerous explanations for these inconsistencies, the juvenile court reasonably determined they indicated Casandra, C.C., and M.C. were not credible and fabricated the accusations against Father. (See *In re S.A.* (2010) 182 Cal.App.4th 1128, 1149 (“inconsistencies and conflicts in the evidence go to credibility of witnesses and weight of the evidence, which are matters for the trial court”].)

The juvenile court’s determination was further supported by the lack of witnesses to the abuse. According to C.C. and M.C., Father sexually abused them multiple times per week over the course of many years, primarily in a room where four to five other people were sleeping. DCFS, however, failed to provide evidence from a single witness to the abuse, aside from the alleged victims themselves. In fact, neither sister reported witnessing the other being abused, nor did E.P. report witnessing any abuse, despite all three sleeping on the same bed while the abuse occurred. The juvenile court could have reasonably determined that, under these circumstances, the lack of witnesses was improbable and indicated the accusations were fabricated.

The juvenile court’s determination found further support in evidence showing a delay in reporting the accusations. Casandra, C.C., and M.C. asserted Father sexually abused them repeatedly over a prolonged period of time, yet each waited several years to disclose the abuse, even to one another and their mothers. Although there may be numerous explanations for the delay, the juvenile court could have reasonably inferred it indicated the accusations were fabricated, especially in light of the timing of the disclosures. Indeed, shortly before C.C. reported the alleged abuse, Mother accused her of stealing from

the sewing business, and C.C. indicated she would seek to hurt Mother. The trial court could have reasonably inferred from this evidence that C.C. fabricated the allegations against Father, and convinced her sister and cousin to do the same, to exact revenge on Mother for accusing her of stealing from the sewing business.

DCFS contends C.C. and M.C. delayed reporting the abuse because they relied on Father for food, shelter, and other necessities.<sup>5</sup> In support, it asserts Casandra, who did not live with Father and was not dependent on him, instigated the police report. Although DCFS posits a possible explanation for the delay in reporting the abuse, it does not compel a rejection of the juvenile court's inference that the accusations were fabricated. On appeal, we accept the juvenile court's inferences if reasonably drawn from the evidence, and do not decide between competing inference. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319 [“ “[w]hen two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court” ’ ”].) As discussed above, the court reasonably concluded that Casandra, C.C., and M.C. delayed reporting Father's alleged sexual abuse because the abuse did not occur.

We also reject DCFS's contention that it was unreasonable for the court to connect C.C.'s threats to the sexual abuse allegations, because the threats were specifically related to faking a workplace injury. According to DCFS, C.C. sought to gain financially through a faked workplace injury, but stood to gain nothing by falsely accusing Father of sexual abuse. DCFS, however, ignores evidence that, in addition to specifically

---

<sup>5</sup> DCFS fails to offer an explanation as to why Casandra delayed reporting the abuse until July 2016.

threatening a faked workplace injury, C.C. generally threatened to get Mother “where it hurt.” The juvenile court could have reasonably determined this vague threat foreshadowed the sexual abuse allegations, which hurt Mother by resulting in the police arresting her significant other and DCFS detaining her children.

DCFS further suggests the juvenile court improperly discounted C.C.’s allegations based on character evidence showing she was a “scheming disloyal teenager.” We disagree. DCFS fails to point to anything in the record indicating the juvenile court discounted C.C.’s allegations based on her character. Although the juvenile court discussed allegations that C.C. stole from the sewing business, it did so in the context of a possible motive for C.C. to make false allegations against Father. We do not read the court’s statements as indicating a belief that C.C. was an untruthful person.

Finally, we reject DCFS’s assertion that the trial court erred in relying on Father’s lack of criminal record as evidence that he did not sexually abuse Casandra, C.C., and M.C. DCFS contends using Father’s criminal record for this purpose is improper under Evidence Code section 1101, which generally prohibits the use of character evidence to show conduct on a specified occasion.

We need not determine whether Father’s criminal record was admissible to show the truth of the accusations because we do not interpret the juvenile court’s statements as does DCFS. Rather, we construe the court’s discussion of Father’s criminal history as a brief aside prompted by its apparent surprise that Father had a completely clean criminal record, which it noted is a

rarity in dependency cases.<sup>6</sup> In that way, the court's comments were unrelated to its findings that the accusations were fabricated and its ultimate order dismissing the petition.

**DISPOSITION**

The juvenile court order is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.

---

<sup>6</sup> We also note the juvenile court's review of Father's criminal record was not per se improper. For example, pursuant to section 355.1, subdivision (d), evidence of a parent's prior conviction for sexual abuse shall be prima facie evidence that the subject minor is a person described by section 300, subdivisions (a), (b), (c), or (d). Father's criminal record also may have been relevant to show a risk of future harm to the children.