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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B284897
(Los Angeles County
Super. Ct. No. DK22598)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.S. and ANTHONY M.,

Defendants and Appellants.

APPEAL from orders of the Superior Court for Los Angeles County,
Kim L. Nguyen, Judge. Affirmed.

Gina Zaragoza, by appointment of the Court of Appeal, for Defendant
and Appellant C.S.

Jamie A. Moran, by appointment of the Court of Appeal, for Defendant
and Appellant Anthony M.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County
Counsel, and William D. Thetford, Principal Deputy County Counsel, for
Plaintiff and Respondent.

This juvenile dependency case involves three children: Maxwell M. (who was 21 months old at the time the petition was filed), Logan F. (who was almost four years old), and Paris F. (who was 10 years old). C.S. (mother) is the mother of all three children; Anthony M. (father) is Maxwell's father and the step father of Logan and Paris.¹ In this appeal, mother and father challenge the juvenile court's jurisdiction and disposition orders. We conclude substantial evidence supports the court's findings and affirm both orders.

BACKGROUND

A. Facts Leading to Filing of Dependency Action

On March 4, 2017,² officers from the Bell Police Department responded to a domestic violence call at the family's apartment; they were told that mother and father were having a loud argument. Officer Silva arrived and knocked on the door. A man Silva recognized as father opened the door. He appeared upset and was breathing heavily. Father asked, "What the fuck do you want?" Silva said that he was there to talk to him, but father refused to talk and shut the door. A witness standing outside told Silva that the woman who lived there had already left. From prior contacts with the couple, Silva knew that

¹ Anthony F., Paris's presumed father and Logan's birth father, is not a party to this appeal.

² Further references to dates are to the year 2017 unless otherwise specified.

mother's mother (MGM) lived down the street, so he when there to speak to mother.

Mother told Silva that she was inside their apartment when father got upset for some unknown reason. Father began yelling at her, so she grabbed some clothes and called MGM. Father continued to yell at her until MGM arrived. At that point, mother grabbed her belongings and left the apartment. She denied being hit or hitting father; she said they only argued and did not need the police officers' help.

Silva also spoke to Paris and MGM at MGM's home. Paris told him that she was sleeping in her bedroom when she heard father and mother arguing. She walked to their room and saw that father pushed mother to the bed. Mother stood up and grabbed some clothes while father was arguing. MGM arrived, and father began to argue with her until mother and MGM walked out of the apartment. MGM told Silva that after getting a call from mother telling her that she and father were arguing, she drove over to mother's apartment to help her gather her belongings. When she arrived, she heard father and mother arguing inside the bedroom. As she approached the bedroom door, she heard "scuffling" inside; she opened the door and saw father and mother tugging on each other. MGM told mother to walk away, which mother did. Father walked toward MGM and spat in her face. Mother gathered her things and they left the apartment.

When he returned to the police station, Silva called the initial reporting party, L.C. She told Silva that she had been sleeping when she heard mother and father arguing. She walked outside, saw them

arguing, and went back inside to call the police. When she went back outside, mother was carrying the baby (Maxwell), and father was trying to get him from her. They continued arguing, and all of a sudden mother began slapping father, and father started to slap mother. L.C. went back inside to call the police again to let them know that mother and father were now fighting. By the time she went back outside, mother was by the sidewalk walking with another woman.

The Los Angeles County Department of Children and Family Services (the Department) was contacted regarding this incident. On March 10, CSW Su interviewed mother at MGM's house about the incident.

Mother told CSW Su that Logan woke up and came into her bedroom. Father took Logan to the bathroom to use the toilet. Logan started to yell and cry while on the toilet, and mother told father that she would take care of it. Father got upset, started to yell and curse at her, and punched the bathroom door. Mother got scared, so she took Logan and Maxwell into Paris's bedroom and called MGM. MGM arrived within 10 minutes. Father was hostile to MGM, calling her a "fucking bitch" and telling her to leave; MGM tried unsuccessfully to calm him down. Mother left the children with MGM by the front door while she went to her bedroom to get some clothes. Father followed her, and pushed her up against the wall. Mother said, however, that neither of them punched or hit the other.

Mother stated that the allegation that she held Maxwell in her arms while slapping father was not true. She told CSW Su that she left Maxwell with father when she left because she did not want father to do

anything “crazy.” She said that father was a good father and would not do anything to harm Maxwell or her other children. She stated that father had calmed down, and she, MGM, and the children were able to leave the apartment without any problems, although father spat in MGM’s face for no apparent reason.

Mother told CSW Su that she picked Maxwell up from father in the evening on March 6. She also left Maxwell and Logan with father during the days on March 7 and 8, picking them up after she finished work. However, she stopped letting the children go with father on March 9, after he began texting her about not wanting to live, or killing himself if they did not get back together.

Mother reported that earlier that day, March 10, father and the police arrived at MGM’s house. She said that father had told the police that mother kidnapped Maxwell and that he was at risk of abuse and neglect. The police did a welfare check, and everything was fine. She told the police that she had filed for legal separation and custody on March 6, and the police helped her by serving father with the court documents. The police also advised her to get a restraining order, which mother did that same day (with a hearing scheduled for March 30). Mother told CSW Su that she was done with father and was not going to go back to him.

CSW Su asked mother if she and father had a history of domestic violence. Mother said she did not think they did; she said they had

verbal arguments but never to the point of physical altercations.³ She said the March 4 incident was the first time that father pushed her, but she denied that either of them hit the other. She told CSW Su that when father “flips” she usually takes the children to MGM’s house and lets father “cool down.”

CSW Su interviewed Paris privately about the March 4 incident. Paris told him that it was early in the morning when everyone was waking up. Logan woke up and went into mother’s bedroom. Father took Logan to the bathroom and sat with him. Logan started to yell and cry, so mother went into the bathroom and said, “I got it.” Father got upset and started to yell at mother. Mother came into Paris’s bedroom with Logan and Maxwell; she was crying. Mother called MGM. When MGM arrived, father yelled at her and told her to leave. Father then followed mother into their bedroom, and Paris saw father push mother onto Maxwell’s bed. Paris had seen father push mother in the past, although she did not know when. She told CSW Su that although father and mother constantly argue and yell, she never saw them hit

³ We note that the Department submitted evidence that the police had been called to the family’s apartment at least twice before the March 4 incident. The first involved an allegation of child abuse, based on reports from neighbors that they frequently heard mother and father screaming and cursing at the children; after investigating, the police concluded the child abuse allegation was unfounded. In the second incident, mother called the police and told dispatch that father was physical with her; she asked the police to come and escort him out of their apartment. When the police arrived, mother told them that there was a verbal altercation, but not a physical one as she initially reported to dispatch.

each other. She said that she felt safe with mother, but was scared of father.

CSW Su also interviewed MGM at MGM's house. MGM told him that she arrived at mother apartment within 10 minutes after mother called. She said that father was like a "maniac." She tried to calm him down, but father told her to "get the fuck out fucking bitch." She told father that she was not leaving, and father spat in her face. After mother gathered clothes and belongings, they were able to leave the apartment. MGM said she never witnessed father physically assaulting mother, but heard from mother that father has a "temper" problem and that they constantly had verbal arguments. MGM expressed concern about the children due to father's "outbursts" and mental health. She said that father came to her house earlier that day and was screaming like a "crazy person."

After leaving MGM's house, CSW Su went to the family's apartment to speak with father. When he asked father to explain what happened on March 4, father said, "I have nothing to say." He did say, however, that he thought the children were not safe at MGM's house. When CSW Su told him that mother had not only filed for legal separation and custody, but she also had filed for a restraining order, father said, "Are you fucking serious?" He then told CSW Su to leave and slammed the door shut.

CSW Su immediately returned to MGM's house to tell mother that father was unaware of the restraining order. He advised mother to see if the police would help her again by serving it on father. Mother said she would get it done.

CSW Su next spoke with mother on April 5. She told him that she and the children were living at a friend's house. She reported that at a hearing on March 30 in her family law case, the court granted father visitation on Mondays through Thursdays, from 6:30 a.m. to 6:30 p.m., and every other weekend.⁴ She told CSW Su that father had been placed on a "5150 hold" for depression and suicidal thoughts several weeks before,⁵ but was now living with his mother (PGM). She said that she did not know what was going on with father, but she did not plan to get back together with him. When CSW Su asked her about the restraining order, mother said that father was not served and "it was dropped."

CSW Su tried to speak with father on April 5, but when he called father said "I don't want to fucking talk to you" and hung up.

On April 13, CSW Su met with mother at her friend's home, where she and the children were staying until she could get her own place. Mother told him that she and father were done, but she still wanted father to see his child Maxwell, as well as Paris and Logan. She reported that father had voluntarily admitted himself to Del Amo Hospital; she did not know when he would be discharged.

⁴ The order from the family law court was attached to the jurisdiction/disposition report. It was a stipulated order, dated March 24. It orders joint legal custody of Maxwell, and states that father would have care and responsibility for the child on Tuesday through Friday, from 6:30 a.m. to 6:30 p.m., and alternating weekends from Friday at 6:30 p.m. to Sunday at 6:30 p.m.

⁵ Officer Silva told CSW Su that father was placed on a "5150 hold" on March 11 for suicidal thoughts.

CSW Su spoke with a nurse at Del Amo Hospital and confirmed that father was voluntarily admitted on April 9. He was diagnosed with depression, was on medication, and did not have a discharge date yet. CSW Su asked the nurse to ask father if he would talk to him; the nurse reported that father did not want to talk to him, and would rather talk to CSW Su's supervisor.

On April 18, the Department obtained a removal order for Maxwell. CSW Su tried to serve the order on father at the hospital, but the hospital social worker told CSW Su that father would not meet with him and would rather talk to his supervisor. The social worker told CSW Su to leave the order with the receptionist.

The next day, father contacted CSW Su's supervisor, SCSW Petruzzi. He told Petruzzi that he was confused about the removal order because mother maintained regular contact with him after issuance of the family law order and allowed all three children to have contact with him. He said that CSW Su had "pushed [him] to that edge," and that CSW Su and mother were "agitators" for him. SCSW Petruzzi asked father about the allegation that mother was hitting him while he held Maxwell, and father said that the allegation was true.

PGM contacted SCSW Petruzzi that same day. She expressed concern about the well being of the children in mother's care and the removal of Maxwell from father. She told Petruzzi that father had a "very drastic emotional breakdown" because of the removal. She said that even after mother filed for legal separation and custody, mother and father maintained a relationship and often were together with the children. She acknowledged that father "snapped" and was

uncooperative with the Department, but said that mother and father were under the impression that, with the family law court awarding joint legal and physical custody, and that since mother allowed all the children to have contact with father, there was no need for further intervention by the Department.

B. *Filing of Dependency Action*

On April 24, the Department filed a Welfare and Institutions Code⁶ section 300 petition with regard to Maxwell. In counts a-1 and b-1, the petition alleged that mother and father had a history of engaging in violent physical and verbal altercations in the child's presence, that on March 4 father pushed mother against a wall and struck a door in the child's presence, and that on prior occasions mother struck father while father held the child. In count b-2, the petition alleged that father had mental and emotional problems, including a diagnosis of depression and suicidal ideation with violent and aggressive behaviors, which rendered him incapable of providing the child with regular care and supervision, and that mother knew of father's mental and emotional problems and failed to protect the child.

At the detention hearing, the juvenile court found that father was the presumed father of Maxwell. Father's counsel argued there was no need to detain Maxwell from father. He explained that father was prescribed medication after his 5150 hold in March that was insufficient

⁶ Further undesignated statutory references are to the Welfare and Institutions Code.

for his needs, but father realized he needed more help and admitted himself to the hospital on April 9. He had since been discharged, and would be starting an outpatient program the following day. The court ordered that Maxwell be detained from father, finding that “continuance in the home of father is contrary to the child’s welfare,”⁷ and ordered Maxwell released to mother.

Four days later, on April 28, the Department filed a section 300 petition with regard to Paris and Logan, based upon the same counts and allegations. In its Detention Report, the Department stated that it “has filed a non-detained petition for children Paris [F.] and Logan [F.] due to substantiated allegations of emotional abuse.” It explained that it was concerned about father’s mental health, and that his “mental health instability and . . . domestic violence issues endanger the emotional well-being of the children such that the children are at risk of suffering emotional or physical harm. . . . [The Department] needs court supervision to ensure the safety and well being of the children.”

At the detention hearing on this second petition, the juvenile court found that Anthony F. was the presumed father of Paris and the biological father of Logan. It ordered the children removed as to Anthony F., noting that he was a non-custodial parent. The court also

⁷ Although the court appears to acknowledge that father had (joint) custody of Maxwell (i.e., it referred to “continuance in the home of father”), the minute order from the hearing stated that “father is the non-custodial parent.” There is no reference in the reporter’s transcript to father as the non-custodial parent.

ordered the children be released to mother, and that the Department provide family maintenance services.

In preparation for the jurisdiction/disposition hearing, the dependency investigator (the DI) interviewed mother, father, and Paris, as well as two anonymous “collateral” witnesses.

Mother told the DI that she and father did not have a history of domestic violence; she said there was only one incident, and it was a verbal incident with no violence or physical altercation. She denied being pushed by father during the incident, explaining that father walked by her and she tripped over Maxwell’s bed as Paris walked in, so Paris thought he had pushed her. She admitted, however, that father punched the door during the incident, but said that the children did not see it happen (although they saw the hole in the door). She said that father had a depressive outburst or breakdown; he was angry, but the anger was not directed at her. She explained that he was upset after his cousin committed suicide a couple of months before, so she left to give him some space. She left Maxwell with him on March 4 because father tried to take him while she was holding him; she did not want to engage him, so she let him take him. However, when she got to MGM’s house, she told the police that Maxwell was with father, and they checked on him. Father returned Maxwell to her later that day because he was asking about her and his siblings.

Mother denied the allegation that she struck father while he held Maxwell. She told the DI that she had never struck father, and father had never struck her. She also denied the allegation that she failed to protect her children. She said they were having a family crisis and she

took the children to another room when father got upset, called MGM, and stayed at MGM's house with the children. She said she got a restraining order against father because the police advised her to do so, but it was never served; she did not think she needed one.

Father admitted to the DI that he and mother had loud verbal arguments, a few of which were in front of the children. He said the arguments were never physical, although he admitted that they may have bumped into each other during some arguments. He conceded that it may have looked to Paris as though he pushed mother, but he claimed that he did not push her, and that there was no shoving involved in the incident. He did, however, admit that he hit the bathroom door and spat in MGM's face in front of the children. He said that he did not remember why he and mother were arguing because he was in a rage, and he could not remember why he was in a rage.

Father denied that mother struck him while he held Maxwell. He said that he made up his statement to SCSW Petruzzi confirming that mother had hit him because he was angry at mother, but he asserted that it did not happen. He said that mother did slap him on the face once some months before, but the children were not present at that time. He explained the several calls from neighbors to law enforcement on March 4 by stating that he and mother had disputes with the manager of their building, who did not like mother and was trying to evict them.

With regard to his emotional and mental health, father denied having a history of mental health issues or suicidal ideation; he claimed that these issues were very recent. He explained that his cousin had

committed suicide a few months before, and it made him “spiral.” He admitted, however, that he has had issues with rage since he was 16 years old. He said he was involuntarily hospitalized after the March 4 incident for about a week and a half. He was given medication that controlled his rage, but it made him really sad, and he had to be hospitalized again because he was planning to run into traffic. He was in the hospital for about three weeks that time. He was diagnosed with severe depression, psychosis, and anxiety, and he may be manic bipolar. His medication was adjusted, he attends outpatient services three times per week, and was doing fine now.

Father said that he was not violent and did not have aggressive behavior; he claimed they were blindsided by the recent incidents. He had gone to counseling prior to the March 4 incident to help get his rage under control, but he stopped going because it was a long way away and he did not have a car. He admitted he smoked medical marijuana, but denied being under the influence while caring for the children; he kept the marijuana in a locked drawer to prevent them from having access to it.

Finally, father said that he had telephone contact with mother, but no face-to-face contact. He believed the petition was filed because he refused to speak to CSW Su.

Paris told the DI that she did not witness any physical abuse or disciplining of her siblings by mother or father. She reported feeling safe and comfortable at home, and denied fearing for her safety. She said that she did not have a relationship with father because she was shy; she just helped him look after her brothers, and he walked her to

school. She said that she was not afraid of him, and denied telling CSW Su that she feared him. She did not have any concern about father hurting mother or her brothers, nor was she concerned if father returned to live with them. She denied seeing father being physical with or striking mother, and denied seeing mother being physical or striking father. She said they only argued, and admitted she sometimes got scared when they got really loud. She explained that “[u]sually when the arguing went overboard, my mom usually just left with us.”

With regard to the March 4 incident, Paris said there was no pushing or hitting during the incident. She said mother and father were just arguing. She said she had not had any unmonitored contact with father since then, and denied that father resides or spends overnights at the family’s home. However, she said that mother was in touch with him, and told her that father was taking his medication and was getting better.

As noted, the DI spoke to two collateral witnesses, who agreed to speak on the condition that they remain anonymous. One told the DI that over the past year mother and father had frequent verbal altercations in their apartment in the presence of the children. On several occasions, the witness saw mother leave the apartment with the children after a verbal altercation and then return the next day. The witness could not say if the altercations involved any physical fighting. The second collateral witness reported that there were frequent complaints from other tenants regarding the loud verbal altercations between mother and father. The witness said that several neighbors called law enforcement on March 4, and she or he was informed by a

“witness” that mother and father struck each other outside of their apartment while engaged in a struggle for infant Maxwell.

In the jurisdiction/disposition report filed in advance of the hearing, the Department noted that mother had not been completely cooperative with the Department: she refused to livescan, refused to sign her case plan, hung up on the psychiatric social worker, declined a referral to have the children assessed for mental health counseling, and refused to allow the DI to enter the family residence during a scheduled visit. The Department concluded: “[The Department] assessed that the three children should remain in the physical custody of their mother under the supervision of the [Department] as she has demonstrated some protective capacity. . . . Additionally, the mother appears to be able to meet the children’s basic needs. . . . However, the [Department] recommends that the Court order continued jurisdiction in this matter to ensure the children’s safety and well being and so that the parents may address the issues that brought them to the attention of the [Department].”

C. Jurisdiction/Disposition Hearing

Mother filed written objections in advance of the jurisdiction/disposition hearing, objecting generally to all hearsay statements in the Department’s reports, attachments to the reports, and all other documentation the Department seeks to introduce. Mother also made specific objections to statements in the reports by certain witnesses.

Mother renewed her objections at the start of the hearing, and also objected to the statements of L.C. contained in the police report of the March 4 incident (the police report had been submitted with a last minute information for the court at the time of the hearing). The juvenile court overruled the objections under section 355, stating that it would not use the identified hearsay statements as the sole basis for its jurisdiction ruling.

The hearing was conducted solely on the reports and other documentation submitted by the Department and argument of counsel. The juvenile court sustained the petitions as to the b-1 and b-2 counts and dismissed the a-1 counts. The court identified the bases for its finding of jurisdiction as follows: (1) mother's statement in the detention report regarding the March 4 argument, including her statement that she had been scared; (2) father pushed mother during the March 4 incident, and Paris reported that she had seen father push mother on a previous occasion; and (3) mother's statements in her request for a restraining order that "father was yelling, punching holes in the wall, threatening suicide, threatening to throw out my property, locking doors, no longer allowing us to leave, standing outside my mother's home refusing to leave, threatening to fuck me up, again punching holes in the wall, pushing me against the wall, slapping me."⁸ The court stated that it believed there was a history of domestic violence that began as verbal, but escalated to physical, which

⁸ The juvenile court appears to have been reading from the request for a restraining order, but there is no such document in the record on appeal.

presented a continuing risk of harm to the children, particularly because mother and father failed to acknowledge the domestic violence.

Having found jurisdiction, the juvenile court moved on to the disposition hearing. The Department relied upon the same evidence, and no further evidence was introduced. None of the parties presented any argument, other than to voice an objection to the case plan. The court found by clear and convincing evidence that remaining in the home of father would be detrimental to the children's physical health, safety, protection, and/or physical or emotional well-being. It declared all three children dependents of the juvenile court under section 300, and placed them in the home of mother under the Department's supervision. The court ordered mother to complete conjoint counseling with father if they were reuniting; participate in individual counseling to address case issues, including domestic violence, stress management, anger management, child safety, and co-parenting; and undergo NAMI counseling for Paris. With regard to father, the court ordered him to complete conjoint counseling with mother if they intend to reunite; complete five random or on-demand drug tests, with a full drug rehab program if any test is missed or dirty; undergo a psychological assessment and psychiatric evaluation, and take all prescribed medications; individual counseling to address case issues, including anger management, mental health, co-parenting, domestic violence, and stress management. The court ordered monitored visitation for father for a minimum of twice per week, for two hours per visit.

Both mother and father timely filed notices of appeal from the jurisdiction and disposition orders.

DISCUSSION

Mother argues on appeal there was insufficient evidence to support the juvenile court's jurisdiction order because there was no evidence that she caused any of the children to suffer physical harm or failed to protect her children from father during the March 4 incident, nor was there evidence that the children was at risk of suffering physical harm at the time of the jurisdiction hearing. She also argues that, because the jurisdiction order is not supported by sufficient evidence, the disposition order must be reversed.

Father contends the juvenile court's finding of jurisdiction was erroneous because the family's circumstances had changed after the March 4 incident, and there was no evidence that at the time of the jurisdiction hearing any of the children were at risk of suffering physical harm. He contends the court then abused its discretion by making dispositional orders based upon its erroneous jurisdiction findings, and that it committed prejudicial error by ordering removal of Maxwell from his custody because Maxwell did not reside with him at the time of the jurisdiction and disposition hearing.

A. Standard of Review

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's

determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.]”” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]’ [Citation.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 575.)

B. *Jurisdiction Order*

Dependency jurisdiction may be asserted under section 300, subdivision (b), when the Department establishes that “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b)(1).)

A jurisdictional finding under section 300, subdivision (b), thus requires: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) serious physical harm or illness to the

child, or a substantial risk of such harm or illness. (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, italics omitted.) “Thus previous acts of neglect [or abuse], standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565.)

The juvenile court based its finding of jurisdiction on the March 4 incident, a history of domestic violence, and mother’s alleged statements regarding father’s acts of violence from mother’s request for a restraining order,⁹ concluding that mother’s and father’s failure to acknowledge the history of domestic violence puts all three children at risk of suffering harm. Clearly there was substantial evidence that mother and father had engaged in acts of physical violence, both during and before the March 4 incident: (1) mother told CSW Su that father pushed her up against the wall during the March 4 incident; (2) father told SCSW Petruzzi that the allegation that mother was hitting him while he held Maxwell was true; (3) father admitted to the DI that he and mother had loud arguments in front of the children and sometimes “bumped” into each other during the arguments; (4) father told the DI

⁹ Because the record does not include the request for a restraining order (in fact, it is not listed as an attachment to any of the reports the Department introduced into evidence), we do not consider those alleged statements in determining the sufficiency of the evidence to support the court’s finding.

that mother slapped him in the face, although not in front of the children, some months earlier; (5) father acknowledged that his “rage” caused Paris to fear him; (6) Paris told Silva on March 4 and CSW Su on March 10 that she saw father push mother; (7) Paris told the DI that when mother’s and father’s arguments “went overboard, my mom usually just left with us,” suggesting a history of “overboard” arguments; (8) MGM told Silva that she saw mother and father tugging on each other during the March 4 incident; (9) L.C. told Silva that she saw mother and father hitting each other while mother held Maxwell during the March 4 incident; and (10) two collateral witnesses told the DI that there had been frequent loud altercations between mother and father in the presence of the children (although they could not say if those altercations were physical).

While some of this evidence was contradicted or statements were later retracted, it nevertheless constitutes substantial evidence in support of the juvenile court’s finding that mother and father engaged in domestic violence that started as verbal but became physical and put the children at risk of physical harm. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773 [“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them”].) And, in light of both mother’s and father’s denial or minimization of that violence, the court reasonably could conclude that the children continued to be at risk at the time of the jurisdiction hearing. Both mother and father contend, however, that the evidence is insufficient to support the court’s finding because the court failed to take into account

that circumstances had changed by the time of the jurisdiction hearing such that the children were no longer at risk. We disagree.

There is no question that mother and father had taken steps to lessen the risk to the children, but there also is evidence to support the juvenile court's implied conclusion that those steps were not sufficient to show that the children no longer were at risk at the time of the jurisdiction hearing.

The evidence shows that mother took the children to MGM's house when the arguments with father went "overboard" and that she called MGM for assistance in removing the children from her apartment during the March 4 incident. The evidence also shows that she filed for legal separation and custody within days of that incident. But there also was evidence that she left Maxwell and Logan in father's care after that incident and after she filed for legal separation and custody. She also admitted that she did not follow up with the restraining order by serving it on father, and that under the family law order, father would be responsible for Maxwell's care most days of the week and on alternate weekends.

With regard to father, the evidence shows that he sought treatment for his rage and depression by admitting himself to the hospital in April, where he stayed for three weeks. By the time of the jurisdiction hearing on May 22, he had been released from the hospital and was on medications to address his mental health issues. But, as the Department observes, no evidence was presented from a mental health care provider regarding the progress father had made in controlling his rage. Moreover, there was evidence that father

previously had sought professional help, but stopped going after awhile. Given that the jurisdiction hearing was only a month after he was released from the hospital, the juvenile court reasonably could conclude that there was insufficient evidence to show that father's mental health issues were sufficiently under control so as not to pose a risk to Maxwell (or the other children).

In short, resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, as we must (*In re I.J.*, *supra*, 56 Cal.4th at p. 773), we conclude that the juvenile court's finding of jurisdiction is supported by substantial evidence. "The court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child." (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) Accordingly, we affirm the jurisdiction order as to both parents.

C. *Disposition Order*

As noted, mother's challenge to the disposition order is based entirely upon her assertion that there was no basis for the juvenile court's assertion of jurisdiction. In light of our affirmance of the jurisdiction order, mother's challenge fails, as does father's challenge on the same basis. Father also argues, however, that the portion of the disposition order removing Maxwell from his custody must be reversed because Maxwell was not living with him at the time of the disposition hearing. We conclude that father forfeited that argument by failing to object to the removal order before the juvenile court. (*In re T.G.* (2015)

242 Cal.App.4th 976, 984 [parent’s failure to object forfeits his or her right to pursue the issue on appeal].)

While we recognize we have the discretion to excuse father’s forfeiture, we decline to do so in this case because, as we explain, had the juvenile court been made aware of the issue father raises, it could have entered an order with the same affect under a different statutory provision. (See *In re S.B.* (2004) 32 Cal.4th 1287, 1293 [appellate court has discretion to excuse forfeiture, but should do so only in cases presenting an important legal issue].)

Although the juvenile did not expressly say so, it appears to have ordered Maxwell removed from father’s custody under section 361, subdivision (c). That provision authorizes removal of a child “from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated.” (§ 361, subd. (c).) As father observes, in *In re Dakota J.* (2015) 242 Cal.App.4th 619, our colleagues in Division Three of this District held that that provision “does not contemplate that a child could be removed from a parent who is not living with the child at the relevant time.” (*Id.* at p. 628.)

It is unclear, in light of the family law court’s order granting mother and father joint custody of Maxwell and ordering that father have care and responsibility over him for most weekdays and alternate weekends, whether it can be said that Maxwell did not live with father (albeit for only half of the time). But what *is* clear is that had father raised a timely objection, the juvenile court could have entered an order under section 361, subdivision (a) and/or section 362, subdivision (a),

with the same effect as a removal order under section 361, subdivision (c). Section 361, subdivision (a)(1), grants the court authority to “limit the control to be exercised over the dependent child by any parent or guardian.” (§ 361, subd. (a)(1).) Unlike subdivision (c) of section 361, subdivision (a)(1) applies to “any parent,” not solely to parents with whom the child resides. Similarly, section 362, subdivision (a) further authorizes the court to “make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” (§ 362, subd. (a).) Thus, under those provisions, the juvenile court could have entered an order that effectively removed Maxwell from father’s custody and control.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.