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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re KIMBERLY L., a Person Coming Under
the Juvenile Court Law.

B234524

(Los Angeles County
Super. Ct. No. CK57432)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Timothy R. Saito, Commissioner. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

R.L. (father) appeals the juvenile court's jurisdictional and dispositional findings and orders declaring his daughter, Kimberly L., to be a dependent of the juvenile court and placing her in foster care. We find no abuse of discretion, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Detention

E.F. (mother) is the mother of Leslie T. (born Dec. 1993), Ya. T. and Yi. T. (twins, born Mar. 2004), and Kimberly (born Aug. 2008). O.T. is the father of Leslie, Ya., and Yi.; father is mother's husband and Kimberly's father.¹

On October 29, 2010, a children's social worker (CSW) responded to a report that mother was exploiting 16-year-old Leslie and neglecting her siblings. The CSW visited the family in their two-bedroom apartment. Mother told the CSW that she rents a bedroom and the living room to two adult males, Miguel and Juan. She said Leslie spent most of her life in Guatemala with her paternal grandparents, but came to the United States to live with mother when the paternal grandmother died. Mother reported that Leslie had hit her several times and had once cut her with a knife. She further reported that Leslie had a boyfriend with whom she had sexual intercourse, had twice run away from home, and currently was living with her uncle, M.T. The three younger children live at home with mother and father.

The CSW interviewed Ya., who was six years old and in the first grade. Ya. said mother does not hit her and no one ever touched her private parts. She had never seen Leslie hit mother. The CSW did not see any marks or bruises on Ya.'s body.

The CSW also interviewed Ya.'s twin, Yi. When the CSW asked if Yi. had seen Leslie hit mother, Yi. seemed nervous and said she had to go to the bathroom. Instead, she went to the bedroom and asked mother what to say. Mother told Yi. to say Leslie hit her. Yi. then came back to the living room and said that Leslie hit mother. When asked

¹ Father is sometimes referred to in the juvenile court record by his first name, [R.]; at other times he is referred to by his middle name, Alberto.

what happens when she gets in trouble at home, Yi. said, “Me castigan en la pared, yo lloro porque tambien me pegan con el sapato (I get punished on the wall, I cried because they hit[] me with the shoe).”

The CSW was unable to interview Kimberly, age 2, because she was nonverbal. She was wearing only a diaper and the CSW did not observe any marks or bruises on her body.

On October 29, 2010, the CSW interviewed Leslie in her uncle’s home. Leslie said she left mother’s home because mother had encouraged her to get involved with Miguel, age 40. Mother had advised Leslie to ask Miguel to give her money and buy things for her. Leslie said that mother also introduced her to Alejandro, who is married to father’s cousin. Mother told Leslie to accept Alejandro’s gifts and ask him for money. Mother told Leslie that Alejandro was willing to buy her a car and get her an apartment, and that he would only visit her once in a while because he is married. Leslie denied having sex with Alejandro, but said he kissed her. She said mother also introduced her to another older man, Marcelino, who gave her \$80 to buy a cell phone. Leslie said that both Alejandro and Marcelino gave her money, but she had to give half to mother. Leslie said that on one occasion mother took her to a nightclub with Marcelino, and mother said Leslie should allow him to kiss and touch her or he would not continue to give her money. Leslie said that on many occasions, mother would give her beer so she would relax and allow Marcelino to kiss her.

A CSW interviewed Leslie again on November 3, 2010. Leslie told the CSW that she had seen mother hit the twins with a belt and her shoes, and mother had once threatened to throw Kimberly out the window. Leslie also reported that during the World Cup games, mother invited a man called “El Pelon” to the apartment and arranged for Leslie to have sex with him for money. Leslie said she did not want to have sex with El Pelon, but he followed her into the bathroom and forced her. He paid mother with five bags of drugs.

The Department of Children and Family Services (DCFS) detained the children on November 2, 2010.

On November 5, 2010, DCFS filed a juvenile dependency petition and the juvenile court found a prima facie case for detaining the children under Welfare and Institutions Code, section 300, subdivisions (a), (b), (d), (g), and (j).² The court ordered temporary care and placement of the children with DCFS.

DCFS submitted a pre-release investigation report on November 16, 2010. It reported that paternal grandmother was not willing to be the children's primary caregiver, but said father and the children could move into her home if father were willing to be the primary caregiver. Father told the social worker that he had been involved with mother for three years and is Kimberly's father. He said he had a good relationship with all the children except Leslie, could care for his daughter and stepdaughters, could protect his daughter and stepdaughters from mother, and would follow all court orders. Father did not want to live in paternal grandmother's home in Lancaster because it was too far away, but said that if the children were placed with him he would consider moving to Lancaster. DCFS recommended that the children not be released to father because he continued to live with mother and mother's two roommates who had not live-scanned.

At the November 16 special interim hearing, father's counsel asked that Kimberly be placed with father in paternal grandmother's home. The court denied the request and ordered that the children remain detained with DCFS.

II. Sexual Abuse Allegations

Shortly after they were detained, the twins told their foster parents that they had been touched inappropriately by a man named "Juan" who had lived in the family home for many years. The foster mother contacted the police, who interviewed the girls on December 1, 2010. Ya. told the investigating officer that "What he uses to do pee pee, stuck it in there," pointing to her vagina. She said that while mother was in the shower and her father and sisters were watching television in their bedroom, Juan grabbed her by the hand and took her to his bedroom. He locked the door, took her pants down to her

² All further statutory references are to the Welfare and Institutions Code.

knees, told her to sit on the bed, and then “[h]e put his little thing in my pee pee in here.” She said he was inside her “[f]or one minute.” When he was done, he told her to pull up her pants and he pulled up his pants. She told mother about the incident, and mother “told Juan to go one day to work.”

Yi. told the investigating officer that while mother cleaned the bedroom, Juan would kiss her on the chest area and would take her pants off and kiss her on her vagina. When asked if he ever put anything inside where she pees, Yi. said, “He puts his finger.” She said these incidents happened when she watched television in the living room, and mother told her to just come inside her room when he does that.

Mother told the officer that there was no way Juan could have touched the girls because they were always with her, even when she showered. She said Juan worked long hours and usually did not come home from work until late. She said neither twin ever said Juan had touched her inappropriately.

Juan told the officer that he had been living at the residence for five years. The first three years, he lived in the bedroom with his wife and child. When his wife moved out, he moved to the living room. He said he had never touched the girls inappropriately and he had no contact with them.

DCFS filed the operative second amended petition on February 25, 2011. It alleged as follows: Mother physically abused, and father failed to protect, Ya. and Yi. (a-1), Kimberly (a-2), and Leslie (a-3); Leslie was forcibly raped by an adult male in exchange for drugs given to mother, endangering Leslie’s physical and emotional health, and placing Leslie and her siblings at risk of physical and emotional harm (b-1, d-1, j-1); mother encouraged Leslie to engage in sexual conduct with unrelated males in exchange for money and gifts, and father failed to protect Kimberly when he learned of mother’s exploitation of Leslie (b-2, d-2, j-2); mother physically abused Ya. and Yi., placing all four siblings at risk of physical and emotional harm (b-3, j-3); mother physically abused Kimberly, endangering her, and placing her sisters at risk of physical and emotional harm (b-4, j-4); O.T. failed to provide Leslie, Ya., and Yi. with the necessities of life (b-5, g-1); Yi. and Ya. were sexually abused by an unrelated adult male, Juan, and mother and father

knew of the abuse and failed to protect the children (b-6, b-7, d-3, d-4, j-5, j-6); mother physically abused Leslie, placing Leslie and her siblings at risk of physical and emotional harm (b-8, j-7); and Leslie suffers from mental and emotional problems, endangering her siblings (b-9).

III. DCFS's Investigation

DCFS filed a Jurisdiction/Disposition Report on December 2, 2010. It said that Yi. told the CSW that Juan touched her with his hand in her vaginal area and kissed her on her chest. Yi. said Juan also touched Ya. "and he went with her to the room and he touched her with a thing." She said she told mother, who didn't say anything. She also said that "Alberto [father] said if he touches you then go in the room to watch television." She said Juan touched her and her sister only when mother was not there.

Ya. told the CSW as follows: "Juan touched me here, pointing to her vagina, he touched me with his thing, where he goes pee. It was hard. I was without an underwear[,] Juan took it off, it happened one time. Juan took off his underwear, he was not wet. My mom was taking a shower[,] [Yi.] was in the other room, everyone was in the other room. Juan lives there. He told me that he doesn't do that anymore. They let me go out with him to buy ice cream. I told my mom about it. Alberto was working. It didn't hurt me. My mom wasn't mad, she did believe me. He also touched my sister. My mom didn't throw him out because she needed his money."

Leslie told the CSW that when the girls did not obey mother, mother hit them with a belt or sandal. Sometimes she told Leslie to hit the girls, and if Leslie did not, mother would hit Leslie. Leslie said mother sometimes hit her with a belt. She said mother never hit Kimberly, but she sometimes called father and threatened to throw Kimberly out the window if he did not come home right away. She said father never hit her or was inappropriate with her or mother, but that mother sometimes hit father. Leslie said that mother is "very aggressive and she likes to resolve problems the savage way." She did not want to live with mother or father.

With regard to the sexual abuse allegations, Leslie said that “El Pelon,” a friend of mother’s tenant, Miguel, came to the apartment to watch the World Cup. Mother told Leslie that El Pelon would give her \$300 if Leslie would go to bed with him. El Pelon followed her into the bedroom, forcibly removed her clothes, and forced her to have sex with him without a condom. After Leslie got dressed, mother came into the room and El Pelon paid mother with drugs. Father was not home when this happened. Leslie said mother resents her and told her not to come home because she would have to spend more money on food. Leslie moved in with her boyfriend in September.

Father said he had never seen mother hit the girls. He said he and mother never left the girls in anyone else’s care, and that either he or mother takes the girls to school and picks them up every day. He does not take care of Leslie.

Mother denied knowing anyone named Pelon and denied that Leslie had been raped. Mother said she never told Leslie to have sex with anyone. She said Leslie began having sex with a boyfriend in Guatemala, and after she came to the United States, she lived with a guy named Carlos for about a month. When Leslie returned home, she was bruised from Carlos hitting her.

On December 6, 2010, Yi. told a CSW that Juan “always touched me here (child touched vaginal area) when he was drunk.” When asked if she ever told mother or father, Yi. said, “I told my dad [R.] that Juan would touch me her[e,] pointing to her vaginal area, and my dad said that I should go to my room[.] I told my mom that Juan would touch me and she didn’t say anything.” Ya. also said Juan “took out his thing, and he put it here (child touched her vaginal area).” The CSW asked Ya. what “thing” Juan put in her, and Ya. took a pen, put it over her vaginal area, and said, “His thing where he goes pee pee.” When asked if she ever told mother or father, Ya. said, “I told my mommy that Juan touched me here (child touched her vaginal area) and my mommy said that Juan would sleep at his work.”

On April 12, 2011, DCFS reported that Leslie had recanted her allegations of sexual abuse. Leslie told the CSW, “I’m tired of this situation and I’m going to put a stop to this already.” She said that her brothers, who were still living in Guatemala, convinced

her to “get[] my mom in trouble” because “she abandoned us for 15 years and never went back for us, we wanted her to suffer, and this will stay with her for the rest of her life. . . . It was all about revenge, because she abandoned us, but I’ve had enough, I need to put an end to this. I’ve hurt too many people. I didn’t think that it would affect the girls this way. . . . I want my sisters to go back home, they don’t deserve this.”

On April 13, 2011, Leslie ran away from her foster home. On April 20, she told the CSW by telephone that, “Nothing that I said before really happened. I was upset at my mother. I don’t want my sisters to continue suffering. Everything is a lie.”

In an April 28, 2011 letter to the court, Ya.’s therapist stated that when she asked Ya. about the alleged sexual abuse, Ya. “took a large male doll and, in a matter-of-fact tone, began to describe how a man she calls ‘Juan’ grabbed her (a small female doll) and said, ‘come with me’ and led her to the bedroom. [Ya.] then continued to describe how Juan put her on the bed, pulled down her pants and underwear and threw them on the pillow. According to [Ya.], Juan had intercourse with her, ‘put his hard thing between my legs.’ [Ya.] described that it hurt her and that she was sore for several days after the incident. When asked about whether she bled, [Ya.] denied this but reiterated how sore and red she was. She states that this happened at least twice.” Ya. said she had told mother about the incident, but mother said she “had to pay the rent.” The therapist reported that she could not determine whether Kimberly had also been sexually abused because she spoke only a few words and her drawings were incomprehensible. The therapist’s only observation was that “Kimberly often spreads her legs during session which, in and of itself, is not necessarily indicative of sexual abuse.” Yi.’s therapist said that Yi. reported seeing Juan naked and masturbating. She said the child made the motions of masturbating and had identified Juan.

In a “Last Minute Information for the Court,” a CSW reported that the foster mother had reported the following: “When the girls got home yesterday after the visit with their mom, [Ya.] told me, my mommy told me that if anybody ask me in the court if the man touched me, to say no, because if I say no, then they will let me go home with her.” According to the foster mother, Ya. stated, “[b]ut no mommy, I can’t say that,

because you always tell me to tell the truth and the man did touch me,” at which point the foster mother told both girls, “[y]ou girls just need to tell the truth, no matter what happens.”

IV. Jurisdiction and Disposition Hearing

The court held a jurisdiction and disposition hearing on May 4, 2011. Ya. testified that when she lived with mother, Juan took her hand and took her into his room. Mother was home but was cleaning her room. He asked Ya. to turn around and then he took his pants off and “he got his pee-pee and he put it in my cuca.” Ya. pointed between the legs of a stuffed bear she was holding to show the bear’s “cuca.” Ya. said it hurt. After that, Juan let her go and she left the room. She told mother about the incident, and mother told Juan “to tell me sorry.” Ya. said Yi. reported that Juan did the same thing to her that he had done to Ya. Ya. said she never told father about the incident. Ya. denied that mother ever hit her with a belt or a shoe.

Ya. said she visited with mother and father a few days earlier. Ya. said that mother asked whether Juan had touched her, and she said yes. Mother then told [Ya.] to say “no” when asked in court if Juan touched her.

Therapist Alexandra Kahn testified that Ya. told her that on more than one occasion, Juan had removed her pants and underpants and put his “pee pee” between her legs. Ya. said Juan’s pee pee “was hard, it was long and it goes small and then it goes big.” She said her vagina was red and sore afterwards. Ya. told Kahn that she told mother what happened and mother said, “Well, we have to pay the rent.”

Yi. testified that mother used to hit Leslie with a belt. She said Juan touched her “here,” pointing to her genital area. She said Juan took off her pants and his pants and put his “little thing . . . in there.” She said she told mother what happened, but mother did not say anything. She did not tell “papi” about it.

Mother testified that Ya. never told her that Juan touched her inappropriately. She said she never allowed any man to offer her money in exchange for any sort of sexual contact with Leslie. She said Leslie once brought her boyfriend to the house and had sex

with him in the bedroom where Ya. and Yi. were sleeping. The next morning, Ya. said, “Mommy, Leslie is not wearing any underwear and she’s on top of Carlos.” Mother did not call the police on that occasion because Leslie threatened to slit her wrists. She called the police another time, though, when Leslie hit her.

Juan H. testified that he previously rented a room from the family. He said he works about 12 hours a day, six days a week. On Sundays, he goes out all day. He said he did not have a relationship with the girls because he hardly ever saw them. He never touched Ya. or Yi. inappropriately.

Leslie testified by telephone. She said it was not true that mother wanted her to have sex with Miguel or any other men; she lied because she does not like mother and is angry because mother abandoned her in Guatemala when she was 11 months old. Leslie said she had wanted the other girls to be taken from mother because “I wanted her to suffer just the way that I did when she left me in Guatemala.” Leslie said she had sex with Carlos in the family bedroom while Yi. and Ya. were asleep. She said she lied when she said mother hit the girls with belts; mother has never hit any of the children with anything. She said she told Ya. and Yi. to say they were molested by Juan so they could return home. She said there was an incident when mother didn’t want her to go to a party with Carlos and she threatened to call Social Services if mother didn’t let her go. Leslie said she lied when she said mother threatened to throw Kimberly out the window; she said, “My mother would never do that. My mother really loves Kimberly more than anything and she would never do anything like that to her.”

Leslie testified that she had talked about sex with the twins because they had seen pictures of a naked girl and boy in Leslie’s textbook and had asked about them. The girls tried making their own drawings because “[t]hey wanted to make the same drawings that I had done.” Leslie never made a drawing of a man having sex with a girl or woman on a bed. She said she described to Ya. what a man’s penis looks like “[a] long time ago,” but she never described to her where a man puts his penis on a woman. She said she made up the story of Ya. and Yi. being sexually abused because she had heard of a similar case. A former friend of mother’s helped her to create the story.

At the conclusion of the testimony, DCFS's attorney argued that Leslie's recantation was not credible. He noted that when Leslie originally recanted, she had not said she told the twins to say they were sexually abused. Further, Leslie testified that she had told the girls to make a false report in March 2011, three days after their birthday, but the girls first disclosed the alleged sexual abuse four months earlier, in November 2010. Counsel said he believed Leslie recanted because she loved her sisters and wanted them to be able to go home. Counsel asked the court to sustain the sexual and physical abuse counts in the petition regarding Leslie and the twins based upon the earlier disclosures.

After hearing closing arguments, the court dismissed counts a-1, a-2, b-3, b-4, j-3, and j-4 (mother's alleged physical abuse of the children), g-1 (O.T.'s alleged failure to provide), a-3, b-8, and j-7 (alleged physical abuse of Leslie), b-2, d-2, and j-2 (alleged sexual abuse of Leslie), finding the evidence insufficient to support these counts. The court sustained counts b-5 (failure to provide by O.T.), b-9 (Leslie's mental and emotional problems), b-7, d-4, and j-6 (sexual abuse of Ya.), b-6, d-3, and j-5 (sexual abuse of Yi.), b-1, d-1, and j-1 (sexual abuse of Leslie). It explained as follows:

"The court [finds] that the children, [Ya.] and [Yi.]'s[,] testimony was credible and consistent in this case. [Ya.] gave extremely detailed accounts of the sexual abuse by Juan [H.] She described when, where, and how it occurred. In addition to the details that her counsel gave regarding the abuse, [Ya.] also gave further details that Juan [H.'s] penis was hard. She described that. When he took it out, it didn't hurt anymore, describing her feelings when the act actually occurred. . . . Details of a child of that age would not be able to describe but for the incident tak[ing] place. [Ya.] and [Yi.] also gave similar statements regarding the incident with Juan and gave consistent testimony to social workers, their therapist, and in the police report. Overall their statements continued to be consistent.

"Regarding Leslie's stating that she told them what to say. It should be noted that at first she indicated to the children to tell others that they had been raped, which is a term a child of that age would not be able to comprehend. Although, she later stated that[] she clarified and explained what that term meant to the children. The court does

not find that explanation to be persuasive. She also stated in the beginning of her testimony that she never described a man's penis to her sisters, but then later on indicated that she showed them drawings. All in all, this does not take away from the testimony, the evidence that was presented with regard to [Ya.] and [Yi.]'s sexual abuse.

"Her testimony was extremely credible, detail[ed], and consistent throughout in this case. There's also more than sufficient evidence that the mother knew of the sexual abuse with regards to Mr. [H.] Children time and [time] again indicated that they had told the mother about the sexual abuse in this case, and she didn't do anything.

"With regard to the father, there is a reference in the 3/04/11 last minute information to the court that he, too, also knew about the sexual abuse, but merely told the children when he was informed just to go to their room. No real effort was documented by him to take any measures that he took to follow through in order to protect his own child who was of a young age in the home. . . .

"With regard[] to . . . sexual abuse as to Leslie, the court is going to sustain these counts. Although Leslie recanted in this case, and it's obvious that she harbors a great amount of animosity towards her mother in this case[,] [h]er statements again were very detailed with regard[] to the account of sexual abuse. She stated the date, when it occurred, said that it occurred during the World Cup[.] [S]he stated that she was offered \$200 and then specified that it was actually \$300, details that she didn't have to submit were offered if she just wanted to establish a case of sexual abuse in order to get back at her mother. She outlined exactly what Mr. [H.] [sic] did, indicated that she cried when it occurred, that he touched her by force, didn't use a condom and ejaculated inside of her. These details, the court finds to be true with regard[] to Leslie"

The court then declared the children dependents of the court and found, by clear and convincing evidence pursuant to section 361, subdivision (c), that "[t]here is a substantial danger if the children were returned home to the physical health, safety, protection or emotional well-being of the children and there are no reasonable means by which the children's physical health can be protected without removing the children from the parent's custody in this case."

Father timely appealed.

DISCUSSION

Solely as they pertain to father, the allegations of the operative petition are as follows:

“[Ya.] was sexually abused by an unrelated adult male, Juan [H.], ‘El Pelon’ [*sic*], in that the adult male forcibly raped the child by placing the adult male’s penis in the child’s vagina. . . . [Father] knew or reasonably should have known of the sexual abuse of the child by the unrelated male [and] failed to take sufficient action to protect his own child [Kimberly] who was in the home. Such sexual abuse of the child [Ya.] by the unrelated male . . . and [father’s] failure to take sufficient action to protect his child, Kimberly, . . . place[] . . . Kimberly . . . at risk of physical and emotional harm, damage, danger, sexual abuse,” and “failure to protect.”

“[Yi.] was sexually abused by an unrelated adult male, Juan [H.], ‘El Pelon’ [*sic*], in that the adult male digitally penetrated the child [Yi.]’s vagina with his finger causing pain to her vaginal area. . . . [Father] knew or reasonably should have known of the sexual abuse of the child [Yi.] by the unrelated male and failed to take sufficient action to protect his child Kimberly who was in the home. Such sexual abuse by the unrelated male . . . and [father’s] failure to take sufficient action to protect his child, Kimberly, . . . place[] . . . Kimberly . . . at risk of physical and emotional harm, damage, danger, sexual abuse and failure to protect.”

Father contends there is no substantial evidence that he knew, or reasonably should have known, of the alleged sexual abuse of Ya. and Yi. Although he concedes the juvenile court properly exercised jurisdiction over Kimberly on the basis of mother’s failure to protect the siblings, he urges the court erred in sustaining the allegations as to him. He further contends the court erred in removing Kimberly from his custody because there was insufficient evidence that removing her was the only way to protect her from potential sexual abuse. We consider these issues below.

I. Standard of Review

“In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass judgment on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court’s order, and affirm the order even if there is other evidence that would support a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) When the trial court makes findings by the elevated standard of clear and convincing evidence, the substantial evidence test remains the standard of review on appeal. (*In re Mark L.* [(2001)] 94 Cal.App.4th [573,] 580-581.) The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the order. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 915-916.)

II. Sufficiency of the Evidence to Support the Court’s Jurisdictional Findings

Father does not contest the sufficiency of the evidence to support the allegations against mother, and he concedes that the juvenile court therefore properly exercised jurisdiction over Kimberly because “the acts or omissions of either parent may bring the child within section 300.” (*In re Maria R.* (2010) 185 Cal.App.4th 48, 60 [because substantial evidence supported a finding under section 300 based on father’s sexual abuse of his daughters, the girls would properly be dependents of the juvenile court even if mother had not failed to protect them].) He contends, however, that even if Leslie, Ya., and Yi. were sexually abused, there was not substantial evidence that he knew of the abuse. He notes that neither Leslie nor Ya. claimed they ever told him they had been abused; Yi. initially told a social worker she had told father that Juan touched her inappropriately, but she testified otherwise at the hearing. Because he did not know of

the abuse of Kimberly's siblings, he urges that he did not knowingly put Kimberly at risk of future harm and the juvenile court's order sustaining the section 300 allegations against him therefore should be reversed.

We do not agree. The jurisdiction/disposition report reflects that on November 29, 2010, Yi. told the CSW that she had told father that Juan touched her vaginal area, and father said, "if he touches you then go in the room to watch television." On December 6, 2010, Yi. told the CSW, "I told my dad [R.] that Juan would touch me her[e,] pointing to her vaginal area, and my dad said that I should go to my room." Although Yi. later testified that she did not tell father of the sexual abuse, her earlier statements to the CSW are substantial evidence that father knew of the abuse and failed to take steps to protect Ya., Yi., or Kimberly. (E.g., *In re Maria R.*, *supra*, 185 Cal.App.4th at p. 59 [children's initial report of sexual abuse by father was substantial evidence of such abuse, notwithstanding child's later statement that she had made up the allegations].)

III. Sufficiency of the Evidence to Support the Court's Dispositional Findings

Father contends that because he is not an offending parent and told the court he was willing to care for Kimberly in paternal grandmother's home, the court abused its discretion in removing Kimberly from his care. For the reasons that follow, we do not agree.

Section 361, subdivision (c) provides that a dependent child may not be taken from the physical custody of her parents with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of statutorily enumerated circumstances, including that "[t]he minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian" (Subd. (c)(4).)

In the present case, there was substantial evidence that Kimberly's siblings, Ya. and Yi., had been sexually abused by Juan, a member of their household. That evidence included the twins' statements to the police, the CSW, and their therapists, as well as their testimony in court. Thus, substantial evidence supported the juvenile court's finding as to the first element of section 361, subdivision (c)(4).

Substantial evidence also supported the juvenile court's finding as to the second element of section 361, subdivision (c)(4), that Kimberly could not be protected from future sexual abuse were she not removed from father's custody. Father took no steps to remove Juan from the family home even after Yi. told him that Juan had sexually abused her, suggesting that father did not understand the seriousness of the abuse or the need to protect his young daughter and stepdaughters from such abuse. Further, even as late as the jurisdiction and disposition hearing in May 2011, six months after the children were detained, father continued to reside with mother, whom the juvenile court found had permitted her oldest daughter to be raped and failed to protect her younger daughters from ongoing sexual abuse. Finally, father made no showing that he was willing or able to live separately from mother and act as Kimberly's primary caregiver. Although he requested at the November 16, 2010 hearing that Kimberly be placed with him at paternal grandmother's home if DCFS could assist him with day care, he never moved to paternal grandmother's home or made a showing either that he could provide daily care for Kimberly or that he could make appropriate childcare arrangements for her. Accordingly, the evidence fully supported the court's finding that Kimberly could not be protected from future sexual abuse if she were not removed from father's care.

DISPOSITION

The jurisdiction and disposition orders are affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.