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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re F.L. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.M.P.,

Defendant and Appellant;

F.L. et al.,

Appellants;

M.L.,

Defendant and Respondent.

B283551

(Los Angeles County
Super. Ct. No. DK18221)

APPEAL from an order of the Superior Court of Los Angeles County. Robert S. Draper, Judge. Affirmed in part, dismissed in part.

Pamela Rae Tripp for Defendant and Appellant.

Michelle L. Jarvis, under appointment by the Court of Appeal,
for Minors.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant
County Counsel, and Kim Nemoy, Deputy County Counsel, for
Plaintiff and Respondent.

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

* * * * *

In July 2016, the Los Angeles County Department of Children and Family Services (Department) filed a petition pursuant to Welfare and Institutions Code section 300,¹ alleging domestic violence between L.M.P. (mother) and M.L. (father), substance abuse by mother, and sexual abuse by both parents of the couple's twin girls, H.L. and F.L. At the contested jurisdictional hearing that took place over several weeks in May and June 2017, the Department moved, pursuant to section 350, subdivision (c), to dismiss the dependency petition in its entirety. Counsel for H.L. and F.L., joined by mother, objected to the dismissal of the sexual abuse allegations against father. The court, without objection from any party, dismissed the domestic violence allegations and all allegations against mother. Minors presented evidence in support of the court's continuing jurisdiction with respect to the allegations of sexual abuse by father. Following the conclusion of the evidence and argument, the juvenile court granted the Department's motion.

¹ All undesignated section references are to the Welfare and Institutions Code.

The court concluded there was insufficient evidence warranting an assertion of jurisdiction.

Both mother and minors appeal the dismissal of the petition with respect to the sexual abuse allegations stated against father. No party has appealed the dismissal of the domestic abuse allegations or the allegations as against mother.

We conclude mother lacks standing to appeal the court's dismissal under section 350, subdivision (c) and therefore dismiss her appeal. As to minors' appeal, we affirm the dismissal as we are unable to conclude that a finding in favor of minors is compelled as a matter of law, given the extensive, disputed evidence presented at the hearing, including conflicting expert testimony.

FACTUAL AND PROCEDURAL BACKGROUND

Mother moved to California with her seven-year-old twins, H.L. and F.L., in June 2016 because she had recently come to suspect father was sexually abusing both girls. Mother and the girls went to live in the home of P.P. (maternal grandmother). Upon their arrival, mother was admitted to Cedars Sinai Medical Center due to medical problems related to substance abuse. While mother was in the hospital, the girls remained under the care of maternal grandmother. Mother had a confidant call the Department on her behalf to report her concerns about father. The caller also reported that mother was seeking treatment for substance abuse. Father relocated to California as well, but drove out separately from mother and the girls and did not move into maternal grandmother's home.

1. Detention and Investigation

Shantae McKinney, the Department social worker assigned to the case, met with mother at the hospital. Mother reported that several months earlier she found naked photographs of H.L. and F.L. on father's computer, including photographs of them in the

bathtub, and had also witnessed father fondling the girls. Mother expressed that she was “conflicted” because she did not know if what she had discovered qualified as sexual abuse. Mother said her personal assistant helped her install “nanny cameras” in the girls’ bedroom and she had video recordings of father inappropriately touching the girls in their beds. Mother expressed concern that father had taken advantage of the girls, as well as mother’s finances, while she was dependent on prescription drugs. Mother’s personal assistant gave Ms. McKinney a flash drive containing copies of some of the photographs mother found on the computer, as well as some video and audio recordings.

In the detention report, Ms. McKinney described the photographs, approximately 35, she had been given to review. The “most concerning” photographs were of the girls in the bathtub with their genitalia exposed, photos where they “appear[ed]” to be touching each other’s chest area and genitalia, and one photograph with the girls standing in the bathtub, completely naked, their backsides to the camera, “slightly bent over.” Ms. McKinney described the video clip from the nanny camera footage in the girls’ bedroom as showing father caressing H.L.’s back, arm and buttocks over her clothing while she appeared to be sleeping.

Ms. McKinney documented her interviews of mother and father, maternal grandmother, several other family members, the girls’ two nannies (Y.F. and Z.R-Z.), and others. Mother admitted her substance abuse but denied any other wrongdoing. Father denied he was sexually inappropriate with the girls in any manner. Maternal grandmother was skeptical of any wrongdoing by father. Y.F. denied ever seeing father act inappropriately and described him as a good father and husband, a sentiment shared by Z.R-Z.

H.L. and F.L. were interviewed on July 1, 2016, by Nicolle Farrell, a forensic interviewer at Stuart House. Ms. Farrell had

18 years of experience interviewing primarily sexual abuse victims. Ms. McKinney observed the interviews, but was not in the room. Both girls disclosed that father had touched them once on their vagina, but could not recall any specifics. F.L. said that mother had also touched her vagina.

The Department obtained a removal order and placed the girls in the home of maternal grandmother. Mother filed for divorce from father. After mother was released from Cedars Sinai Medical Center, she checked into an in-patient drug rehabilitation program.

On July 7, 2016, the Department filed a petition pursuant to section 300, subdivisions (a), (b), (d), and (j), alleging domestic violence between mother and father, substance abuse by mother, and sexual abuse of the girls by both parents.

In preparation for the jurisdictional hearing, Ms. McKinney met with the girls at maternal grandmother's home, and conducted further interviews. In her follow-up discussions with mother and father, they largely reiterated their prior statements, but added some additional detail. Both mother and father were reported as cooperative and willing to participate in services.

During a visit to maternal grandmother's home in August 2016, Ms. McKinney reported that H.L. and F.L. appeared happy and said they liked living with maternal grandmother. They had gone to summer camp and were excited about starting second grade.

At this time, mother was still in residential treatment. She denied "tickl[ing]" the girls on their private parts. She said she had obviously touched them to clean them, and to show them how to keep themselves clean. Mother said she also recently demonstrated for them what it would mean for an adult to touch them inappropriately when she tried to ask them about father's behavior. Mother reiterated to Ms. McKinney that she was worried about the

way father had become “secretive” with the girls during the past year and was concerned no one would believe her.

Father continued to maintain that he had never touched the girls inappropriately. He said he often rubbed the girls’ backs, arms, and bottoms to wake them, or would sometimes tickle their feet, and he did not believe that was wrong. He denied having a “stash” of photographs and said he had a lot of photographs that he shared with the family, including mother’s adult children, and that they were stored on a cloud service to which all family members had access. When asked about the girls’ statements that he had touched their private parts, father said the girls are “angels” and “innocent” and he was not calling them liars, only that they spent a lot of time with mother before the forensic interviews and he therefore questioned the validity of the interviews. Father said he did not believe mother ever touched the girls inappropriately or in a sexual manner. But, he believed that mother had been talking to the girls about inappropriate subjects for their age, including sex.

Ms. McKinney spoke with the family’s two live-in nannies. Z.R-Z. had been working for the family since March 2010 and took care of the girls “24/7.” She explained they had lived in various locations around the world, but during the almost two years before they moved to California, mother would rarely come out of her room and did not participate much in the girls’ care. Father attended to mother’s needs, and also assisted with the girls. Z.R-Z. denied witnessing any inappropriate behavior by father with the girls and said it was “preposterous” that father would be sexually abusing them. Recently, she noticed the girls had become more aware of their bodies and had started to say things like “gina” for vagina or other adult words they had never used before. Z.R-Z. also said the girls started having “girl talk” with mother behind closed doors and were secretive about the conversations. H.L. had recently started

telling little “white lies.” Z.R-Z. reported that after the forensic interviews, F.L. had told her she was “relieved” and that she was angry at father for taking naked photographs of them.

Z.R-Z. said she sometimes monitored parental visits for father at maternal grandmother’s home and the girls always seemed happy to see him and to spend time with him. “He makes his visitation meaningful and fun without talking about adults [*sic*] problems.”

The girls’ other nanny, Y.F., said she had been working for the family for six years and “spends about 98% of the day” with the girls. She described father as an “excellent parent” and very involved in their day-to-day care. He helped get them ready in the morning and she found nothing unusual about father waking the girls, particularly H.L. who was always more difficult to wake. She denied having any concerns about sexual abuse and said she would be the first to report it if she felt it was occurring. She expressed concerns about mother’s substance abuse and the negative influence of mother’s personal assistant. Mother recently started having “secret conversations” with the girls, more often with F.L. She believed F.L. would lie to protect mother. Y.F. was aware that mother had told father to sleep in the girls’ bedroom in a sleeping bag when she was out of town. With respect to the photographs of the girls, Y.F. said father always took photographs of the family and had taken multiple photography classes. She was not aware of any inappropriate photographs.

After the girls had been detained, the local police department served a search warrant at maternal grandmother’s home to seize the family’s electronic devices. Detective Ubaldo Mendoza reported to Ms. McKinney that approximately 40 devices had been recovered. Detective Mendoza said he was reviewing a “huge volume” of photographs but had not yet come across any photographs of the

girls in the bathtub or any other photographs that would “make him raise an eyebrow.” He did indicate concern regarding some video footage, including one in which mother was “trying to prod” or “hound” the children into saying that father touched them inappropriately. In the video, both girls denied father did so and then started to ignore mother, talking amongst themselves, giggling and pinching each other in the chest. Detective Mendoza said another video, apparently from a cell phone, showed H.L. bottomless and purporting to make her vagina “talk.” F.L. could be heard in the video as well as one nanny but it was unclear who recorded the video.

With respect to the parents’ monitored visitation, Ms. McKinney reported that B.I., a maternal cousin who also lived in maternal grandmother’s home, was the primary monitor of parental visits. B.I. said that sometimes mother whispered to the girls and asked them questions about their visits with father. B.I. attempted to correct mother but it would change “the mood” of the visit. B.I. reported no problems with father’s visits which always went well.

Ms. McKinney spoke with D.K., mother’s adult daughter from a prior relationship. D.K. said her mother had always been anti-drugs and into holistic medicine, and that the substance abuse that took place before mother moved to California meant that “something was wrong.” D.K. said father did not seem to want to help mother get sober, but she never got a “negative vibe” from him or saw him being inappropriate with her half sisters. D.K. said the girls sometimes seemed sad or anxious around father. She was more worried about F.L. who seemed angry and was exhibiting a tendency to self-harm. For instance, F.L. would say she wanted to pull her face off or wished she was dead when D.K. was not there. Both girls also asked D.K. to not “leave town.”

Throughout August and September 2016, both parents had clean drug tests. Mother was reported as doing well and progressing in treatment. Father began individual counseling sessions with Dr. Ian Russ. Dr. Russ reported that father seemed concerned about the children, as well as mother's progress in treatment. Father denied taking any inappropriate photographs of the girls. Dr. Russ said that father was reading books on parenting. The plan was that father would continue to meet with him. Dr. Russ later reported that he did "not see any indications or symptoms that [father] has inappropriate sexual feelings towards his children or towards children in general." He felt father was "self-reflective and interested in being a good father." Dr. Russ said he had not seen any of the photographs which precipitated the Department's involvement.

In September 2016, Y.F. emailed Ms. McKinney, telling her that she hoped the nannies' statements would be "honored." They were concerned that father was "innocent" and that there could be "dire consequences" as a result of mother's accusations.

In December 2016, it was reported that mother was continuing to test clean, had moved out of the treatment facility and was participating in outpatient services and therapy. Her counselor reported she was "doing far better than expected."

2. The Contested Jurisdictional Hearing

The jurisdictional hearing began in May 2017. A number of the photographs recovered from father's electronic devices, the nanny camera video footage, and several other video and audio clips were admitted into evidence, as well as the recorded forensic interviews of F.L. and H.L. We summarize the material portions of the girls' interviews relevant to our discussion.

a. Forensic interview of F.L.

F.L. said Y.F. or Z.R-Z. usually woke her up, but sometimes father did. Father sometimes slept in a sleeping bag in their room. F.L. liked it when he slept in their room because he read them stories. If father woke her up, it was usually by playing music. F.L. said she was an “early bird” and got up easily, but her sister did not because she liked to stay up late. The nannies or father would always have to get her out of bed. Father would sometimes pat H.L. on the back, but she usually kept laying there. F.L. had been able to get her sister up sometimes by teasing her that she would not be able to see the boy she liked at school if she stayed in bed.

As for bath time, F.L. said that one of her nannies usually bathed her and her sister. She liked to play with the bubbles and her dolls, and to play at being a mermaid with her sister. Sometimes her mother gave them a bath, but never father.

F.L. said that father was the one who always took pictures. When shown the pictures of her and H.L. in the bathtub touching each other, F.L. said they were in the tub in mother’s bathroom. She remembered that mother was in the room and father took the pictures. She said they were touching each other’s “business” (private parts) or “boobies.” F.L. explained: “Sometimes [H.L.] and me do it for fun. We just do it for silliness. We didn’t know that that was not appropriate, but now we do; so we just don’t do that.”

F.L. said that all the bathtub pictures were taken in mother’s bathroom because father was allowed in that bathroom. When asked if there were places father was not allowed in the house, F.L. said he was not allowed in the room during “girl talk” with mother.

Ms. Farrell continued to ask about the bathtub photographs and F.L. said mother had shown them to her on the computer and asked her about them. Mother told F.L. that she knew she was trying to protect father. F.L. said she then told mother that father

had touched her “gina” one time. She had kept it a secret for maybe a year or more. She was afraid something bad would happen like father going to jail. When asked how father had touched her, F.L. said, “I don’t remember when he did it, where he did it. I just remember that he did it.” He touched her with his hand, just a “regular touch” and then he stopped, just “for one second.” It felt “weird,” “strange.” He did not poke her inside or touch her with anything else. F.L. could not remember what house it happened in or where they were.

Ms. Farrell asked if anyone else had touched her like that. F.L. said mother had, but “that’s okay for her” because she is “my mom” and a girl. Sometimes, they were in their pajamas and lying in bed, but it never happened without any clothes on. F.L. explained it started with tickling, and she did not mind. One time, she saw mother tickling H.L. like that on the bed. She did not think anything of it. She thought they were just having fun.

F.L. said no one had touched her chest, but she and H.L. sometimes laughed and touched each other’s “boobies.”

F.L. said she was getting sleepy. She said she liked talking about the pictures and the touches, “so I can feel better and don’t have to worry about them.”

Ms. Farrell showed F.L. some more pictures, including the picture of the girls lying face up in the bathtub. F.L. said that she and H.L. just liked to relax and float like they were in the ocean, but with no sharks or anything. Father did not tell them to pose like that, she and her sister just liked floating like that.

Ms. Farrell asked F.L. if anyone touched her with their mouth. F.L. responded that she sometimes liked to pretend she was going to bite her sister. F.L. also said that she went to the doctor with mother and father, and the doctor asked to see her private

parts and she said no. She thought it was just to make sure she was “doing fine” but she said no anyway and so did H.L.

F.L. said she was not allowed to see father’s “business” and she never saw mother getting dressed. F.L. said pictures that showed your “business” should not be framed, but if you covered up the private parts, then it would be okay. She did not like that father had taken the pictures that showed her business because he was a boy. If he was a girl, it would have been fine.

After responding to a few more questions, F.L. said “I feel so good now that I’m talking [sings].” F.L. said it was a good idea to talk about things so you can understand and “fix” things.

b. Forensic interview of H.L.

H.L. said they were staying at maternal grandmother’s house since they had moved to California. She liked it there. Mother was in the hospital “getting fixed” and father was staying with friends because there was not enough room for him at maternal grandmother’s house.

H.L. said she used to be “fussy” getting up in the morning for school. H.L. said she was a “night owl” and liked to stay up and read books, so it was hard for her to get up in the morning. Her sister fell asleep easily so it was easy for her to get up. Normally, one of her nannies would try to wake her up by talking to her, tickling her, or jumping on the bed. If that did not work, father would come in and tell her to wake up. Father would usually just talk to her but sometimes would rub her back along the spine. H.L. liked it because it felt “comfortable” and made her want to keep sleeping.

H.L. said that she and F.L. would sometimes sleep with mother and father in their bedroom. Mother would hug F.L. and father would hug her. “We all snuggle.” When Ms. Farrell asked H.L. if father ever rubbed her back then, H.L. said yes, and he

would also rub mother's back and F.L.'s back, and sometimes their shoulders.

At bath time, H.L. said it used to be one of her nannies that gave them a bath, but she said she and F.L. now wash themselves. She and F.L. used to get undressed and jump on their beds while the nanny got the bathtub filled with water. They usually took a bath together because they liked playing with their dolls and mermaid toys.

H.L. said father did not bathe them. Mother told them that men cannot see girls' private parts. H.L. denied that anyone took photographs of them in the bathtub, but then said, "[m]aybe they did. Maybe they do and I don't know." She said her mother never said there was a rule against taking pictures at bath time. H.L. also said that mother told her that Ms. Farrell might ask her about pictures in the bathtub or shower and that mother had admitted taking a picture of her, F.L. and father in the shower.

H.L. said she and her sister had "girl talk" with mother and that they were not supposed to tell people what they talked about. Mother also told her that an adult telling her to keep a "bad secret" is wrong. Mother said that Ms. Farrell was "an old friend" of hers.

Ms. Farrell asked H.L. if there was anything important she thought she should know. H.L. said, "I think you should know about a part of our girls' talk." Ms. Farrell asked if they had a talk about "touches" and H.L. said she could not remember anything. She recalled F.L. saying she missed father. She also said that on the previous night, mother asked them if anyone had touched their private parts. F.L. told mother that father had, as well as a boy at school. H.L. also said father and a different boy at school had touched her. Mother thanked them for telling her. When Ms. Farrell asked H.L. to explain about how father had touched her, H.L. said he spanked them "for fun" sometimes and it might have

happened then. “I don’t remember.” H.L. expressed concern that father could get in trouble.

H.L. said she did not like talking about father because it made her miss him a lot since he was not living with them and she did not get to see him enough.

c. The Department’s witnesses

The Department called two witnesses: Dr. Richard Romanoff, a clinical and cognitive psychologist with 30 years of experience in forensic psychology, and Ms. McKinney, the case social worker.

Dr. Romanoff opined that he found no evidence of sexual abuse of the girls by father, nor evidence of a substantial future risk. He acknowledged father exhibited “poor judgment” in taking some of the photographs, including the bathtub photographs. However, he found no evidence that father took or looked at those photographs for sexual gratification, or for the purpose of making the images available to others. There was no indication of pedophilic interest in his daughters. Dr. Romanoff emphasized the importance of looking at the photographs and video clips in context, including the fact there were no other indicators of abuse. By all measures, father appeared to be a loving and caring parent.

In rendering his opinion, Dr. Romanoff did not conduct any interviews. He reviewed the forensic interviews of H.L. and F.L., approximately 100 photographs, several video and audio recordings, and the reports prepared by the Department which included lengthy statements from mother, father, numerous other family members, and the family’s two nannies.

Dr. Romanoff found the statements of the two nannies to be particularly significant because they had spent years with the girls, taking care of them on a daily basis, and were familiar with the family dynamic. Both women were also well-educated. Their statements and interviews reflected the girls had no fear around

father, nor did they exhibit the type of behavior often associated with victims of sexual abuse. Despite being an almost constant presence in the girls' lives, both women said they never saw father acting inappropriately with the girls, nor heard the girls say that father had done so.

Dr. Romanoff also believed it was significant that the girls' descriptions of the alleged touchings were vague and there was "almost an equivalency" in how they described the alleged touchings by both father and mother.

With respect to the nanny camera video of father attempting to wake H.L., Dr. Romanoff agreed there appeared to be a "sensual quality" to it. However, the video shows the nanny and F.L. in the room. There was no evidence father was trying to be secretive about the behavior or was engaging in the behavior for sexual gratification. He reiterated that it showed "very poor judgment" but not an inappropriate interest in the child. When the video was analyzed in context with the rest of the information, Dr. Romanoff opined that it did not create a risk for future sexual abuse.

Dr. Romanoff explained that the naked photographs were problematic for a different reason. He expressed concern the girls could suffer harm from the disclosure of the photos, later in life, if for example, a computer hacker gained access to the photos and published them on the internet. He noted that F.L. expressed discomfort when shown the photographs by Ms. Farrell. He believed the girls could definitely suffer emotional harm if other individuals saw the photographs without their permission. Dr. Romanoff also said that once a child reaches the age of six or seven, ambiguous touching like the caressing by father in the nanny camera video can cause confusion in the child. He opined that physical and sexual boundaries needed to be kept more clear.

Dr. Romanoff reviewed the report prepared by the minors' expert, Dr. Michael Dishon. He disagreed with Dr. Dishon's conclusion that it appeared father was "grooming" the girls. "Grooming" is a term to describe behavior pursued by a sexual perpetrator that makes it more likely a victim will be susceptible to victimization later on. Dr. Romanoff reiterated the importance of assessing the photographic and video evidence in context, and that when so viewed, there was no basis to conclude father was grooming the girls. Father made no effort to hide the photographs and had them stored with thousands of other family photographs on a computer available to the family. Father was not defensive about the photographs and there was no evidence he used them for sexual gratification. Dr. Romanoff thought it was good that father was seeing a therapist, but said he felt Dr. Russ should be privy to the photographs so he understood the context.

On cross-examination, Dr. Romanoff conceded there may have been duplicates in the 100 or so photographs he had been given by the Department to review. He said he had not seen many of the photographs minors' counsel described. When the hearing ended for the lunch break, Dr. Romanoff was given a binder of photographs to review (minors' exhibit 3). When his questioning resumed, Dr. Romanoff said the exhibit binder contained a number of photographs he had not previously seen, including some of the girls with the family dog, photographs with mother and the girls in the swimming pool, the photograph of father kissing H.L. on the mouth, and several photographs of other partially nude children. Dr. Romanoff considered these photographs of a similar quality and character to the ones he reviewed in rendering his report. He stated the girls were naked in many of them, but they do not look uncomfortable and are not in forced poses typical of child erotica. None of the photographs in minor's exhibit 3 changed his opinions.

Dr. Romanoff reiterated that some of the photographs showed poor judgment, but did not support a finding of any predilection in father for pedophilia or that the girls were at risk for sexual abuse.

When asked questions on cross-examination about the photographs where the girls appear to be touching each other in the bathtub, Dr. Romanoff conceded that he had not considered whether these were sequential photographs. He agreed it might be significant whether father continued to take photographs intentionally once the girls started touching each other.

Ms. McKinney, the Department social worker, testified about the Department's investigation. She agreed that when she first saw the bathtub photographs of the girls and the nanny camera video clip she found them disturbing. She felt the photographs were inappropriate because of how the girls were positioned, often with exposed genitalia or touching each other. Nevertheless, she relied on Dr. Romanoff's assessment and expertise and the likelihood of risk to the girls. According to Ms. McKinney and her superiors, Dr. Romanoff's report supported the Department's determination that dismissal was warranted.

Ms. McKinney explained that the Department found the allegations of domestic violence between the parents and sexual abuse by mother to be unfounded. With respect to the allegations of mother's substance abuse, mother had successfully addressed the Department's concerns through treatment and was continuing to do well in recovery. As to allegations of sexual abuse by father, he was participating in individual counseling with Dr. Russ, who was experienced in sexual abuse issues. Dr. Russ and Dr. Romanoff both concluded that father did not present a risk to the girls. The Department had therefore concluded its initial concerns had been addressed and there was insufficient evidence to proceed on the petition.

In her conversations with father throughout the course of the investigation, Ms. McKinney said he admitted he may have shown “poor judgment” with some of the photographs he took of his daughters, but he did not believe any of them was inappropriate. Ms. McKinney acknowledged she did not personally show any of the photographs to father and discuss them with him; they only talked about them generally. Father also denied touching the girls inappropriately. He said he did not think it was wrong to rub the girls gently to wake them, even if his hand rubbed across their buttocks. In her observations of father interacting with both girls during visits, Ms. McKinney saw no evidence the girls were fearful or uncomfortable around father. Their relationships appeared to be normal father-daughter relationships.

Ms. McKinney acknowledged that both girls, in their forensic interviews, had said father touched them, and that mother had reported seeing inappropriate touching. But Ms. McKinney also noted the girls denied any touching in the video in which mother was trying to get them to say father had done so. Ms. McKinney agreed that F.L. had appeared uncomfortable when Ms. Farrell showed her the bathtub photographs. She further admitted that she had not seen all of the photographs contained in minors’ exhibit 3, and agreed it was possible some of those photographs could be significant in making an assessment of risk. She said that no one at the Department had seen Dr. Dishon’s report before making the decision to recommend dismissal. Nonetheless, Ms. McKinney reiterated that the Department believed Dr. Romanoff’s report supported the conclusion that father does not present a risk to the girls and that dismissal was appropriate.

After the testimony of Dr. Romanoff and Ms. McKinney, the Department renewed its motion to dismiss the petition in its entirety pursuant to Welfare and Institutions Code section 350,

subdivision (c). Minors objected to dismissal, except as to the domestic violence allegations at paragraphs (a)(1) and (b)(5). All parties stipulated that those allegations could be dismissed.

Minors then proceeded with presenting their witnesses in support of the court's jurisdiction with respect to the sexual abuse allegations against father at paragraphs (b)(1) and (d) of the petition. Minors called Dr. Dishon, a practicing forensic psychologist since 1983, Ms. Farrell, the forensic interviewer from Stuart House, Jim Carden and Timothy Weaver, forensic computer experts and former law enforcement officers, mother and father.

d. Minors' witnesses

Like Dr. Romanoff, Dr. Dishon did not conduct any interviews in forming his opinions. Dr. Dishon reviewed the Department's reports, and analyzed the forensic interviews of H.L. and F.L., a few hundred photographs, and several short video and audio recordings, including the nanny camera footage.

Dr. Dishon had no opinion as to whether the girls had been sexually abused, as he did not have sufficient information to render such an opinion. He also did not form any opinion as to whether father had any sexual deviance. Rather, Dr. Dishon stated his opinion was that the girls have "some risk for sexual abuse" in the future based on the fact that father appeared to be "grooming" his daughters. He explained that grooming involved conduct intended "to influence [a] child in a particular way and make sexualized behavior more acceptable." Based on the photographic evidence, particularly those photographs that "sexualized" the girls, Dr. Dishon was "concerned that grooming might have been going on."

The main factor supporting his conclusion that grooming was occurring was the large number of photographs taken by father in which the girls are nude, including photographs exposing their

genitals. He noted that the bathtub photographs, including the ones in which the girls appear to be touching each other, were particularly problematic. Such photographs were not properly characterized as normal family photographs. Rather, they were suggestive of a distortion of the normal father-daughter dynamic, where the girls' bodies were the focus of attention.

The nanny camera video of father trying to wake H.L. was similarly problematic as it showed father stroking the child's back and buttocks "in what appears to be a more erotic way than I would expect from a parent." Father continued stroking the child even though she did not respond. Dr. Dishon also pointed to the photograph of father kissing H.L. on the mouth in a sexualized way. It too suggested a distortion of the normal relationship. In his opinion, it was not a kiss reflecting parental affection.

Dr. Dishon also believed the girls were at risk for developing problematic personal behaviors as they got older given the preoccupation with their bodies they have experienced in childhood.

As for Dr. Romanoff's report and his conclusion the girls did not face any risk of abuse, Dr. Dishon said he believed Dr. Romanoff had become an apologist for the parents' behavior, assessing risky, inappropriate behavior as merely poor judgment. Dr. Dishon also did not believe it was sufficient to merely refer to the girls' statements about the alleged touchings as being "vague," given their young age and the numerous stressors on them to respond to difficult questions. He agreed that their statements and descriptions were vague but explained that the interviews performed by Ms. Farrell were "weak." Ms. Farrell did not ask sufficient or proper questions to clarify several issues, including what the girls meant by "girl talk" with mother and the circumstances surrounding the alleged touchings. Nevertheless, under the circumstances, the vagueness of their statements did not

“eliminate the possibility that something might have happened.” Dr. Dishon also said he felt the girls’ affects during the interviews did not match the seriousness of what was being discussed. He explained that while many victims of sexual abuse show obvious upset and fear, particularly around the offending parent, not all do.

When asked whether he was aware that the family’s electronic devices contained thousands of additional family photographs, Dr. Dishon said he was not, but that he believed he had been provided the relevant photographs to assess.

Ms. Farrell, the forensic interviewer, attested to her interviews of the girls on July 1, 2016 at the start of the proceedings. In conducting those interviews, Ms. Farrell followed the interview protocol developed by the National Institute of Child Health and Development. Ms. Farrell also reviewed the photographs provided to her by Ms. McKinney, as well as the nanny camera video of father attempting to wake H.L.

Ms. Farrell said she did not adhere to the belief that children are highly susceptible to making false allegations of sexual abuse. She explained that most children were reluctant to confirm that sexual abuse had taken place and generally delayed reporting. However, she said the related issue of “coaching” can be a problem. Coaching entailed indoctrinating a child to such an extent that it affects their own memory of an event and how they retell it. Ms. Farrell believed it was “quite difficult” to coach a child of seven or eight years of age to falsely report abuse. In her opinion, neither H.L. or F.L. showed signs of having been coached.

In general, when inappropriate photographs of a child exist, Ms. Farrell believes they should be shown to the child during the course of an interview. During her interview of F.L., she showed F.L. a few of the naked photographs that had been taken of her in the bathtub. F.L. appeared surprised and “bewilder[ed].” During

her interview of H.L., H.L. said there were no pictures of her naked, so Ms. Farrell decided not to confront her with them in case it upset her. She acknowledged that both girls made “positive statements” about the adults in their lives.

Based on the girls’ statements in the July 1 interviews, Ms. Farrell believed that an investigation for sexual abuse was warranted. She did not render any further opinions in the case.

The computer forensic experts, Mr. Carden and Mr. Weaver, analyzed the desktop computer and related hard drives used by father. Father’s user account on the computer was not password-protected. The hard drive had some 195,000 images on it, but that included an extensive number of “non-user created visual files” that are cached on the system during internet use, such as an image of album cover art when music is downloaded.

Of the 195,000 visual files, there were thousands of general photography images of landscapes, architectural subjects and the like. There appeared to be approximately 2,000 images that could be characterized as family photographs. There were also a fair number of duplicate images.

In reviewing the hard drive, Mr. Weaver concluded there were 492 images “of interest” that he bookmarked for review, including 40 “carved” or deleted images. He did not find indicators that the photographs were altered. He concluded there were approximately 418 images that either had naked children or were “related photos.” Mr. Carden noted approximately 25 photographs of naked children, with 50 percent including exposure of genitalia. He considered that a high percentage. None of the video clips stored on the computer appeared to be problematic or worthy of further investigation. There was no evidence that any improper images had been downloaded from the internet.

Mother testified over the course of several days. She denied touching the girls inappropriately. She said she obviously had touched their private parts over the years, cleaning them and helping with potty training, but never anything sexual.

Mother admitted she had a serious substance abuse problem that started around 2012 and continued up to the initiation of these proceedings. Mother abused painkillers that she took because of a back injury, plus cocaine and alcohol. Mother denied ever doing drugs in front of the girls, but sometimes she drank or did cocaine with her personal assistant. Mother said that from October 2015 until their move to California in June 2016, she was using a significant amount of drugs and staying in bed a lot. Around October 2015, mother started using cocaine to counteract the effect of the pills. However, the cocaine would often affect her ability to sleep. She would go for days without sleeping. During this time period, the family's two nannies primarily took care of the girls, along with father. Mother said the nannies were primarily responsible for giving the girls their baths. But, any baths the girls had in the master bathroom were given by mother. The nannies did not give baths in the master bathroom.

Mother said she tried several different drug rehabilitation programs that did not work. In July 2016, after being released from Cedars Sinai Medical Center, mother started an inpatient program that was successful. As of the time of her testimony, mother said she had been sober almost eight months and all of her drug tests during that time had been negative. Mother expressed regret that her drug use interfered with her being a good mother and that she missed what father had been doing because she was in bed a lot and not fully functioning.

Mother explained that in early 2016, she saw some interactions between father and the girls that caused her concern.

Mother described one time when she had gone up to the girls' bedroom. She could see from the hallway that father was sitting on F.L.'s bed with her, rubbing her leg. H.L. was lying on her own bed completely naked. Father started to run his hand up F.L.'s leg and she said "no." Mother then heard H.L. say, "Mommy, you're peeking." At that point, mother went into the room and told H.L. to put some clothes on.

Mother described another incident that occurred in their master bedroom. Mother explained that she and father had a practice, since the girls were little, of lying down with them until they fell asleep. She would be on one side of the bed, father on the other and the girls in the middle. One morning just before dawn, mother saw father whispering in H.L.'s ear and "feathering" his fingers in a sensual manner from her throat down to her chest. Mother could not see if father's hand went farther down H.L.'s body. Mother was alarmed and got out of bed. She pulled the covers off father and grabbed his crotch. She said he was three quarters "erect."

Mother admitted she was still in the midst of her addiction when she observed these incidents, but she denied it affected her perceptions of father's behavior. Mother also denied she ever hallucinated because of her drug use. She said it was an "outright lie" for father or anyone to say otherwise. Mother denied she had accused father of sexual abuse only because she discovered, around this same time, that father had stolen hundreds of thousands of dollars from her (\$300,000 just in the period from October to December 2015).

Mother told her personal assistant and her adult daughter, D.K., about the incidents she observed. She said she was scared for H.L. and F.L. Mother was concerned that no one would believe her if she accused or confronted father because of her addiction, and

also because father was “charming.” She delayed reporting her concerns so she could try to collect evidence. Mother said she intended to get evidence to show what father was doing and then file for divorce and full custody of both girls. Around March 2016, her personal assistant helped her install a concealed nanny camera in the girls’ bedroom that was on 24 hours a day. She did not think it was safe to review the footage from their home, so she would drive to another family home that was nearby and look at it there. Mother said she believed there were almost three months of footage she had not seen because the devices had been seized by the police.

Mother explained that the nanny camera captured father attempting to wake H.L. one morning by rubbing her repeatedly across her back and buttocks. Mother conceded the footage also showed F.L. and the nanny walking around in the room at the same time. Mother acknowledged that H.L. was notoriously difficult to wake up. Another excerpt of the nanny camera footage showed father walking back and forth between the two girls’ beds and rubbing them, and appearing also to bend down to kiss F.L.

Sometime in April 2016, mother’s assistant set up her cell phone, in a hidden location, to film father snorting cocaine. Mother turned that video footage over to the Department because father denied he used drugs.

Mother also had a listening device in father’s car, but nothing sexual was ever said in the car. However, mother believed the audio recordings demonstrated how father favored H.L. with attention and neglected F.L.

Around the same time, mother discovered a number of upsetting photographs on father’s computer, photographs she had never seen before, like the girls in the bathtub touching each other. She agreed that father was the one who primarily took family photographs. He would often put them into a slideshow for

everyone to see or email them to the grandparents. However, she could not recall father ever sharing the photographs that contained nudity.

Mother was distressed to see a pattern to some of the photographs of the girls, such as pictures of them licking ice cream cones or other food. Those photos would be mixed in with other normal photographs of the family.

Mother identified the photographs of the girls with a cat, and others with a dog, including one where the dog's genitalia is exposed, as pictures with their family pets that she had not previously seen.

Mother identified a series of photographs that were taken in a rock-lined swimming pool or "family bath" at a spa hotel in Japan. The hotel closed the pool area for them to use in private. It was a beautiful setting and father was taking pictures. Mother said she waited for father to leave the pool area with his camera before taking off her robe and joining her daughters in the pool. She said she was unaware that father had continued to take pictures of the girls, naked around the pool, from inside the room, looking out through a window.

Mother could not recall if she was present when the photograph of father kissing H.L. on the mouth in Hawaii was taken. She said the photographs of H.L. naked, except for a scarf and sunglasses, were taken at the hotel room mother always rented when she was in New York. She said she was not in the room when those photographs were taken.

Mother identified photographs of other children found on father's computer. They were children of friends or her former personal assistant. There were also some of her adult daughter, D.K., when she was a teenager sunbathing with her friends in

Hawaii. Mother did not believe she had seen any of the photographs before.

Mother said one of the cell phone video clips turned over to the Department had been taken by F.L. of her sister. In the video, H.L., naked from the waist down, was dancing around and pretending to make her vagina “talk.” Mother identified one of the nannies as the person on the video who told the girls to stop what they were doing and to erase the footage. Mother said she was not present when the girls were making that video.

Both girls disclosed to mother that father had touched their “tee-tee” (a word they used for vagina in addition to “gina” or “business”). Mother tried to get them to say it again on video. Mother denied that she was trying to coax the girls into wrongly accusing father. Mother admitted she was “obnoxious” with the girls trying to get them to confirm the touchings. She explained she just wanted the allegations to be taken seriously.

During this same time, mother also noticed that the girls began to exhibit unusual and troubling behaviors. F.L. exhibited “self-harming,” saying that she wanted to rub the skin off her face. H.L. became more inward and secretive. Mother conceded she did not seek therapy for the girls once she started noticing these behaviors.

Mother sought the advice and opinions of a criminal defense attorney (Burke) and a private investigator (Perkins) who was a lawyer and former agent with the Federal Bureau of Investigation. She sent Mr. Perkins some of the photographs that concerned her to get his opinion.

Once in California, mother decided to report her concerns to the Department and give them the materials she had discovered. She knew her substance abuse would make her less credible, but

she “saw what she saw” and she had to report it. She said she would never make sexual abuse allegations without being certain.

Mother conceded that maternal grandmother did not believe her allegations against father. When asked about both nannies denying any inappropriate behavior by father, mother said Y.F. was a “pathological liar.” As for Z.R-Z., mother believed she just did not want to believe anything bad about father.

Father was the final witness to testify. Like mother, he also testified over the course of several days. He said that from around 2014 through June 2016, mother had a serious substance abuse problem and he primarily looked after the girls, along with their two nannies. Father said he participated in all of the girls’ daily activities, except for giving them baths. The nannies were responsible for bathing the girls. Occasionally, mother gave them a bath. Father acknowledged that he was sometimes present in the bathroom when the girls were in the tub, if they were having a bath in their master bathroom.

Father said he was essentially the family photographer and had always taken a lot of photographs with different cameras and his cell phone. He is a professional musician but also liked to be creative with photography. He often took a series of photographs in order to try to get the best shot, as it was normally not possible to get a really good image by taking only one photograph. He would sometimes make slide shows of the photographs he took for the family to view on the television. Father could not recall if any naked photographs of the girls were ever included in any slide show. He thought it was probable that some were included when they were babies or toddlers, but not recently. He stopped making the slide shows when their lives became too complicated with mother’s addiction and having to take care of her and the girls. Father continued to show or share photographs he took on his

phone with mother, the girls, mother's adult children, and the grandparents.

The kiss photograph with H.L. was taken by mother when they were vacationing in Hawaii. The girls were about four years old and they were out to dinner. Mother took the picture of him and H.L. and then he took a picture of mother kissing F.L. Father said they were just quick kisses and "cute pictures with our kids."

Father said he took the photographs of mother and the girls at the spa hotel in Japan. It was a beautiful pool and he thought it was an interesting vantage point to shoot through the window. He modified some of the images to black and white on the computer. He thought they were "aesthetically pleasing pictures" for the family to enjoy and remember the trip.

Father did not believe any of his photographs of the girls were inappropriate, even those in which they were naked. He thought the innocence of their nudity was "cute." They were his own children and the photos with nudity were a very small percentage of the thousands of photographs he took. Mother was often present when he took photographs, including when father took the picture of H.L. and F.L. standing in the master bathroom bathtub with their backs turned.

As for the photographs of the girls in the tub where they appear to be touching each other, father conceded that he did not stop and tell the girls not to do that. Father said the photograph with H.L. holding one soap-covered hand up toward the camera does not show her telling him to stop. They were having fun and if either of the girls had ever told him to stop taking pictures, he would have done so.

The photographs showing both girls floating face up in the bathtub were taken because the girls were pretending to be mermaids. He thought the symmetry of the composition was really

interesting, like a mirror image, so he took a few shots. When he showed them to mother, she was upset and did not like them, so he deleted them from his phone.

Father also acknowledged taking the pictures of the girls with the family pets. He said he was not focused on the dog's genitalia, it was just a cute picture of the dog sleeping and another one with the dog kissing H.L.'s face. He explained that the pictures of F.L. holding and hugging their pet cat was, like most of his pictures, just a spontaneous moment that he thought was cute. It did not matter that F.L. was naked at the time. He was not focused on that. Father pointed out how the series of pictures with the dog all have borders which are the ones he took. The cropped copies of those pictures focused in on the dog's genitalia did not have borders. Father said he did not crop or modify those photographs to focus in on the genitalia and does not know who did.

Another photograph of H.L. drinking a bottle with a towel over her head just seemed like a cute moment. Father said he was not focused on the fact that her underwear was showing. Father said it was the same with the pictures of H.L. playing dress-up with mother's scarf and glasses at the hotel in New York. Mother and F.L. were in the bed at the time, and can be seen in the background of at least one photograph. H.L. was just being cute so he took the pictures. He was not focused on the fact H.L.'s buttocks was showing.

Father said the pictures he took of the girls were almost always just spontaneous pictures trying to capture the moment or make a photo journal of their daily lives, eating meals and the like. The pictures where the girls are playing in the tub exposing their bottoms were not posed. They did that on their own. The only photographs he recalled telling the girls to pose, other than maybe

just saying “smile,” were those taken at the shrine in Mexico where he asked them to stand near the cross.

Father denied taking the pictures of the other children. He said he knew who those children were, and was present when they were around the home or came on family vacations, but he did not take the photos and had not even seen them until the proceedings in this case were initiated. When asked about a series of photographs with other children, father said those were taken by an assistant of some family friends who were visiting and emailed to him and mother.

Father denied he spent time on his computer looking at the photographs of the girls. Taking care of mother because of her addiction was so time-consuming, he never had the time. Father explained he would not be taking any more photographs of the girls naked. He said that after listening to Dr. Romanoff and reading some of the information from Dr. Malinek (another doctor contacted by his lawyer), he realized that the photographs he thought were just nice photographs for the family to enjoy could be hacked and used improperly by others.

Father denied ever touching the girls in a sexual way. To the extent the girls said he touched their private parts, father believed they were confused because of having been coached by mother. He denied the incidents mother claimed to have witnessed ever happened. In particular, the incident where mother said he had an erection while touching H.L. was false. He believed mother was confusing another incident that occurred when H.L. got strep throat. Father said he was exhausted after taking care of H.L. all day and fell asleep next to her. Mother came into the room and ripped the covers off and accused him of having an erection. Father said he grabbed mother’s hand and put it on his penis to show her she was wrong.

Father did not believe there was anything wrong with how he sometimes tried to wake up the girls for school. He said the nanny camera video just showed him trying to gently wake H.L. by rubbing her back, arms, and buttocks. H.L. was often difficult to wake and it showed how he also tried tickling her face to no avail. The nannies would come and go when he was trying to wake her and neither of them ever told him they thought it was inappropriate.

Father explained the reason he sometimes slept on the floor of the girls' room in a sleeping bag was because mother specifically asked him to do so when she was not at home. Father expressed concern the girls were becoming more aware of their bodies since mother started having her "girl talks" with them.

In his conversations with the social worker, father said he never denied that he had used drugs on occasion, only that he did not abuse them and was not currently using them. He explained that mother's substance abuse had gotten so out of control before the move to California, she even hallucinated at times. She thought there were bugs crawling around her or that she could see cocaine floating in the air. He would have to try to coax her to believe there was nothing there. Father thought her personal assistant had been a bad influence on her and added a lot of drama to their lives.

3. The Juvenile Court's Ruling

On June 23, 2017, the last day of the hearing on the motion to dismiss, the court stated its intention to grant the motion and dismiss the petition in its entirety. The court said it would provide a written decision to the parties by July 19, 2017, noting the delay was to allow counsel for the Department to return from a previously planned vacation.

The minute order for June 23 stated the petition was dismissed that date, but that the order of dismissal would be stayed

until July 19, 2017 when the court planned to issue its written decision. The court also vacated “all prior orders” and set a progress hearing for June 28 for receipt of a custody schedule from counsel. On June 28, 2017, the court ordered that both mother and father were to have unmonitored visitation. The court maintained its previous order that mother was allowed unmonitored overnight visits with the girls. As for father, he was allowed unmonitored overnight visits at the home of maternal grandmother with her consent.

The court subsequently made additional orders related to the appointment of minors’ counsel, among other matters. The juvenile court then reversed itself and vacated those orders.

On July 19, 2017, the court filed its written statement of decision, and then filed a final “corrected statement of decision” on July 24, 2017.

4. The Writ Proceedings and Notices of Appeal

In response to the juvenile court’s orders of June 23 and June 28, 2017, minors and mother filed notices of appeal. We consolidated those appeals.

On July 5, 2017, minors filed a petition for writ of supersedeas in this court seeking a stay of the dismissal order. Mother filed a joinder. We issued a stay of the dismissal as to father and requested briefing. We also ordered that during the pendency of the stay, father was to have only monitored visitation with the girls.

Minors filed a motion to augment the record with the juvenile court’s post-June 23 written orders, and a motion to deem the premature notice of appeal timely. We granted the motion to augment and deferred a ruling on the minors’ motion to perfect the notice of appeal.

On August 31, 2017, after briefing was complete, we granted minors' petition for writ of supersedeas, ordering that the stay we issued on July 6 was to remain in effect pending resolution of this appeal or further order of this court. We also directed the parties to brief the issue of whether mother had standing to appeal the dismissal order or join in minors' appeal.

We dismissed as moot the separate writ petition filed as to the juvenile court's orders purporting to vacate the appointment of minors' counsel (B284023) in light of the fact the juvenile court had vacated its own order.

In December 2017, mother filed a request for judicial notice of the juvenile court's order recusing itself from further proceedings in the case in light of a reassignment to a civil department. We granted the request on December 22, 2017.

DISCUSSION

1. The Notices of Appeal Are Timely

Both mother and minors filed their respective notices of appeal in response to the juvenile court's oral statement, on June 23, 2017, of its intent to dismiss the dependency petition in its entirety. The court's minute order from that date stated the dismissal was ordered, but stayed until the written decision was filed on July 19, 2017. Minors subsequently moved this court for an order deeming their notice of appeal timely as to the court's final corrected written decision filed on July 24, 2017.

"A notice of appeal is premature if filed before the judgment is rendered or the order is made, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order." (Cal. Rules of Court, rule 8.406(d); see also *In re Ricky H.* (1992) 10 Cal.App.4th 552, 558-559 [premature appeals are typically "deemed to be timely when the decision being appealed from has been made preliminarily, but is not yet final"])

such as when a judge “announce[s] an intended decision but before a final judgment [i]s signed”).)

The notices of appeal filed by minors and mother before the court’s final written order of dismissal were premature. However, the premature filings did not cause any prejudice. Indeed, no party has so claimed. Both notices are deemed timely as to the court’s written order of dismissal. (*In re Ricky H.*, *supra*, 10 Cal.App.4th at pp. 558-559.)

2. Mother Lacks Standing to Challenge the Juvenile Court’s Dismissal Order

As noted above, we asked the parties to brief the question of whether mother has standing to appeal the juvenile court’s dismissal pursuant to section 350, subdivision (c). Minors and father declined to take a position. Mother argues the general rule that standing is to be broadly construed and relies heavily on *In re Lauren P.* (1996) 44 Cal.App.4th 763 (*Lauren P.*) which held a parent had standing to appeal a juvenile court order dismissing a dependency petition. The Department contends mother’s appeal should be dismissed, relying on *In re Carissa G.* (1999) 76 Cal.App.4th 731, 733 (*Carissa G.*), which disagreed with *Lauren P.*

“Generally, a parent can appeal the judgment in a juvenile dependency matter. [Citations.] But as in any appeal the parent must also establish he or she is a ‘party aggrieved’ to obtain a review of a ruling on its merits. [Citations.] To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court’s decision. A nominal interest or remote consequence of the ruling does not satisfy this requirement.” (*Carissa G.*, *supra*, 76 Cal.App.4th at p. 734.)

Mother acknowledges the holding in *Carissa G.*, but argues the facts here are more analogous to *Lauren P.* in which the court

concluded that a mother was aggrieved by the dismissal of a dependency petition alleging sexual abuse by the father. *Lauren P.* explained the mother had “a natural interest in obtaining the state’s protection for her daughter against future sexual abuse. Dismissal of the petition injuriously affected this interest.” (*Lauren P.*, *supra*, 44 Cal.App.4th at p. 771.) *Lauren P.* acknowledged the agency had the sole authority to file a dependency petition, and had the burden of proof at the jurisdictional hearing. (*Id.* at pp. 768-769.) But, the court found significant that if the agency failed to establish jurisdiction, under section 350, subdivision (c), the juvenile court “must give *the other parties* an opportunity to supply the evidentiary deficiency.” (*Lauren P.*, at p. 769, italics added.) *Lauren P.* continued: “Any parent who takes the position that dependency jurisdiction is warranted is aggrieved by dismissal of the petition. Just as *a parent must be permitted to present evidence* and to argue in opposition to dismissal below, so such a parent must be allowed to appeal from a dismissal on the merits.” (*Id.* at p. 770, italics added.)

The reasoning of *Lauren P.* is at odds with the statutory language. The plain language of section 350, subdivision (c) does not permit “other parties” to present evidence in opposition to a motion to dismiss. The statute was amended in 1994 to allow only *a minor* to present evidence, in addition to the prosecuting agency. (*In re Eric H.* (1997) 54 Cal.App.4th 955, 965 (*Eric H.*)). The statute provides that a parent only has a right to offer evidence in the event the juvenile court denies the motion to dismiss, but not when, as here, the agency grants the motion to dismiss.

In relevant part, section 350, subdivision (c) provides: “At any hearing in which the probation department bears the burden of proof, after the presentation of evidence *on behalf of the probation*

department and the minor has been closed, the court, on motion of the minor, parent, or guardian, or on its own motion, shall order whatever action the law requires of it if the court, upon weighing all of the evidence then before it, finds that the burden of proof has not been met. That action includes, but is not limited to, the dismissal of the petition *If the motion is not granted, the parent or guardian may offer evidence* without first having reserved that right.” (Italics added.)

Mother was not statutorily authorized to present evidence in the juvenile court urging the court to assert jurisdiction. Mother fails to provide a persuasive explanation for why she should nonetheless be allowed to challenge the dismissal on appeal. Mother was allowed to participate in the hearing by cross-examining witnesses and arguing against dismissal, but “the mere fact a parent takes a position on a matter at issue in a juvenile dependency case that affects his or her child does not alone constitute a sufficient reason to establish standing to challenge an adverse ruling on it. Numerous decisions in the juvenile dependency context support this conclusion.” (*Carissa G.*, *supra*, 76 Cal.App.4th at pp. 736-737; see, e.g., *In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1807 [parent did not have standing to challenge juvenile court’s order declining to place minor with sibling].)

The minors’ interests in bolstering any deficiency in the evidence presented by the Department as to jurisdiction was protected by the *minors* having the statutory authority to present additional evidence, as well as to challenge the dismissal on appeal. “The amendment to section 350[, subdivision] (c) appears to recognize that the minor’s interests and well-being are sufficiently protected if the Agency and minor’s counsel are heard before the court determines whether to dismiss the petition.” (*Eric H.*, *supra*, 54 Cal.App.4th at p. 966.)

A parent plainly has a legitimate and fundamental right to parent his or her child. But, mother's right to parent her daughters has not been diminished by the juvenile court's dismissal. Mother's custody rights have not been impacted. Mother retains her remedies regarding custody issues in the pending family law proceeding. If new evidence comes to light warranting the Department's investigation, mother can petition the Department to take action in accordance with section 329.

Moreover, minors' counsel has vigorously challenged the dismissal on behalf of the minors and mother has not suggested any deficiency in minors' counsel's actions or argued that her standing to appeal must be recognized in order to ensure the minors' interests are fully litigated. Mother appears to be asserting her right to appeal primarily as support for minors' arguments. We therefore conclude mother has not shown "a legally cognizable immediate and substantial interest" which has been "injuriously affected" by the juvenile court's decision. (*Carissa G.*, *supra*, 76 Cal.App.4th at p. 734.) We therefore dismiss her appeal.

3. The Juvenile Court's Order of Dismissal

In granting the Department's motion to dismiss the dependency petition pursuant to section 350, subdivision (c), the juvenile court concluded there was insufficient evidence to support any jurisdictional finding. We typically review a juvenile court's jurisdictional findings for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

However, as minors concede, where, as here, "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.*" (*In re Luis H.* (2017) 14 Cal.App.5th 1223, 1227, italics added (*Luis H.*), quoting *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528; see also *Roesch v. DeMota*

(1944) 24 Cal.2d 563, 570-571.) In such a case, the appellant must demonstrate the evidence in the juvenile court “ ‘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.]’ ” (*Luis H.*, at p. 1227; see also *In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1163 [applying same standard to a minor’s appeal of juvenile court’s order terminating jurisdiction under Welf. & Inst. Code, § 364].)

In *Luis H.*, the family came to the attention of the Department when L.O., the mother’s minor daughter from a prior relationship, disclosed sexual abuse by the mother’s current boyfriend. (*Luis H.*, *supra*, 14 Cal.App.5th at p. 1225.) The mother had three other children (one girl, two boys) who were L.O.’s half siblings. (*Ibid.*) After a contested jurisdictional hearing, the court sustained the allegations relative to the abuse of L.O., but dismissed the petition as to the three half siblings. (*Id.* at pp. 1225-1226.) The two minor boys appealed, arguing they were at risk of sexual abuse in light of the abuse of their half sibling. *Luis H.* affirmed the juvenile court’s dismissal, concluding the minor boys had not demonstrated that the evidence before the juvenile court was uncontradicted and unimpeached and of such a character as to compel a finding in their favor as a matter of law. (*Id.* at p. 1227.)

The court in *In re I.W.* also found the evidence before the juvenile court was disputed and therefore affirmed the juvenile court’s order, explaining as follows: “Here, as in many dependency cases, the case posed evidentiary conflicts. And, as is common in many dependency cases, this case obligated the juvenile court to make highly subjective evaluations about competing, not necessarily conflicting, evidence. . . . It is not our function to retry the case. . . . *This is simply not a case where undisputed facts lead to only one conclusion.*” (*In re I.W.*, *supra*, 180 Cal.App.4th at

pp. 1528-1529, italics added, citations omitted [affirming termination of parental rights where the mother failed to meet her burden of showing applicability of beneficial relationship exception to adoption].)

Such is also the case here. In objecting to the motion to dismiss, minors bore the burden of proving there was sufficient evidence to warrant the court's assertion of jurisdiction on the grounds father was sexually abusing H.L. and F.L. or there was a substantial risk that they would be sexually abused. Section 300, subdivision (d) provides in relevant part, that a child may be deemed a dependent, where "[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code." As relevant for our purposes, Penal Code section 11165.1, subdivision (b) defines sexual assault to include "[t]he intentional touching of the genitals or intimate parts . . . or the clothing covering them, of a child . . . for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose." And, the statute defines sexual exploitation as including the posing of a child "to be photographed participating in obscene sexual conduct." (See, e.g., *In re Ulysses D.* (2004) 121 Cal.App.4th 1092, 1095-1096.)

Minors presented significant evidence below, including the testimony of their expert, Dr. Dishon. However, minors have not demonstrated that the record contained *uncontradicted* evidence father had sexually abused the girls or posed a substantial risk of doing so. Both Dr. Romanoff and Dr. Dishon appear well qualified and experienced in the subject on which they were asked to render opinions. Dr. Romanoff's qualifications to render an opinion on the

risk posed by father were not contested, and we find no basis in the record for disregarding his testimony in its entirety. Dr. Romanoff provided a lengthy report and explained the bases for his opinion that father did not pose a risk of sexually abusing his daughters. Dr. Dishon also articulated the bases for his opinion that father appeared to be grooming his daughters and therefore did present some risk for future abuse. Both doctors critiqued each other's analyses. Minors did not establish below, and have not shown here, that Dr. Romanoff's opinions were flawed to the point the juvenile court had no reasonable basis upon which to rely on them, or that it was otherwise compelled to accept Dr. Dishon's contrary conclusions.

The evidence below was not undisputed, nor was it “ ‘ of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.” [Citation.]’ ” (*Luis H.*, *supra*, 14 Cal.App.5th at p. 1227.) Accordingly, we must affirm the dismissal.

DISPOSITION

Mother's appeal of the juvenile court's order dismissing the dependency petition pursuant to Welfare and Institutions Code section 350, subdivision (c) is dismissed.

The order dismissing the petition in its entirety is affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

GOODMAN, J.*

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