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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re EMMANUEL D., a Person Coming  
Under the Juvenile Court Law.

B264246

(Los Angeles County  
Super. Ct. No. DK09330)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.D.,

Defendant and Appellant.

APPEAL from a judgment and order of the Superior Court of Los Angeles  
County, Julie Fox Blackshaw, Judge. Affirmed.

Joseph T. Tavano for Defendant and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant  
County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

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## **INTRODUCTION**

Mother appeals the juvenile court's judgment pursuant to Welfare and Institutions Code section<sup>1</sup> 300, subdivisions (a), (b), (d), and (j) finding jurisdiction over her three-year-old son Emmanuel, and the dispositional order removing Emmanuel from her custody. We affirm jurisdiction because substantial evidence produced by the Department of Children and Family Services (DCFS) supports the court's finding that Emmanuel was at risk of substantial physical harm based on Mother's failure to protect her seventeen-year-old stepdaughter, J., from Father's physical abuse. We conclude that Mother's due process rights were not violated by the court relying on hearsay statements made within the social study reports to support its jurisdictional finding because the witnesses, who lived across the country, testified telephonically and were subject to cross examination. We also affirm the court's decision to remove Emmanuel as the evidence indicated that Mother was controlled by Father, maintained contact with and assisted Father following his arrest, and was a flight risk.

## **FACTS AND PROCEDURAL BACKGROUND**

### **1. Physical and Sexual Abuse of Emmanuel's Half-Sibling**

Prior to the commencement of this dependency case, Father had full physical custody of J., his 17-year-old daughter from a previous marriage. Dannie, J.'s biological mother who lives in Massachusetts, shared joint legal custody of J. In 2011, Father married Mother, and brought Mother and her mother (the maternal grandmother) to live with him and J. in the United States. The family subsequently moved from Massachusetts to California about three years ago to advance J.'s musical career. Father and Mother had a son, Emmanuel, who is the subject of this dependency case.

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

Father has physically abused J. since she was four years old, hitting, kicking, and punching her on a regular basis. Although J.'s biological mother, Dannie, repeatedly reported the abuse in Massachusetts, J. hid the bruises and abrasions under clothing and denied the abuse when child protective services attempted to investigate due to her fear of retribution from Father. The recent physical beatings occurred in response to J. going out with friends or in reaction to J. doing something wrong, like when she made an accounting error on an invoice for Father's company (Father required J. to do all of the accounting for his company and for the family).

When J. was 14-years-old, Father began raping J. on a daily basis. Father, who did not share a bedroom with Mother, would sleep for part of the night in J.'s room and force her to have sex with him. J. perceived that she was required to have sex with him in exchange for things like new shoes or new music, for permission to hang out with friends, and for him to support her musical career.

The family was brought to the attention of DCFS in January 2015 when Father severely beat J. for hours and then raped her. That day, J. was with a boy at a basketball court when Father began yelling at her for being out with boys and acting disrespectfully. Mother later told police that Father observed J. having sex with this boy at this juncture. Father rapidly approached J. and slapped her in the face. He ordered her to come home with him. When J. bent over to pick up her bag, Father forcefully kicked her on the butt, causing her to fall. Before J. regained her footing, Father struck her on the ribs with a closed fist.

Once inside the home, Father pushed J. into her bedroom, followed her in, and closed the door. Father obtained a white cable television cord and began to whip J. across the upper arm, causing deep lacerations and abrasions. Father made J. remove her pants so that he could strike her bare legs. During the incident, Mother began banging on the door and yelling for Father to stop hitting J. Father shortly thereafter stopped, made J. put on a sweater to cover up the evidence of his beating, and took her with him to his optometrist appointment.

After they returned from the appointment, the beating resumed while J. was required to clean the house. Father continually slapped J. while she was cleaning. J. overheard Father telling someone on the telephone that he was going to break J.'s teeth and collar bone later that night. Emmanuel, Mother, and Emmanuel's maternal grandmother witnessed Father's physical abuse that night. Father also threatened J. with a pair of scissors and demanded that she perform the same sex acts on him that she performs on her boyfriend. Fearing for her life, J. pleaded with Father not to hurt her or make her perform oral sex. Father then required J. to undress and lay on her bed, at which point in time he raped her.

Later that night, Father left J.'s room and went to bed. Since Father routinely confiscated J.'s phone and laptop, she was unable to call for help from her home. Fearing that Father would kill her if she stayed, J. climbed out her bedroom window and walked a couple of miles to her nearest friend's home. J. called her biological mother, Dannie, who contacted the police and DCFS. J. told police about Father's history of abuse and described that night's beating and rape in graphic detail. J. was examined and treated at a rape treatment center, where her injuries were photographed and documented. J. subsequently moved to Massachusetts to live with Dannie.

Upon learning of Father's physical and sexual abuse of J., DCFS detained Emmanuel. Mother denied ever knowing about Father's physical or sexual abuse of J. J. informed DCFS during interviews and also telephonically testified at the trial that although Mother likely did not know of the sexual abuse, Mother was aware that Father physically abused J. J. stated that both Mother and Emmanuel witnessed prior incidents of physical abuse. J. reported to DCFS that Mother was fully aware of the physical abuse and "would go about her business [cooking and cleaning] in the home while [F]ather was beating her." J. and Mother did not have a positive relationship, and J. testified that Mother was jealous of her and hardly talked to her. With the exception of Mother telling Father to stop when he was whipping J. with a cord during the incident that led to this dependency case, Mother never intervened or tried to stop Father from beating J. J.

expressed concerns that although Mother treated Emmanuel well, Mother may not protect Emmanuel in the future because she feared Father.

After being arrested and released on bail, Father fled California and his whereabouts are unknown. Police reported that a week after Father's arrest, Mother lied about not knowing where Father lived and refused to provide the police with information about Father's whereabouts. Mother became uncooperative with the police and with DCFS, initially speaking perfect English with them and then insisting that she did not speak English and needed an interpreter. Bank records provided by J. revealed that Mother provided Father money out of state and was paying for his attorney's fees. Mother nonetheless testified that she did not want to reunify with Father.

## **2. Jurisdiction and Disposition Proceedings**

On January 28 2015, DCFS filed a section 300 petition alleging that the court had jurisdiction pursuant to subdivisions (a), (b), (d), and (j). The petition stated that Father physically and sexually abused J., that Mother knew of Father's excessive physical abuse of J. and failed to protect J. from the abuse, and that Emmanuel was in substantial danger of physical harm. That same day, the court detained Emmanuel from the parents' custody.

Prior to the jurisdictional hearing, pursuant to section 355, subdivision (c)(1), Mother objected to the admission of hearsay statements made by J. and Dannie in the jurisdiction and disposition report. Mother requested that J. and Dannie be made available for cross-examination or alternatively, have their statements excluded from the court's consideration. Pursuant to section 355, subdivision (c)(1), if the parent raises a timely and specific hearsay objection to hearsay within a social study, that hearsay cannot be sufficient by itself to support a jurisdictional finding unless it falls under an exception set forth in the statute. One applicable exception allows the jurisdictional finding to be completely based on the hearsay where the hearsay declarant is available for cross examination. (§355, subd. (c)(1)(D).)

At trial, DCFS asserted that because J. and Dannie, who lived in Massachusetts, were available for cross examination over the phone, their statements could support a jurisdictional finding. Mother argued that the hearsay declarant must be in court for cross-examination to satisfy the statute, and thus, telephonic testimony was insufficient to satisfy the exception set forth in section 355, subdivision (c)(1)(D). The juvenile court disagreed, stating: “the court can accept testimony by telephone, which I will do here, given that [J.] does live across the country.” The court also noted that despite the telephonic testimony, “there is much evidence in this case” to support jurisdiction.

J. and Dannie subsequently testified. At Mother’s request, the dependency investigator also provided testimony. Mother testified on her own behalf, stating that she loved J. just as much as she loved her son Emmanuel and denying any knowledge of the physical and emotional abuse. Mother admitted that on the day of the January 2015 incident, Father told Mother that he had whipped J. with a belt because he found J. having sex with a boy. Mother stated that she spoke to J. later that day but J. did not mention the abuse. Mother also denied telling the police that J. ran away because Father saw her having sex with a boy. The court also admitted DCFS’s detention report, jurisdiction and disposition reports, photos of J.’s injuries, as well as last minute information reports into evidence.

The court sustained jurisdiction over Emmanuel pursuant to section 300 subdivisions (a), (b), (d), and (j), based on allegations that Mother knew of and failed to protect J. from Father’s excessive physical abuse. The court explained its ruling and its credibility determinations as follows:

“I do find this to be a very egregious case of physical and sexual abuse. The photographs of the injuries that [J] sustained are horrific, and the fact that she sustained them at the hands of her father are awful. So it is a very serious case of abuse.

“ . . . I found Julie to be very credible. [I]t did not appear that she was making up stories. Her testimony and, also, all the times that she had recounted what had happened to her social workers, police . . . was very consistent. And she was credible in her testimony. And she said that the

physical abuse started when she was very young, not too much older than Emmanuel. And the sexual abuse had been going on for years.

“I did not find the mother to be credible. She denied that she mentioned anything about the sex in the police report. We have the police report in front of us and that is what is stated in the police report. So that, obviously, was a lie. I do not believe the mother’s claims that she knew nothing about the physical abuse. I can’t imagine that she would live in the same home and not know that this egregious abuse was happening.

“[¶] . . . [¶]

“ . . . I am convinced that she knew the physical abuse was going on because . . . the one time she said she was made aware of it when Father told her about it and she had a subsequent conversation with Julie, she didn’t even ask about the physical abuse. She didn’t even ask . . . if Julie was hurt. . . . She didn’t ask to see the injuries. Basically, Mother didn’t want to know.

“ . . . I do believe that Mother . . . was extremely unable to protect Julie and, unfortunately, I also believe that she is unable to protect Emmanuel. The fact is that my concerns are that I do believe Mother is very controlled by the father and does not have the ability, perhaps the courage, perhaps the desire to stand up to him and protect her children. The T.R.O. has lapsed. There’s been no request for a new T.R.O.”

The court also found that Mother could not “stand up to Father and protect [Emmanuel] because she certainly did nothing of that sort with respect to [J.], . . . who she testified . . . she loved as much as she love Emmanuel. And if that’s how she protects [J.], we can’t expect more for Emmanuel.” The court found by clear and convincing evidence pursuant to section 361, subdivision (c), that there is a substantial danger to Emmanuel’s physical health, safety, protection and well-being if he were returned to Mother and ordered him removed from the parents’ custody.

## **DISCUSSION**

Mother contends that the court erred in allowing telephonic testimony by J. and Dannie and therefore under section 355, there was insufficient evidence to sustain jurisdiction. Mother also asserts that there was insufficient evidence to support jurisdiction, specifically arguing that there was no evidence that Emmanuel was currently

at risk of serious harm. Lastly, Mother attacks the sufficiency of the evidence supporting removal.

### **1. The Court Did Not Err in Admitting Telephonic Testimony and Hearsay Statements from J. and Dannie**

We first address Mother's evidentiary contentions as she claims that without the statements from J. and Dannie, the court lacked substantial evidence on which to base its jurisdictional findings. Mother asserts that "the telephonic testimony violated [Mother's] due process rights to cross-examine and confront the witnesses, and should not have been allowed." Mother also argues that "there was no other existing hearsay exception to allow admission of the statements contained in the social worker's report," and thus the statements may not be the basis of the jurisdictional finding without corroboration.

As mentioned above, Section 355, subdivision (b) sets forth admissibility standards for hearsay evidence at the jurisdictional hearing and expressly allows the admission of hearsay evidence in DCFS's social study reports. However, if a parent "raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes" a hearsay exception set forth under section 355, subdivision (c). (§ 355, subd. (c)(1).) "Section 355 thus does not bar hearsay evidence at a jurisdictional hearing but, if a timely objection is made and no hearsay exception applies, the evidence must be corroborated." (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1280; *In re B.D.* (2007) 156 Cal.App.4th 975, 983–984 (*B.D.*).)

Here, Mother objected to hearsay statements made by J. and Dannie on specific pages of the jurisdiction/disposition report and to J.'s statements in the police report. The statements attested to the physical and sexual abuse by Father and that Mother observed the physical abuse. Thus, at issue is whether a hearsay exception applied to the statements made by J. and Dannie, or alternatively, whether their testimony was corroborated by other evidence before the court.

#### *a. The Cross-Examination Hearsay Exception*



Section 355, subdivision (c)(1) sets forth a number of hearsay exceptions that enable the court to rely solely on hearsay statements to find jurisdiction. The enumerated exception pertinent to this case states that the jurisdictional finding may entirely be supported by the hearsay if: “The hearsay declarant is available for cross-examination. For purposes of this section, the court may deem a witness available for cross-examination if it determines that the witness is on telephone standby and can be present in court within a reasonable time of a request to examine the witness.” (§ 355, subd. (c)(1)(D).) We agree that because J. and Dannie were telephonically available for cross examination at trial, the hearsay exception set forth in section 355, subdivision (c)(1)(D) applied and the court could rely on their statements to find jurisdiction.

There is no specific statutory direction regarding the manner in which testimony may be provided in juvenile dependency hearings, and there is no statute or court rule specifically prohibiting telephonic testimony. Evidence Code section 711 provides that a witness “can be heard only in the presence and subject to the examination of all the parties to the action.” Courts have held that this statute does not bar juvenile courts from taking testimony by child witnesses in chambers and outside the presence of parents in dependency cases, even before enactment of a specific statute that authorized such a procedure (§ 350, subd. (b)). (*See In re Mary S.* (1986) 186 Cal.App.3d 414, 417–420 (*Mary S.*) [reviewing cases].) The “presence” requirement has been deemed satisfied because the testimony was given in the presence of the parent’s attorney, who had the opportunity to cross-examine the child witness. (*Id.* at p. 417.) Here, we conclude that the “presence” requirement was satisfied by J. and Dannie’s presence on the phone, at which time Mother was afforded a full opportunity for cross-examination.

We note that the court’s decision to allow telephonic testimony in a case where the abused minor lived across the country is consistent with the court’s inherent power and wide discretion to “develop rules of procedure aimed at facilitating the administration of justice.” (*In re Jeanette H.* (1990) 225 Cal.App.3d 25, 34.) This inherent power and discretion is particularly important, where “[j]uvenile courts are required to ‘control all proceedings with a view to the expeditious and effective ascertainment of the

jurisdictional facts and of all information relevant to the present condition and welfare of the child.’ ” (*Id.* at p. 36; Cal. Rules of Court, rule 5.534(a).)

Moreover, the use of telephonic testimony, although not ideal, is not novel. Family Code section 3411 allows out-of-state witnesses to testify by telephone in child custody proceedings. Rule 43(a) of the Federal Rules of Civil Procedure also authorizes the use at trial of testimony from another location “by contemporaneous transmission,” “[f]or good cause in compelling circumstances and with appropriate safeguards.” Here, the court had good cause to allow J. and Dannie to testify remotely as they lived in Massachusetts.

To the extent Mother asserts that her due process rights have been violated because she could not physically confront the witnesses, we note that the right to confrontation is statutory and not absolute in this context. In *Mary S.*, *supra*, 186 Cal.App.3d at p. 419, the Court of Appeal explained that the express constitutional right to confrontation applies solely to criminal proceedings, and even in criminal proceedings, “the right to physical confrontation is not absolute, but is subject to certain hearsay, consent, and waiver exceptions.” Likewise, the statutorily created right to physical confrontation in civil proceedings is also not absolute. (*Ibid.*) “A trial court at a dependency hearing may control the proceedings ‘with a view to . . . the ascertainment of all information relative to the present condition and future welfare’ of the minor. (§ 350, subd. (a); cf. Evid. Code, § 765.) Unlike at a criminal proceeding where an express constitutional right to confrontation exists, at a civil proceeding the constitutional right involves general notions of procedural due process.” (*Mary*, at p. 419, fn. omitted [concluding that the right to physical confrontation did not apply where it conflicted with the child’s wellbeing].)

In assessing whether Mother’s due process rights were violated, we utilize a balancing standard that considers: “[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and

the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” (*Mathews v. Eldridge* (1976) 424 U.S. 319, 335; *In re Jackson* (1987) 43 Cal.3d 501,511.)

Here, Mother had substantial private interests at stake in the jurisdiction and dispositional proceeding because she could and did lose custody of Emmanuel as a result of the failure to protect allegations being sustained. However, under the present set of facts, the risk of an erroneous deprivation of her custody interest through the use of telephonic testimony was minimal, since J.’s credibility was well-supported by the record.<sup>2</sup> J. had made multiple consistent statements to law enforcement and DCFS, and J.’s medically documented injuries were consistent with J.’s disclosures to the authorities. Only Mother’s testimony conflicted with J.’s statements, and only as to the issue of Mother’s knowledge of Father’s physical abuse. To this end, the record indicated that Mother’s credibility was questionable. Mother blatantly lied during her testimony when she denied telling the police that J. ran away because Father caught J. having sex; police reports indicated that Mother did report this. As J.’s credibility was already well-supported, physical confrontation would likely contribute little to Mother’s case.

Furthermore, DCFS as well as counsel for Emmanuel had a great interest in admitting J.’s telephonic testimony in order to establish jurisdiction and protect her half-sibling from future abuse. “[J]uvenile court proceedings, particularly in abuse and neglect cases, are supposed to be informal and to place the best interests of the child ahead of inflexible and ritualistic adherence to ordinary, adversarial trial court procedures.” (*In re Lucerno L.* (2000) 22 Cal.4th 1227, 1252 (conc. opn. of Chin, J.).) The court here placed Emmanuel’s best interest ahead of Mother’s interest in this procedural protection. In weighing these interests, we conclude that under this particular set of facts, the admission of the telephonic testimony was a reasonable exercise of both the court’s discretion and its inherent power to control the proceedings.

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<sup>2</sup> We note that Julie’s statements and testimony were the crux of the jurisdictional findings adverse to Mother, since Julie stated that Mother was well aware of the abuse.

*b. Corroboration*

We also conclude that J. and Dannie's hearsay statements in the social study reports supplied by DCFS were corroborated by other evidence in the record. "Corroborating evidence is 'evidence supplementary to that already given and tending to strengthen or confirm it. Additional evidence of a different character to the same point.' [Citation.] In this context, corroborating evidence is that which supports a logical and reasonable inference that the act described in the hearsay statement occurred." (*B.D.*, *supra*, 156 Cal.App.4th at p. 984.) The standard for sufficient corroboration with respect to dependency jurisdictional findings "is analogous to the rule in criminal law requiring independent corroborative proof of accomplice testimony. [Citation.]" (*In re Christian P.* (2012) 208 Cal.App.4th 437, 448 (*Christian P.*), citing *B.D.*, at pp. 984–985.) Thus, corroborating evidence may be slight so long as it connects the parent with the alleged abuse, and it need not go so far as to establish by itself, without the aid of the hearsay testimony, that the parent committed the alleged conduct. (*Christian P.*, at p. 448; *B.D.*, at p. 984.)

Here, photographs of J.'s injuries, taken shortly after the incident that precipitated this case, document the extensive and noticeable bruises and lacerations that covered J.'s body following Father's beating. One of the photographs shows a bruise to the front of J.'s neck, which would have been visible when Mother saw J. on the night of the beating despite J. wearing long sleeves. The extent of J.'s injuries lends credence to J.'s statements that Mother knew about the physical abuse.

Furthermore, Mother's inconsistent testimony as well as her evasive and conflicting statements to law enforcement and DCFS further support J.'s assertions that Mother knew of the physical abuse. When first questioned by police, Mother denied knowing about any physical discipline by Father. Yet, Mother testified at the jurisdictional hearing that Father told her that he had whipped J. with a belt on the day of the beating. Mother also told police that J. ran away from home because Father caught her having sex with a boy, and police recorded this statement. Nonetheless, when testifying, Mother denied ever telling the police that J. was caught having sex with a boy.

From the outset of police and DCFS involvement in this case, Mother contradicted herself and withheld information regarding Father's abuse until testifying and faced with losing custody of Emmanuel. Mother's inconsistent statements further corroborated J.'s statements regarding Mother's knowledge of the abuse: Mother's inconsistencies show that Mother knew more than she revealed to DCFS and police during the pendency of this section 300 petition.

Based on the foregoing, we conclude that the court properly relied on J. and Dannie's hearsay statements because their statements were corroborated by evidence of J.'s injuries as well as Mother's own inconsistent statements in the record and testimony.

## **2. Substantial Evidence Supports Jurisdiction**

Mother asserts that the court erred in finding jurisdiction over Emmanuel. We review the juvenile court's jurisdictional findings for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966.) "Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value." (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) Although substantial evidence may consist of inferences, the inferences " 'must be "a product of logic and reason" and "must rest on the evidence" [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations].' " (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394, italics omitted.) Conflicts in the evidence and reasonable inferences are resolved in favor of the prevailing party. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) "[I]ssues of fact and credibility are questions for the trier of fact." (*Ibid.*)

When a section 300 petition alleges multiple subdivisions, " 'a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.' " (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*)). Here, we focus our analysis on section 300, subdivision (j), as it most closely describes Emmanuel's case.

Section 300, subdivision (j) provides jurisdiction where there is evidence that “[t]he 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.” In evaluating whether there is substantial evidence of abuse, the juvenile court “consider[s] 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.” (*Ibid.*) “In determining whether the child is in present need of the juvenile court’s protection, the court may consider past events.” (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169.)

In *I.J.*, *supra*, 56 Cal.4th at page 774, the Supreme Court explained that subdivision (j) expanded the juvenile court’s exercise of jurisdiction with regard to children whose siblings have been abused as defined by section 300, subdivisions (a), (b), (d), (e), or (i). Noting subdivision (j)’s broad language, the Court stated that “ ‘the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of any of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.’ ” (*Ibid.*, italics omitted.)

Here, the first prong of subdivision (j)’s analysis has been satisfied because Emmanuel’s half-sibling, J., was abused as stated in section 300, subdivision (b), which describes a child who has suffered serious physical harm as a result of her parent’s failure to protect her. Here, Father repeatedly raped and excessively beat J. Evidence described above showed that Mother knew at minimum about the physical abuse and failed to do anything to protect J. from Father.

We conclude that the second prong of subdivision (j)’s analysis was also satisfied because considering the totality of the circumstances, substantial evidence supports the conclusion that there was a present substantial risk that Emmanuel would also be abused

as described under subdivision (b). Father's abuse of J. was extensive and ongoing. At the time of the jurisdiction hearing, Emmanuel was close to J.'s age when Father began physically abusing J. J. expressed concerns that even though Mother was kind to Emmanuel, she would not protect him out of fear of Father. Mother testified that she loved J. as much as she loved Emmanuel, yet she failed to protect J. from Father's beatings. There was no evidence that Mother would provide Emmanuel greater protection from Father than the lack of assistance she provided to J.

Even though Father was not presently living with Mother, evidence indicated that Mother was a flight risk and likely to reunite with Father. The record shows that Father continued to pose a risk to Emmanuel because his whereabouts were unknown and because he continued to have control and influence over Mother. Mother was largely dependent on Father: Father brought Mother and the maternal grandmother to the United States from Haiti, and Mother had no other family or ties to this country. As evidenced by police reports and bank records, when Father absconded during the pending criminal and dependency proceedings, Mother refused to reveal Father's location to law enforcement and she supported Father by sending him money. Mother would not or could not protect the children she loved from Father, who had a great deal of control and influence over Mother.

To the extent that Mother asserts that she was not a flight risk because she testified that she no longer wanted a relationship with Father, such contradictory evidence was for the juvenile court to weigh and consider. Even if contradictory evidence exists, “ ‘ “we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” ’ ” (*I.J.*, *supra*, 56 Cal.4th at p. 773.) We are not tasked with reweighing the evidence or exercising independent judgment, rather we “ ‘ “merely determine if there are sufficient facts to support the findings of the trial court.” ’ ” (*Ibid.*) Here, the trial court judged the credibility of J. and Mother, and determined that Mother was not credible based on Mother’s contradictory statements and that J. was very credible due to her consistency. We do not reweigh the evidence or contradict the juvenile court’s well-reasoned factual determinations.

Furthermore, Mother cites *In re Phoenix B.* (1990) 218 Cal.App.3d 787 (*Phoenix*), and *In re Daisy H.* (2011) 192 Cal.App.4th 713 (*Daisy*), for support of her assertion that there was no present risk of harm to Emmanuel. In *Phoenix*, the county filed a section 300 petition when the child’s mother was hospitalized for mental illness. Prior to the jurisdiction hearing, the child’s father came forward to care for and take custody of the child. (*Phoenix*, at p. 790.) Evidence indicated that the father was able and willing to care for the child. (*Ibid.*) The juvenile court released the child to the father’s custody and dismissed the petition because there was no present risk of harm to the child. (*Ibid.*) The mother appealed the court’s decision not to take jurisdiction. The Court of Appeal upheld the dismissal of the dependency proceedings, stating that because the father provided the child with appropriate care and the child’s welfare was not endangered in the father’s custody, there was no basis for assuming jurisdiction. (*Id.* at p. 793.)



In *Daisy H*, the juvenile court found jurisdiction over the children based on allegations that father committed domestic violence against the mother. (*Daisy H, supra*, 192 Cal.App.4th at pp. 715-716.) The Court of Appeal reversed, holding that there was no evidence showing a risk of harm to the children because the domestic violence happened years ago, the parents were separated, the children were not physically exposed to the violence, the father never intentionally harmed any of the children, and the children were not at risk of intentional harm. (*Id.* at p. 717.)

Both cases are clearly distinguishable from the case at bar. Unlike *Phoenix* and *Daisy*, this case involves past egregious physical abuse to a sibling by a parent. Emmanuel has been exposed to Father's violence against J., and is close to the age at which the violence began against J. Also unlike the parents in those cases, Father appears to have substantial control and influence over Mother. Mother is a flight risk and without court intervention, would likely reunify with and expose Emmanuel to Father.

We thus conclude that substantial evidence supports findings that J. was abused, as defined in section 300, subdivision (b), and that there is a substantial risk that Emmanuel will be abused, as defined in subdivision (b). We therefore affirm the court's finding of jurisdiction over Emmanuel under subdivision (j).

### **3. Substantial Evidence Supported the Removal Order**

Under section 361, subdivision (c)(1) children may not be removed from their parent's home "unless the juvenile court finds clear and convincing evidence" of a "substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." "A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor; and (2) potential detriment to the minor if he or she remains with the parent." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163.) Upon satisfying these prongs, the removal is appropriate even if the parent is not dangerous and the minor at issue has not yet been harmed. (*Ibid.*) "The focus of the statute is on averting harm to the child." (*Ibid.*)

The substantial evidence discussed at length above supports the court's finding that Mother was incapable or unwilling to protect Emmanuel from Father, and was likely to expose Emmanuel to Father. Even though Emmanuel was not harmed, the threat of harm to Emmanuel was illustrated by Father's physical abuse of J. and Mother's failure to protect J. Removal was essential to averting harm to Emmanuel. Based on the foregoing, we conclude substantial evidence supports the court's dispositional order removing Emmanuel from his parents' custody.

### **DISPOSITION**

The juvenile court's jurisdictional judgment and dispositional order are affirmed.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

JONES, J.\*

We concur:

EDMON, P. J.

LAVIN, J.

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