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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

HERBERT A., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B240079 (Los Angeles County Super. Ct. No. CK80569)

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Rudolph A. Diaz, Judge. Petition denied.

Herbert A., in pro. per., for Petitioner.

No appearance for Respondent.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, Navid Nakhjavani, Deputy County Counsel, for Real Party in Interest.

In his petition for an extraordinary writ, Herbert A. (Father) challenges a February 2, 2012 jurisdiction finding and a March 5, 2012 order setting a permanency planning hearing for July 2, 2012 as to his children Lorenzo A. and E.A. We deny the petition because substantial evidence supports the juvenile court's finding that Father's sexual abuse of his stepdaughter J.F.[1] presented a substantial risk to his minor son Lorenzo and minor daughter E.A.

BACKGROUND

J.F., Father's stepdaughter, is 10 years old; Lorenzo A., Father's biological son, is eight years old; and E.A., Father's biological daughter, is six years old. The matter came to the attention of the Department of Children and Family Services (DCFS) when it received a referral on December 28, 2009 alleging that Lorenzo was the victim of general neglect by his mother A.C. (Mother) and E.A. and J.F. were at risk of general neglect.

On January 5, 2010, DCFS filed a petition under Welfare and Institutions Code[2] section 300, subdivisions (a) (serious harm by Mother and Father), (b) (failure to protect) and (j) (sibling has been abused or neglected). DCFS alleged that Father physically abused J.F. by repeatedly striking the child with a belt on the buttocks resulting in the child sustaining marks and bruises; that Mother physically abused E.A. and J.F. by repeatedly striking the children with a belt on the buttocks inflicting marks and bruises on the children; and that Mother and Father have a history of engaging in violent altercations in the children's presence.

On January 5, 2010, the juvenile court detained the children and they were placed in foster care. The juvenile court ordered DCFS to provide reunification services and ruled that Mother and Father were to have monitored visits.

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[1] J.F.'s biological father is not a party to this writ petition.

[2] Unless otherwise indicated, all further statutory references are to the Welfare and institutions Code.

On February 1, 2010, DCFS filed a first amended petition further alleging that Mother used marijuana which rendered her incapable of caring for the children. The juvenile court dismissed the original petition.

On February 24, 2010, DCFS reported that Father was enrolled in a program for domestic violence, a drug and alcohol treatment services program, and continued to have monitored visits with the children. The visits were going well.

The case was successfully mediated and Mother and Father both pleaded no contest to the amended petition. The children were to be treated as a sibling group and remain placed together. DCFS was to provide reunification services to Mother and Father. Mother and Father were to have monitored visits at least two times a week for two hours per visit, and more to be arranged with an approved monitor. Father was to complete a parenting class, substance abuse rehabilitation with counseling and random testing, domestic violence counseling and participate in individual counseling.

On June 6, 2010, DCFS reported that Father completed an on demand drug test and tested positive for marijuana. Father completed 120 hours of domestic violence classes, completed requirements of Phase One at Community Education Center, and completed 10 hours of an employment workshop at Community Education Center. DCFS further reported that J.F. was diagnosed with psychotic disorder and placed at Kedren Mental Health Facility. Also, Mother and Father continued to reside in the same house despite having unresolved issues surrounding domestic violence, and were participating in the same domestic violence group and program.

At the disposition hearing on June 15, 2010, the juvenile court ordered Father to participate in a drug treatment program with random testing and aftercare, domestic violence counseling, parenting classes and individual counseling. The juvenile court further ordered no reunification services for Father as to J.F. pursuant to section 361.5, subdivision (a).

On September 29, 2010, DCFS reported that J.F. was placed at Five Acres Group Home, while Lorenzo and E.A. were placed together in a foster home. Also, DCFS

reported that Father was in compliance with his case plan. Mother and Father had monitored visits with J.F. once a week on Saturdays for one to two hours.

On December 14, 2010, DCFS reported that Father had completed his court-ordered programs and was consistently visiting Lorenzo and E.A. During the months of November and December, Mother and Father had unmonitored visits with Lorenzo and E.A. on Wednesdays for two to four hours, and there were no problems. They also had unmonitored visits with J.F. on Saturdays for two to four hours on the grounds of the group home.

On December 14, 2010, the juvenile court ruled that Lorenzo and E.A. were permitted to have overnight visits with their parents beginning December 18, 2010. Mother and Father were permitted six-hour unmonitored visits with J.F. off the grounds of the group home, and over Christmas weekend for up to six hours on any day.

On February 8, 2011, DCFS reported that Mother and Father had had unmonitored consistent visits with Lorenzo and E.A. for several months, and the visits were extended to overnights from Saturday 9:00 a.m. to Sunday 2:30 p.m. J.F.'s visits were extended to nine hours. DCFS recommended that Lorenzo and E.A. be returned to the custody of Mother and Father. DCFS further recommended that J.F. maintain her residence at Five Acres Group Home until Mother and Father have shown the ability to deal with her behaviors. Overnight visits would begin on March 5, 2011 from Saturdays at 9:00 a.m. to Sundays at 3:30 p.m.

On February 8, 2011, the juvenile court ordered Lorenzo and E.A. placed in the home of parents, but J.F. remain suitably placed.

On June 1, 2011, DCFS filed a section 342 petition on behalf of the children, alleging jurisdiction under section 300, subdivisions (b) (failure to protect), (d) (sexual abuse of sibling) and (j) (risk of other siblings being abused).[3] The petition alleged that

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[3] Section 342 provides: "In any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that

on May 21, 2011, Father sexually abused J.F. by sodomizing the child and that he had fondled J.F.'s vagina on prior occasions. Father denied the allegations.

In its Detention Report, DSFS reported it had received a referral from Five Acres Group Home on May 25, 2011, alleging J.F. had been sexually abused by Father. J.F. informed the case social worker that she visited with her family every weekend; she would be picked up on Saturday and returned to Five Acres Group Home on Sunday. Mother worked on Saturday nights and Father would supervise the children. J.F. stated Father inappropriately touched her with his hands and his penis. J.F. told the case social worker, "'[father] put his penis inside my butt.'" According to the case social worker, after she made this disclosure, J.F. became quiet, began looking at the ground, and would not elaborate. J.F. stated she slept on a blue couch in the living room on Saturday nights while her siblings slept in their room. She indicated Father would lay behind her and rub his penis against her butt. J.F. further informed the case social worker that Father would put his penis in her "'poo poo'" as she pointed to her butt, but denied he inserted his penis in her vagina. The case social worker also interviewed Lorenzo and E.A. They both denied anyone touched them inappropriately, but E.A. stated J.F. liked to touch her private parts, pointing to her vagina. Mother and Father denied the allegations and asserted that J.F. had a history of lying. Father indicated J.F. had stated she no longer wanted to live with her family and did not want to return home.

On June 1, 2011, the juvenile court ordered the children detained and provided Mother and Father monitored visits with Lorenzo and E.A. Father was not to visit J.F.

In the jurisdiction/disposition report, DCFS reported that according to J.F.'s therapist, J.F. had displayed sexualized behavior that coincided with family visits. Two months before telling of the abuse, J.F. displayed depressive symptoms, she was fearful of returning home, she wanted to move away from Father and she was fearful. Since the visits with Father have stopped, J.F. has stopped all sexualized behaviors.

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the minor is a person described in section 300, the petitioner shall file a subsequent petition."

On February 2, 2012, DCFS filed a last Minute Information for the Court report. The case social worker stated that she met with E.A. and her substitute caregiver Ophelia T. on January 13, 2012. Ophelia stated E.A. had been playing with her private parts and that the behavior occurred after she visited with her parents on the weekends. Ophelia also reported E.A. had not been as playful and cheerful as she had been in the past. Ophelia believed "'something [was] not right with the visits.'" She also reported that when Mother would call to schedule visits, she always expressed concern about Father seeing the child and never indicated that she wanted to see E.A. The case social worker also met with Lorenzo and his substitute caregiver Sharie T., who reported the parents' visits were inconsistent, Father was disrespectful and Lorenzo had been wetting the bed after family visits.

On February 2, 2012, the adjudication hearing, which had been continued multiple times and had taken place over multiple dates, concluded and the juvenile court sustained the section 342 petition. The disposition hearing was continued to March 5, 2012.

DCFS reported that Father continued to deny any sexual abuse occurred even though J.F.'s statements were consistent.

At the contested disposition hearing on March 5, 2012, Father provided no evidence. Father asked the juvenile court to return Lorenzo and E.A. to his care. The juvenile court determined that the period for reunification services had expired, and terminated Mother and Father's reunification services. The children were declared dependents of the court.

The juvenile court set a section 366.26 hearing for July 2, 2012. On March 7, 2012, Father's notice of intent to file a writ petition was filed with the superior court; the notice of intent was signed by Father's counsel and dated March 7, 2012.[4] On April 6, 2012, Father's counsel advised this court he was unable to file a petition for extraordinary relief on behalf of Father. Father filed the petition in propria persona on April 24, 2012.

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[4] Father also filed a notice of intent to file a writ petition with the superior court on April 19, 2012; the notice of intent was signed by Father and dated April 18, 2012.

Father's petition alleges that there was insufficient evidence to find that he sexually abused J.F. and that she has a history of lying. He wants custody of Lorenzo and E.A. On April 24, 2012, the clerk of our court notified the parties that the matter will be decided on its merits. DCFS filed an answer to the petition for extraordinary writ.

DISCUSSION

Noncompliance with California Rules of Court

Rule 8.452 of the California Rules of Court requires that a writ petition to review an order setting a section 366.26 hearing include certain specified information. In particular, "[t]he petition must be accompanied by a memorandum" that provides a summary of the significant facts and supports each point with argument and citation to authority and the record. (Cal. Rules of Court, rule 8.452(a)(2) & (b); see also rule 8.456 (a)(2) & (b).) A petition that fails to comply with these rules is subject to dismissal. We "dismiss as inadequate any rule 39.1B [now rule 8.452] petition that does not (1) summarize the particular factual bases supporting the petition, (2) refer to specific portions of the record, (3) relate the facts to the grounds alleged as error, (4) note disputed aspects of the record, and (5) have attached to it a particularized memorandum of points and authorities. [Citation.]" (*Cheryl S. v. Superior Court* (1996) 51 Cal.App.4th 1000, 1005, italics omitted; see also *Cresse S. v. Superior Court* (1996) 50 Cal.App.4th 947, 955–956.)

Father failed to comply with these rules. His petition does not include a memorandum of points and authorities, and he offers no "support" for his petition. There are no grounds for the petition. There is no factual basis for the petition.

Although we could dismiss the petition for its clear failure to comply with the applicable rules, we decline to do so in light of the importance of the right at stake and the critical stage of these proceedings.

Substantial Evidence Supports the Juvenile Court's Finding of Sexual Abuse

It does not appear that Father is challenging the March 5, 2012 orders of the juvenile court terminating reunification services and setting a section 366.26 hearing. However, Father seems to challenge the February 2, 2012 jurisdictional findings based on

allegations of sexual abuse, which were supported by substantial evidence. Any request by Father for custody of Lorenzo and E.A. is not supported by the record or his writ petition.

On appellate review, jurisdictional findings are reviewed for substantial supporting evidence. (*In re James C.* (2002) 104 Cal.App.4th 470, 482.)

"A dependency proceeding under section 300 is essentially a bifurcated proceeding." (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 535.) At the jurisdictional hearing, the juvenile court shall first consider only whether a child is described by section 300. (§ 355, subd. (a).) Any child who comes within the provisions of section 300, subdivisions (a)–(j), is within the juvenile court's jurisdiction and may be adjudged a dependent. (§ 300.) Once the juvenile court determines that the child is a person described by section 300, it shall hear evidence regarding the proper disposition for the child. (§ 358, subd. (a).) Therefore, in order for a juvenile court to sustain an allegation in a petition, the court must determine, by a preponderance of the evidence, that the child is described by section 300. (§ 355, subd. (a); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.)

Section 300, subdivision (b), provides, in pertinent part, that a child may be declared a dependent of the court when: "The child has suffered, or there is substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . , or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

Section 300, subdivision (d), provides, in pertinent part, that a child may be declared a dependent of the court when: "The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when

the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse."

Section 300, subdivision (j), provides, in pertinent part, that a child may be declared a dependent of the court when: "The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child."

In this case, there was ample evidence that Father sexually abused J.F. J.F. disclosed the sexual abuse to her therapist. She explained with specificity how and when Father touched her and on two occasions, sodomized her. Such personal accounts by a child of molestation are sufficient to support section 300, subdivision (d), jurisdiction. (*In re Christina T.* (1986) 184 Cal.App.3d 630, 633–634, 640.) J.F.'s therapist reported that simply based on J.F.'s behavior, she had a "clinical hunch" that J.F. was being abused before there was any disclosure. (See *In re Dorinda A.* (1992) 10 Cal.App.4th 1657, 1663–1664 [14-year-old girl's sexualized behavior supported jurisdictional finding under subdivision (d)].) J.F.'s sexualized behavior coincided with her family visits. (See *In re Kailee B.* (1993) 18 Cal.App.4th 719, 726 [change in girl's behavior after visiting father and other evidence supported jurisdiction].) J.F. was very fearful of returning home and wanted to move away from Father. J.F.'s account of the sexual abuse disclosed to her therapist was consistent with the account she gave to law enforcement. J.F. was developmentally delayed and lacked the capacity to fabricate the story. J.F.'s behavior significantly improved once DCFS terminated her visits with Father. J.F. was diagnosed with psychotic disorder with hallucinations and her therapist explained that these hallucinations were common in children who have suffered abuse as they try to disassociate themselves from the trauma.

In addition to the information contained in the various DCFS reports, the juvenile court conducted an extensive adjudication hearing that spanned over several days. During the hearing, the juvenile court heard testimony from the case social worker and from Father and had the opportunity to assess their credibility prior to concluding the allegations in the petition were true.[5]

Thus, the juvenile court had before it more than sufficient evidence to conclude that DCFS had met its burden of proof that Father had sexually abused J.F. and that she was a child described by section 300.

Sexual Abuse of J.F. Also Puts Sibling Lorenzo at Risk of Sexual Abuse

In *In re Rubisela E.* (2000) 85 Cal.App.4th 177, the father sexually abused his oldest daughter Rubisela. (*Id*. at p. 180.) There were five other children in the family, one girl and four boys. (*Ibid*.) Division Two determined that evidence that the father had sexually abused his daughter was sufficient to establish that a younger daughter was at risk of sexual abuse. (*Id.* at p. 197.) "The circumstances surrounding the abuse of Rubisela support a finding under section 300, subdivision (j) as to her sister. It is reasonable for the juvenile court to determine that in Rubisela's absence, Father's sexual offenses were likely to focus on his only other daughter." (*Ibid.*)

The *Rubisela* court found "[t]he question whether section 300, subdivision (j) can be upheld as to the sons [as] more problematic." (*In re Rubisela, supra,* 85 Cal.App.4th at p. 197.) The court reasoned: "We do not discount the real possibility that brothers of molested sisters can be molested [citation] or in other ways harmed by the fact of the molestation within the family. Brothers can be harmed by the knowledge that a parent has so abused the trust of their sister. They can even be harmed by the denial of the perpetrator, the spouse's acquiescence in the denial, or their parents' efforts to embrace them in a web of denial." (*Id.* at p. 198.) However, the court determined "there has been no demonstration by the department that 'there is a substantial risk [to the brothers] that

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[5] Father did not include as part of the record any reporter's transcripts of the hearing.

[they] will be abused or neglected, as defined in . . . [the applicable] subdivisions.' [Citation.] We must therefore reverse the jurisdictional order as to the brothers . . . ." (*Id.* at p. 199.)

In *In re Karen R.* (2001) 95 Cal.App.4th 84, the juvenile court declared three minor siblings dependent children under section 300. The court found that the father had sexually abused the oldest daughter, and found that such conduct placed her younger brother at substantial risk of sexual abuse. (*Id.* at p. 88.) Division Three affirmed. The court questioned the *Rubisela* court's holding that the father's sexual abuse of his oldest daughter did not present a risk of harm to Rubisela's brothers. (*Id.* at p. 90.) "Moreover, *In re Rubisela E.*, the case relied upon by mother for the proposition that sexual abuse of a female child does not establish substantial danger of sexual abuse to a male sibling, conceded that sexual abuse of a female child can be harmful to a male sibling. It noted: 'We do not discount the real possibility that the brothers of molested sisters can be molested . . . or in other ways harmed by the fact of the molestation within the family. Brothers can be harmed by the knowledge that a parent has so abused the trust of their sister. They can even be harmed by the denial of the perpetrator, the spouse[']s acquiescence in the denial, or their parents' efforts to embrace them in a web of denial.' [Citation.]" (*Ibid.*)

The court further stated: "Here, Alvaro R. witnessed the initial beating of Karen R. by mother and father, and later saw Karen R. crying, her head having been forcibly shaved, wrapped in a towel and reporting that father had raped her. When mother arrived home and Karen R. reported the sexual abuse, mother refused to believe Karen R. and humiliated her. Father and mother then continued to physically abuse Karen R. in the presence of Alvaro R., and forced her to exercise late into the night. [¶] While no act of sexual abuse occurred in Alvaro R.'s presence, the abuse that did take place in his presence clearly was sufficient to warrant the conclusion that a normal child in Alvaro R.'s position would have been greatly disturbed and annoyed at having witnessed these events. Thus, the juvenile court properly could conclude Alvaro R. personally had been the victim of child molestation and thus had been sexually abused

within the meaning of section 300, subdivision (d). [Citation.] Thus, even under *Rubisela*, it is clear the evidence supports the juvenile court's finding under section 300 subdivision (d)." (*In re Karen R, supra*, 95 Cal.App.4th at. p. 90.) The court further stated: "Additionally, we conclude a father who has committed two incidents of forcible incestuous rape of his minor daughter reasonably can be said to be so sexually aberrant that both male and female siblings of the victim are at substantial risk of sexual abuse within the meaning of section 300, subdivision (d), if left in the home. To the extent other cases suggest only female siblings are in substantial danger of sexual abuse after a sexually abused female sibling has been removed from the home due to sexual abuse by a father, we respectfully disagree. [Citation.] Although the danger of sexual abuse of a female sibling in such a situation may be greater than the danger of sexual abuse of a male sibling, the danger of sexual abuse to the male sibling is nonetheless still substantial." (*Id.* at pp. 90–91.)

In *In re P.A.* (2006) 144 Cal.App.4th 1339, Division Three rejected a father's contention that the evidence was insufficient to support the juvenile court's findings that his sexual abuse of nine-year-old daughter, P.A., placed P.A.'s two male siblings at risk of harm. (*Id.* at p. 1345.) The court noted: "The abuse in this case concededly is less shocking than the abuse in *Karen R.* However, this does not mean that *Rubisela E.* therefore applies. Rather, we are convinced that where, as here, a child has been sexually abused, any younger sibling who is approaching the age at which the child was abused, may be found to be at risk of sexual abuse. As we intimated in *Karen R.*, aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior. [¶] Here, the juvenile court properly could conclude that father's presence in the home placed his sons at risk of sexual abuse." (*In re P.A.*, at p. 1347, fn. omitted.)

In *In re Andy G.* (2010) 183 Cal.App.4th 1405, the juvenile court adjudged a two-year-old boy a dependent child, "refus[ed] to release him to his father's custody, and order[ed] the father to attend sexual abuse counseling for perpetrators. The court found that the father had sexually abused [his son's adolescent half sisters] and that [his son]

was at substantial risk of sexual abuse as well." (*Id.* at p. 1407.) Division Eight affirmed. The court reviewed *In re Rubisela E.*, *In re Karen R.*, and *In re P.A.* in considering "the question whether a father's sexual abuse of a female child justified juvenile court jurisdiction over her male siblings." (*In re Andy G.*, at p. 1411.) The court concluded: "Turning to this case, we agree with the proposition advanced in *In re P.A.* that 'aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior.' [Citation.] Here, the only significant difference from *In re P.A.* is the fact that Andy was only two and one-half years old at the time of the court's orders, so he was not 'approaching the age at which [his sisters were] abused.' [Citation.] (Maria said she was about 11 years old the first time A.G. [Andy's father] exposed his penis to her.) But other factors convince us that the evidence was sufficient to support the court's findings that Andy was at substantial risk of sexual abuse. While Andy may have been too young to be cognizant of A.G.'s behavior, A.G. exposed himself to Janet while Andy was in the same room (albeit apparently facing in the other direction). Indeed, the court could infer, as the Department suggests, that A.G. used Andy to get Janet to approach him so he could expose himself to her, by asking her to take Andy to the store and holding out the money to do so. This evinces, at best, a total lack of concern for whether Andy might observe his aberrant sexual behavior. . . . [¶] In short, on this record the juvenile court properly could conclude that A.G.'s aberrant sexual behavior with Janet and Maria placed their brother Andy at risk of sexual abuse. Accordingly, the trial court's jurisdiction findings under section 300, subdivisions (d) and (j) were proper." (*Id.* at pp. 1414–1415, fn. omitted.)

However, in *In re Maria R.* (2010) 185 Cal.App.4th 48, the court disagreed with prior cases "to the extent that they have held, either explicitly or implicitly, that a parent's sexual abuse of a daughter, either alone or in combination with a factor or factors that have no established correlation with sexual abuse, is sufficient to establish that the parent's son is at risk of sexual abuse by that parent within the meaning of subdivision (d)." (*Id.* at p. 63.) The *Maria R.* court observed that the courts deciding *In re Karen R.*, *In re P.A* and *In re Andy G.* had been unable to cite "any scientific authority or empirical

evidence to support the conclusion that a person who sexually abuses a female child is likely to abuse a male child." (*In re Maria R.*, at p. 68.) In the absence of scientific evidence "demonstrating that a perpetrator of sexual abuse of a female child was in fact likely to sexually abuse a male child," the court was "not persuaded that the rule of general applicability enunciated in *P.A.*, and repeated by the *Andy G.* court, is grounded in fact" and "decline[d] to adopt the reasoning of *P.A.* and *Andy G.*" (*In re Maria R*, at p. 68.) "Since there is no evidence in the record that would tend to support a finding that George has an interest in engaging in sexual activity with a male child, we cannot, despite the Agency's urging, conclude that George's sexual abuse of his daughters—as aberrant as it is—establishes that George, Jr., is at substantial risk of *sexual abuse* within the meaning of subdivision (j), as defined in subdivision (b) and Penal Code section 11165.1." (*Ibid.*)

Most recently, in an opinion also disagreeing with the conclusion in *In re Karen R.*, *In re P.A.* and *In re Andy G.*, Division Four, in *In re Alexis S.* (2012) 205 Cal.App.4th 48, held that evidence did not support the dispositional order removing fathers' two sons from his legal custody and restricting him to monitored visitation on the basis that they were at risk of sexual abuse. The court reasoned: "Here, it appears from the record that the court's primary concern was emotional injury to the boys from being in a home where sexual abuse was occurring. However, there was no evidence that the boys were in any way aware of appellant's actions. The touching incidents took place outside their presence or when they were asleep. Moreover, as the minors' counsel pointed out, by the time of the dispositional hearing any such risk had been eliminated, as appellant had moved out of the family home and was in compliance with an order prohibiting further contact with E.G. Further, appellant's conduct toward his adolescent stepdaughter—kissing and fondling her—did not support, under a clear and convincing evidence standard, that the boys—aged eight and ten at the time of the dispositional hearing—were at risk of similar abuse, either now or in the immediate future. There was no evidence of any proclivity on appellant's part to abuse or molest sexually immature

children or males of any age, or to expose them to inappropriate sexual behavior." (*In re Alexis S.*, at p. 55.)

Because of Father's sexual abuse of J.F., and following the reasoning and the holdings in *In re Karen R.*, *In re P.A.* and *In re Andy G.*, we conclude that Lorenzo was at risk of being harmed by the molestation of his stepsister.

Removal of the Children from Parental Custody and Termination of Reunification Services

Although Father does not specifically challenge the juvenile court's removal orders, he states in his petition that he requests custody of Lorenzo and E.A. However, given the juvenile court's proper jurisdictional findings discussed *ante*, and the substantial period of time the family had received services, the juvenile court properly removed the children and terminated family reunification services.

The juvenile court has broad discretion at the disposition hearing to decide what will best serve the child's interest and to fashion an order accordingly, and a decision of the juvenile court at disposition will not be reversed absent a clear abuse of discretion. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103–1104) Regarding the removal of a child, while the statute requires clear and convincing evidence of a danger at the juvenile court level, the substantial evidence standard of review applies on appeal. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.)

Once jurisdiction is decided, section 358 requires the juvenile court to determine the appropriate disposition for the child. At disposition, the juvenile court is not limited to the content of the sustained petition when it considers what disposition would be best for the child. Additional social study reports, special evaluations, and "other relevant and material evidence" may be considered. (§ 358, subd. (b).)

In this case, by the time the juvenile court conducted the March 5, 2012 hearing, where it made findings and orders supposedly being challenged by Father, the children had been declared dependents of the court and the family had been receiving reunification services for more than 24 months. J.F. had been out of her parents' custody

since 2009; Lorenzo and E.A. were also taken into protective custody in 2009, returned to their parents in February 2011, only to be redetained in June of the same year.

At the March 5, 2012 hearing, Father did not present any evidence and no witnesses testified on his behalf. Father merely requested that Lorenzo and E.A. be returned to parental custody.

There was ample evidence before the juvenile court to show that returning Lorenzo and E.A. to their parents would have placed the children at risk of harm. In addition to the evidence that Father had sexually abused J.F., the case social worker reported she received a telephone call from Mother who did not believe Father had sexually abused J.F. The case social worker opined Mother did not have the protective capacity to ensure that Lorenzo and E.A. remained safe from harm because Mother continued to deny that the sexual abuse could have occurred and was unable to grasp the concept that the children could be at risk of abuse. Father continuously denied the abuse.

Additionally, the parents' visits with Lorenzo and E.A. appeared to be problematic. DCFS reported that E.A. had started playing with her private parts and the behavior occurred after she visited with her parents on the weekends. E.A. had not been as playful as she had been in the past and her caregiver believed "something [was] not right with the visits." Moreover, the parents' visits with Lorenzo were inconsistent, Father was disrespectful, and Lorenzo had been wetting the bed after family visits.

Given the serious sustained allegations of sexual abuse, the parents' failure to acknowledge the abuse, the children's behavior and reported problems with the parents' visits, as well as the fact the family had been under juvenile court jurisdiction for over two years and yet was unable to demonstrate the children could safely return home, the juvenile court properly ordered the children removed and terminated reunification services.

DISPOSITION

The petition for extraordinary writ is denied. The temporary stay order is vacated.

NOT TO BE PUBLISHED.

JOHNSON, J.

I concur:

CHANEY, J.

ROTHSCHILD, J., concurring and dissenting.

I concur in the majority's opinion upholding jurisdiction over J.F. and her stepsister E.A. based on Father's conduct with respect to J.F. I dissent, however, as to jurisdiction over Father's biological son, Lorenzo.

The majority's conclusion that the sexual abuse of J.F. put Lorenzo at risk of sexual abuse has no evidentiary support. The majority bases its determination on the conclusion of some appellate courts—again without any factual basis—that if the father sexually abused a minor daughter or stepdaughter, it's *possible* that in the future he will abuse a minor male son or stepson. (See, e.g., *In re P.A.* (2006) 144 Cal.App.4th 1339, 1347.) As the court pointed out in *In re Maria R.* (2010) 185 Cal.App.4th 48, 68, however, there is not "any scientific authority or empirical evidence to support the conclusion that a person who sexually abuses a female child is likely to sexually abuse a male child." Neither the majority nor DCFS contends that the scientific landscape has changed since the *In re Maria R.* decision.

ROTHSCHILD, Acting P. J.