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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re CARISSA W., et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Appellant.

v.

DEXTER W.,

Defendant and Appellant.

B270002

(Los Angeles County
Super. Ct. No. DK13841)

APPEAL from orders of the Superior Court of Los Angeles
County. Annabelle G. Cortez, Judge. Affirmed.

Serobian Law, Inc. and Liana Serobian, under appointment
by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Brian Mahler, Deputy County
Counsel for Plaintiff and Appellant.

Dexter W. (father), father of Carissa W. (born June 1999) and Devin W. (born June 2000), appeals from the jurisdictional and dispositional orders of the juvenile court entered pursuant to Welfare and Institutions Code section 300.¹ The Department of Children and Family Services (DCFS) cross-appeals, challenging the amended language in the jurisdictional findings. Finding no reversible error, we affirm the orders.

CONTENTIONS

Father contends that the juvenile court erred in failing to order a joint assessment pursuant to section 241.1 because Carissa was involved in unlawful behavior that would render her a ward of the court. Father further contends that substantial evidence did not support the allegations of amended counts a-1, b-1, b-3, and b-4.

In its cross-appeal, DCFS argues that the juvenile court erred in amending the language in counts a-1 and b-1 that father “physically abused” Carissa to read that father “used inappropriate physical discipline” with Carissa.

COMBINED FACTUAL AND PROCEDURAL BACKGROUND

Initial referral and investigation

On October 9, 2015, DCFS received a referral alleging physical abuse of 16-year-old Carissa by father. Carissa was in trouble at school for going to the bathroom with another student, and father was called to collect her. After father was called Carissa reported that she was afraid to go home because father might beat her again. Carissa stated that father had beaten her with a belt while she was in the shower and reported having current injuries on her right thigh from the beating.

¹ All further statutory references are to the Welfare & Institutions Code.

Officer Gonzalez went to the school to interview Carissa, who reported that father hit her with a belt 20 times or more on her leg. After Officer Gonzalez had school staff check for marks, they confirmed that the child had marks that were consistent with her claim. Officer Gonzalez had Carissa and her brother brought to the police station, where a female officer took pictures of Carissa's injuries. Upon observing the pictures, Officer Gonzalez did not believe that the marks were consistent with Carissa's claim. Though she had bruises, they were not from being hit 20 times or more with a belt. Officer Gonzalez declined to arrest father, stating that the child had severe behavioral issues. Carissa admitted there was a video of her giving oral sex to four boys. She also admitted that she ditched school and ran away from home. Officer Gonzalez concluded that these behaviors resulted in the parent imposing discipline. It appeared likely that the child was hit a few times with a belt.

At the police station a social worker interviewed Carissa, who stated that on Thursday, October 8, 2015, she was in the shower when father came into the bathroom and hit her on the legs with a belt several times. Father had discovered that she was ditching school and that there was a video of her giving oral sex to four boys in an alley. She claimed to be afraid of father and that the abuse had been going on since they moved to Pomona several months earlier. She added that father calls her "bitch" and "whore" and curses her. Carissa reported that father hits her "all of the time," and he told her he did not care if she killed herself because then he would no longer have to take care of her. Carissa stated that she would get hit two to three times per week on average, either by belt or with father's hand.

Carissa's brother Devin was also interviewed. Devin stated that his sister has behavioral problems. Devin admitted to being hit by father in the past when he was doing bad things, but

denied ever receiving any marks or bruises. Devin stated, “Everyone gets hit with a belt one time or the other in their life.” Devin saw father going into the bathroom on Thursday when his sister was taking a shower, but he did not know what happened after that. Devin was not afraid of going home, and thought his sister was lying.

The children’s step-mother, Kenya S., came to the police station and stated that she does not know if father hits Carissa, as she does not interfere with what father does with his daughter. She acknowledged that father has been struggling with Carissa’s behaviors such as running away, talking back, cursing, bad grades, getting into fights, ditching school, cutting herself, and extremely promiscuous behavior such as giving oral sex to boys in an alley. Carissa was recently at Canyon Ridge Hospital in Chino because she had been cutting herself. In addition, she had an upcoming appointment with a therapist. Kenya S. believed the children were not in danger and that father was doing his best to deal with the situation.

DCFS detained Carissa, who was placed in shelter care.

DCFS was unable to contact father until October 13, 2015. Father explained that he and the children’s mother (who was stationed in the military in Japan) were together when they were very young. They separated in 2000, and returned to the United States in 2003. After the separation father did not see the children from the time they were three or four years old until 2013. Mother had become an alcoholic and died from alcohol poisoning in 2013, at which time the children came to live with father. It had been very challenging. Father claimed that mother had imposed no rules on the children, so they were upset that there were rules in his household. Both children lied and had behavioral problems. Father enrolled Carissa in counseling. In August, Carissa tried to sneak a man into the home. It was

then that father tried to hit her for the first time. He was not sure if he actually hit her, as she was kicking and hitting at him as well. Father stated that this was the only time he hit Carissa. Father stated that both Carissa and Devin have histories of making false accusations.

DCFS received the first referral on the family when Carissa was hospitalized in August 2015. She reported that she had been sexually abused by mother's boyfriend while living with mother. The referral was closed as Carissa was no longer living with her mother's boyfriend.

On Thursday, October 8, 2015, father discovered that Carissa had not attended school since Monday. He was just about to leave for work, but went to the bathroom where Carissa was in the shower. She opened the door at his request and he asked her about missing school. He tried to slap her on the shoulder but Carissa hit him back on his wrist to stop him. He told her that he would take her back to be admitted to Canyon Ridge. He believed she was making up the story of his abuse so that she would not have to go back to the hospital.

The DCFS social worker explained that Carissa had consented to her own detention as she reported being afraid to go home. Devin was not detained as he denied abuse allegations and did not report feeling in danger at the home.

Section 300 petition and detention

On October 15, 2015, DCFS filed a petition on behalf of then 16-year-old Carissa and 15-year-old Devin, alleging that father physically abused Carissa by repeatedly striking her legs with a belt resulting in marks and bruises, and that the child did not want to reside in the home, resulting in the risk of harm to the child and her sibling. The petition also alleged that father physically abused Devin by striking him with a belt, resulting in a risk of harm to Devin and his sibling.

Father was present at the October 15, 2015, detention hearing when he was found to be the children's presumed father. The juvenile court found a prima facie case for detaining Carissa from father. Carissa was detained in foster care, with monitored visits for father. The court ordered Devin to remain in father's custody, and ordered DCFS to investigate the appropriateness of striking Devin from the petition.

The court ordered DCFS to refer Carissa to a sex victims' organization, a new therapist, and to undergo testing for pregnancy and sexually transmitted diseases. The court further ordered DCFS to investigate whether commercially sexually exploited child counts needed to be filed on behalf of Carissa.

First amended petition

On January 20, 2016, DCFS filed its first amended petition. The first amended petition added new counts under b-3 and j-3, alleging that on numerous prior occasions since 2015, Carissa engaged in commercial sexual activity as a result of exploitation by a sex trafficker, and that father was unable to supervise or protect the child, which endangered her well-being.

The amended petition further added new counts under b-4 and j-4, alleging that Carissa suffered from mental and emotional problems including self-harming behaviors such as cutting herself and suicidal ideations; that she had received treatment and hospitalization on prior occasions in 2014 and 2015; and that father was unable to care for the child due to her mental and emotional problems.

Jurisdiction/disposition report

On January 25, 2016, DCFS filed a jurisdiction/disposition report that Carissa ran away from her placements on several occasions. She was placed at the David and Margaret Group Home on October 9, 2015. She was AWOL beginning from October 31, until November 2, 2015, when she surrendered at

Lynwood Sheriff Station. Carissa was then placed at Delilu Group Home, where she stayed until she ran away on November 7, 2015, returning on November 9, 2015. Carissa ran away again on November 12, 2015, until approximately November 28, 2015, when she arrived at the DCFS welcome center. On November 30, 2015, Carissa was placed at Heritage Group Home, where she remained through the date of the report.

Carissa had three or four visits with father while at Heritage Group Home. All visits had gone well and without incident, and DCFS had liberalized father's visits to unmonitored and allowed an extended visit over the holidays.

In a follow-up interview with father, he reported finding Carissa's diary the day that she was detained by DCFS. The diary entries included descriptions of suicidal thinking, oral sex, and sexual activity with boys at school. Carissa had one friend who continually asked her if she would like to be involved with prostitution. Carissa wrote of sneaking boys and men into her room to have sex, and prostituting with her friends. Father reported finding "stripper" clothing in Carissa's backpack. Carissa told father that she sometimes gives sex to men for "candy," but father did not know if "candy" was a reference to something else.

Father denied hitting Carissa with a belt, although he admitted threatening her with it because of her behaviors in October 2015. Father claimed he reached into the shower and hit Carissa with his hand after learning that she had skipped school. Father believed one of Carissa's friends encouraged Carissa to make the false accusations against him. He believed she made the false allegations because she wanted to hang in the streets.

Carissa reported smoking marijuana when she ditched class, but did not want to share the quantity or frequency. Carissa had a history of self harm, and had several healed scars

from cuts on her left arm. Carissa was cutting herself deeply for two to three days before she was admitted to Canyon Ridge Hospital. Carissa also reported trying to hang herself once in her room when she was 14 years old.

Regarding father's alleged physical abuse, Carissa stated "I don't know if it was physical abuse or not but it felt like he was hitting me all the time with a belt or with his hand on my back for stupid reasons; like, if I didn't clean my bathroom right or my room or for school. The school work was hard, but I tried my best. I had bruises on my leg. It happened the one time he found out about school."

Carissa admitted engaging in prostitution. She stated that she was doing it "just to be doing it." She claimed never to have been forced. Carissa admitted that when she left her placement, she was prostituting with another girl, stating "She didn't force me to do it with her. She convinced me. I went to this man's house. He was 18 years old. Other girls were coming and going and they probably was prostituting too. I prostituted for about three days." Carissa was asked about drugs and admitted that when she left Delilu Group Home someone introduced her to methamphetamines. She then started using it daily. Carissa reported that she still has the urge to use methamphetamines but fights it off by sleeping.

Carissa was not taking any prescribed psychotropic medication. She had been diagnosed with major depression a couple of years ago, however, father did not agree with her taking psychotropic medication.

A police report dated October 9, 2015, was attached. When asked when she was last hit by her father, Carissa reported that it was the morning of October 9, 2015, before she left for school. Carissa reported that father had found revealing clothing in her backpack and kicked her on the back and hit her on the back

with his hands. Carissa then described the incident from the prior evening when father hit her in the restroom. Father had found out that she had ditched school that week, and hit her approximately 15 to 20 times with a belt. When asked if there were other recent incidents of father hitting her, Carissa reported that father had hit her in September 2015 when he found out she was on a video performing a blow job on a boy in front of her other friends. Carissa reported that then father hit her approximately 15 to 20 times with a belt throughout her body. Carissa said before that, it had been a while since father last hit her and she could not remember.

Jurisdiction hearing

On January 25, 2016, the juvenile court held a contested jurisdiction hearing. Father was present.

The court dismissed counts a-2, b-2, j-1, and j-2, which were allegations pertaining to Devin. The court also dismissed count d-1, which was a sexual abuse allegation pertaining to Carissa's commercial sexual activity.

The court sustained the following counts over father's objections, which were amended by interlineation to conform to proof:

(a-1) "On 10/08/2015, the children['s] father . . . used inappropriate physical discipline with [Carissa] by repeatedly striking the child's legs with a belt, inflicting marks and bruises to the child's buttocks. On prior occasions, the father struck the child with a belt and with the father's hands. Such inappropriate physical discipline was excessive and caused the child unreasonable pain and suffering. The child does not want to reside in the father's home due to the inappropriate physical discipline by the father. Such inappropriate physical discipline of the child . . . by the father endangers the child's physical health,

safety, and well-being, and places the child at risk of serious harm.”

(b-1) “On 10/08/15, the children[‘s] father . . . used inappropriate physical discipline with [Carissa] by repeatedly striking the child’s legs with a belt, inflicting marks and bruises to the child’s buttocks. On prior occasions, the father struck the child with a belt and with the father’s hands. Such inappropriate physical discipline was excessive and caused the child unreasonable pain and suffering. The child does not want to reside in the father’s home due to the inappropriate physical discipline by the father. Such inappropriate physical discipline of the child . . . by the father endangers the child’s physical health, safety and well-being and places the child at risk of serious physical harm.”

(b-3) “On numerous occasions since 2015, the child, [Carissa,] was the victim of commercial sexual activity as a result of exploitation by a pimp or sex trafficker. The child engaged in sexual acts in exchange for basic needs being met. The child’s parent is unable to supervise and protect the child. Such inability to provide appropriate parental supervision for the child by the parent, endangers the child’s physical health and safety placing the child at risk of physical harm.”

(b-4) “The child [Carissa] has mental and emotional problems, to include but not limited to self-harming behaviors of cutting herself and suicidal ideations. On prior occasions in 2014 and 2015, the child required treatment and hospitalization due to the child’s mental and emotional problems. The father . . . is unable to care for the child due to her mental and emotional problems. Such mental and emotional problems on the part of the child

endangers the child's physical health and safety and place the child at risk of physical harm."

On January 25, 2016, father filed a notice of appeal following the jurisdiction hearing.

Disposition hearing

The disposition hearing was held on February 22, 2016. Father was again present. The court declared Carissa a dependent of the court and removed her from father's custody under section 361, subdivision (c). DCFS was ordered to provide reunification services and unmonitored visits for father. Father's case plan consisted of conjoint counseling with Carissa when her therapist deemed it appropriate and support from Commercially Sexually Exploited Children (CSEC) Advocacy. The court ordered DCFS to provide Carissa with individual counseling, conjoint counseling with father when deemed appropriate, CSEC services to include substance abuse counseling, and a mental health evaluation.

On March 2, 2016, DCFS filed a cross-appeal from the juvenile court's jurisdictional findings and disposition orders.

On April 4, 2016, father filed an appeal from the disposition order of February 22, 2016.

Further protective custody warrants

On February 4, 2016, DCFS requested a protective custody warrant for Carissa, who had been missing since February 1, 2016. At the hearing, DCFS reported that the child had been located and the matter was taken off calendar.

On March 7, 2016, DCFS requested a protective custody warrant for Carissa, because she left her group home and her whereabouts were unknown since February 29, 2016. The court issued the warrant, which was recalled on March 10, 2016, after Carissa called the child protective services hotline to be picked up.

On March 24, 2016, DCFS again requested a protective custody warrant for Carissa after she ran away from her group home on March 22, 2016. The court issued the warrant, which was recalled on April 14, 2016.

DISCUSSION

I. Applicability of section 241.1

Father's first contention is that the juvenile court orders must be reversed because a section 241.1 joint assessment report was required. We first address the applicability of section 241.1 to the matter before us.

A. Section 241.1

Pursuant to section 300, any minor who has been abused or neglected as described in the statute comes within the jurisdiction of the juvenile court as a dependent child of the court. Pursuant to sections 601 and 602, any minor who commits a crime or habitually refuses to obey the reasonable and proper orders of his or her parents comes within the jurisdiction of the juvenile court as a ward of the court. "When a minor is adjudged a ward of the court, the minor is subject to more restrictive placements because of his or her criminal conduct and the court may commit the minor to a juvenile home . . . or juvenile hall. [Citation.]" (*In re Joey G.* (2012) 206 Cal.App.4th 343, 347 (*Joey G.*)).

Where a minor qualifies as a dependent and a ward of the juvenile court, the Legislature has declared that the minor cannot simultaneously be both. (§ 241.1.) Section 241.1 sets forth the procedures for handling cases with potential dual jurisdiction.

Section 241.1, subdivision (a), provides, in relevant part:

"Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a

jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. Any other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.”

The language requiring the recommendations of both departments be submitted to the juvenile court “with the petition that is filed on behalf of the minor” has been interpreted “to mean that the assessment of which status would be appropriate for the minor is to accompany the *later petition*, i.e., the petition that creates the potential for dual jurisdiction.” (*In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1013.) The *Marcus G.* court explained:

“Likewise, the determination of the appropriate status is to be made by the juvenile court that is acting upon that second petition. The juvenile court that has already acted upon an earlier petition so as to bring the minor within the jurisdiction of the juvenile court must now receive notice of the second proceeding, but it is the juvenile court facing the problem of dual jurisdiction that must determine whether the minor should be treated as a dependent child or a delinquent minor.”

(*Marcus G.*, *supra*, 73 Cal.App.4th at p. 1013.)

Thus, it is the filing of a second petition, whether pursuant to section 300 or sections 601 or 602, that triggers the procedures set forth in section 241.1.

Further, even where a second petition is filed, a report under section 241.1 is not necessary unless the minor is under the jurisdiction of the court at the time the second petition is filed. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1123-1124 (*D.M.*).) In *D.M.*, a section 241.1 report was provided. However, the petitioners contended that it was inadequate because the social worker prepared it unilaterally without the assistance of the probation officer. (*D.M.*, at p. 1123.) The court questioned whether a section 241.1 report was even necessary under the circumstances, explaining “[the minor] was not a ward in November 2008 when the juvenile court assumed jurisdiction over her as a dependent child. Accordingly, there was no basis for a section 241.1 report. [Citation.]” (*D.M.*, at p. 1124.) The court concluded that because no report was required, “it follows that any error in the manner it was prepared is necessarily harmless, furnishing no basis for writ relief.” (*Ibid.*)

B. A section 241.1 report was not required in this case

Here, Carissa had not been declared a ward of the court pursuant to sections 601 or 602. Nor was a petition filed during the pendency of the section 300 proceeding. Therefore, the potential for dual jurisdiction never arose, and a section 241.1 assessment was unnecessary.

Father compares this case to *Joey G.* In *Joey G.*, a court-placed foster child stole a cell phone. Following his arrest, he was found to be a dependent of the court pursuant to section 300 in Imperial County. Subsequently, he was found to be within section 602 in San Bernardino County. (*Joey G.*, *supra*, 206 Cal.App.4th at pp. 345-346.) On appeal from the juvenile court’s decision that he was a ward of the court pursuant to section 602,

the minor argued that the juvenile court erred in failing to obtain and consider a joint report pursuant to section 241.1. (*Joey G.*, at p. 346.) The *Joey G.* court reiterated that it is the juvenile court facing the problem of dual jurisdiction that must determine whether the minor should be treated as a dependent child under section 300 or a delinquent minor under sections 601 or 602. (*Joey G.*, at p. 348.) In *Joey G.*, the court held that the procedures set forth in section 241.1 were not followed because a joint report was not created and presented in accordance with section 241.1. (*Joey G.*, at p. 349.)

The present matter is distinguishable from *Joey G.* While father correctly points out that Carissa engaged in commercial sexual activity such as prostitution and methamphetamine use while running away from her various group homes, no criminal charges were filed against Carissa, nor did any entity seek to declare her a ward under sections 601 or 602. The issue of dual jurisdiction never arose, thus the requirement of a section 241.1 petition was not triggered.

Father further argues that the language of the statute requires a section 241.1 report to be filed “[w]henver a minor *appears* to come within the description of both Section 300 and Section 601 or 602.” (§ 241.1, subd. (a), *italics added.*) Father argues that this language does not require that the child already be either a dependent or a ward when the second petition is filed. Father argues there is ample evidence that Carissa “appeared” to come within sections 601 or 602 due to her chronic truancy, her chronic running away from foster placements, her commercial sexual activity, and her methamphetamine use. Thus, father argues, the statute applies.

We disagree with father’s interpretation of section 241.1 as requiring a joint report whenever a dependent child has engaged in an act or acts which may potentially subject him or her to

wardship under sections 601 or 602. Such a rule would require the juvenile court to engage the probation department in the dependency matter even if the probation department previously had no involvement. This is not a reasonable interpretation of the statute, nor is it workable for the dependency court, which cannot be required to notify the probation department every time a dependent child's behavior potentially comes within sections 601 or 602.

Therefore, we hold that a minor can only “appear[] to come” within the description of both section 300 and sections 601 or 602 when that minor is brought before a court on the second of two separate petitions seeking that the child be declared either a dependent or a ward. The juvenile court did not err in failing to order a joint report under the circumstances of this case, because no petition was ever filed pursuant to sections 601 or 602.

II. Substantial evidence supports the jurisdictional findings

Father argues that the evidence did not support the court's findings under counts a-1, b-1, b-3, and b-4. We address these contentions below, and find that substantial evidence supported the juvenile court's findings on all four counts.

We review jurisdictional findings under the substantial evidence standard. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.) “Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence that is reasonable in nature, credible and of solid value. [Citations.]” (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) In determining whether substantial evidence exists, we must review the evidence “most favorably to the prevailing party . . . indulging in all legitimate and reasonable inferences to uphold the court's ruling. [Citation.]” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298). We may not reweigh the evidence, evaluate the credibility of

witnesses, or resolve evidentiary conflicts. (*In re Jordan R.* (2012) 205 Cal.App.4th 111, 135-136.)

Further, when a petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, we may affirm the juvenile court's jurisdiction over the minor if any one of the statutory bases for jurisdiction enumerated in the petition is supported by substantial evidence. "In such a case, [we] need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]" (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) "As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate. [Citations.]" (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.)

A. Counts a-1 and b-1

Father challenges the sufficiency of the evidence supporting the jurisdictional findings that he inflicted serious physical harm on Carissa or that she was at risk of serious physical harm within the meaning of section 300, subdivisions (a) and (b) when he hit her with a belt.

A child falls within section 300, subdivision (a) if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian."

A child falls within section 300, subdivision (b) where "[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. . . ." The three elements for a section 300, subdivision (b) finding are: "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial

risk' of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) The third element effectively requires a showing that there is an ongoing, substantial risk of physical harm or illness to the child. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.)

Here, there was sufficient evidence that father imposed serious physical harm and placed Carissa at substantial risk of suffering such harm.

Carissa initially reported that father had hit her with a belt numerous times. She had marks on her legs which were consistent with her allegations of being hit with a belt. Carissa also reported that this was not an isolated incident. She stated that she would get hit two to three times per week on average, either by belt or with father's hand. The most recent incident was the morning of October 9, 2015, the day of Carissa's detention. Father found clothing in Carissa's backpack that he thought was too revealing, so he kicked her and hit her on the back. Carissa explained that it felt like father was hitting her all the time with a belt or with his hand for stupid reasons, such as if she did not clean her bathroom or her room correctly. Carissa consented to her own detention because she was afraid to go home.

Father also admitted to some of the physical violence that Carissa described. He admitted he attempted to strike Carissa when she tried to sneak a male into their home. He also admitted the incident that led to the detention, stating that when he found out that Carissa had ditched school, he reached into the shower and hit her with his hand.

Reading this evidence most favorably to the juvenile court's decision, we find that it is sufficient to sustain the findings under section 300, subdivisions a-1 and b-1. “Whether a parent's use of discipline on a particular occasion falls within (or instead

exceeds) the scope of [the] parental right to discipline turns on three considerations: (1) whether the parent’s conduct is genuinely disciplinary; (2) whether the punishment is ‘necess[ary]’ (that is, whether the discipline was ‘warranted by the circumstances’); and (3) ‘whether the amount of punishment was reasonable or excessive.’ [Citations.]” (*In re D.M.* (2015) 242 Cal.App.4th 634, 641 (*In re D.M.*)). The juvenile court was justified in finding that father’s purported discipline of Carissa was inappropriate or excessive under the circumstances and caused Carissa unreasonable pain and suffering.²

Father argues that he had a right to reasonably discipline his child. (*Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72 [parent who was hitting her daughter with a wooden spoon not subject to inclusion in Child Abuse Central Index because she had a right to administer reasonable punishment].) Father argues that Carissa did not suffer serious harm. He equates this case to *In re D.M.*, where a mother used her hand or a sandal to spank her two children on the buttocks on rare occasions when lesser disciplinary measures proved ineffective. (*In re D.M.*, *supra*, 242 Cal.App.4th at p. 637.) Father argues that there should be no blanket rule against spanking with a belt, just as the *In re D.M.* court concluded there is no blanket rule against spanking with a sandal. However, the juvenile court here did not rely on a blanket rule against hitting with a belt. Instead, the court concluded that the punishment

² We reject father’s assertion that the juvenile court failed to analyze the factors set forth in *In re D.M.*, *supra*, 242 Cal.App.4th at page 640. The court’s interlineations show that the court considered whether or not the physical violence was in fact discipline, and concluded that it was. However, the juvenile court made clear its finding that such discipline was unreasonable and excessive.

inflicted was excessive. As set forth above, the evidence supported the court's decision. Further, in *In re D.M.*, the evidence showed that mother never spanked her children hard enough to leave bruises. Here, on the contrary, there was evidence that father was hitting Carissa hard enough to leave marks. The facts of this case are sufficiently distinguishable from the facts of *In re D.M.* to warrant a different outcome.

In re J.N. (2010) 181 Cal.App.4th 1010 (*J.N.*), is also distinguishable. In *J.N.*, the father was involved in an automobile accident with his children in the car while he was driving under the influence of alcohol. (*Id.* at pp. 1015-1016.) Because it was an isolated incident and the parents seemed remorseful and loving, there was insufficient evidence of a substantial risk that the parents' behavior would reoccur. (*Id.* at p. 1026.) In contrast to *J.N.*, this case involved multiple incidents in which father repeatedly hit Carissa with a belt or his open hand, inflicting marks or bruises, to the point where Carissa was afraid to return home.

Father further argues that Carissa's stories were exaggerated in an effort to gain the freedom to roam the streets. According to father, Carissa was playing the system to further her desire to have no supervision and no consequences for her actions. Carissa's credibility, and the conflicts in evidence between father and Carissa, were properly determined by the juvenile court. We may not reweigh the evidence, or re-evaluate the credibility of witnesses. (*In re Jordan R.* (2012) 205 Cal.App.4th 111, 135-136.) The juvenile court had sufficient evidence before it to make the findings under sections a-1 and b-1. We cannot second-guess its decision that Carissa's reports of abuse were valid. No error occurred.

B. Count b-3

In count b-3, the juvenile court found true the allegation that Carissa was a victim of sexual exploitation and father was unable to supervise her or protect her from such harm. Father contends that the evidence does not support the conclusion that Carissa was a victim of sexual trafficking while in his care.

Father argues that according to Carissa, she began prostituting for money while in foster care. Before that, she simply engaged in sexual activity for no pay and without any expectation of return. Therefore, father argues, count b-3 cannot stand because there was insufficient evidence that she was a victim of sexual trafficking while in father's care.

We disagree, and find that there is sufficient evidence that Carissa was engaging in commercial sexual activity while in father's care. Father admitted to the social worker that Carissa's diary, which he found on the day she was detained, documented that she was prostituting with her friends. In addition, Carissa had admitted to father that she sometimes exchanged sex for "candy," but father thought that the word "candy" might refer to something else. This evidence is sufficient to support the juvenile court's finding that Carissa was the victim of commercial sexual activity while in father's care, and father was unable to supervise or protect the child from such activity.

C. Count b-4

In count b-4, the juvenile court held that Carissa has mental and emotional problems, not limited to self-harming behaviors such as cutting herself and suicidal ideations, and that father was unable to care for the child due to her mental and emotional problems. The juvenile court found that Carissa's mental and emotional problems endangered her physical health and safety and put her at risk of physical harm.

Father argues that he had done his best to deal with Carissa's mental health issues. When the children first moved in with him after their mother's death, he put them both in counseling. They attended for two to three months. Sometime in August 2015, father noticed cut marks on Carissa's hands, for which he sought immediate treatment at Canyon Ridge, where she was hospitalized for a week. There, Carissa revealed for the first time that she had been sexually abused in the past by her mother's boyfriend. After Carissa's most recent troubling behavior, father made an appointment for later in October 2015 to meet with a counselor. On the day Carissa made the physical abuse allegations, he told her he was taking her back to Canyon Ridge for treatment because he felt she needed help. Father argues that this evidence shows that he did meet her mental and emotional needs. He just did not have a chance to effectuate his plans.

We find that the evidence supports the juvenile court's conclusion that father was not able to supervise or protect Carissa from her mental and emotional health issues. The evidence shows that during her hospitalization, it was recommended that Carissa take psychotropic medication. However, father did not allow it because he was concerned about the potential effects of the medication. In addition, while he tried to help her in other ways, father eventually used physical punishment to deal with the problems stemming from Carissa's mental and emotional issues. This is sufficient evidence to support the juvenile court's finding that father was unable to adequately supervise or protect her.³

³ Father's argument that count b-4 is based solely on emotional harm is incorrect. The allegation is that Carissa's mental and emotional problems endanger her physical health and safety and place her at risk of physical harm. There is no

III. DCFS's cross-appeal

DCFS argues that the juvenile court erred when it struck the language in counts a-1 and b-1 that father “physically abused” Carissa and inserted language stating that father “used inappropriate physical discipline” on Carissa. DCFS argues that the juvenile court abused its discretion in making these amendments to the allegations because the record supports the original language describing father’s acts as “physical abuse.” As such, DCFS argues, father’s actions do not deserve to be called “discipline.”

We disagree. The juvenile court acted within its discretion in changing the words “physical abuse” to “inappropriate physical discipline.” The evidence supported the juvenile court’s determination that father’s acts were aimed at correcting Carissa’s negative behaviors such as skipping school and engaging in sexual activities. Father provided evidence that his actions were a result of Carissa’s failure to live by the rules of his household, and the juvenile court was entitled to believe this evidence.

Even when a parent has a genuinely disciplinary motive, the parent’s actions fall outside of the parental right of discipline where such discipline is excessive and unreasonable. (*In re D.M.*, *supra*, 242 Cal.App.4th at p. 641.) The evidence amply supported the juvenile court’s determination that father’s acts constituted excessive parental discipline. No error occurred.

question that Carissa’s troubling behaviors stemming from her mental and emotional problems were a serious risk to her physical health and safety.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____. J.
CHAVEZ

We concur:

_____, J.*
GOODMAN

_____, Acting P. J.
ASHMANN-GERST

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