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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re VICTOR R., JR., a Person Coming  
Under the Juvenile Court Law.

B248747

(Los Angeles County  
Super. Ct. No. CK97922)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

VICTOR R., SR.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Donna Levin, Juvenile Court Referee. Affirmed and dismissed.

Maryann M. Milcetic, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Peter Ferrera, Senior Deputy County Counsel, for Plaintiff and Respondent.

Appellant Victor R., Sr. (Father) challenges the juvenile court’s jurisdictional and dispositional orders regarding his son, Victor R., Jr. (Victor), a dependent child. We affirm the jurisdictional order, but dismiss the appeal from the dispositional order as moot.

## **BACKGROUND**

Father contends the juvenile court erred in concluding that 11-year-old Victor was at substantial risk of harm as a result of Father’s sexual abuse of his step-granddaughter Lilly T., who was three and four years old when the abuse occurred. Although Father denies that he sexually abused Lilly, his appeal does not challenge the sufficiency of the evidence to support the juvenile court’s factual finding to the contrary. Accordingly, our discussion of the facts will be brief.

Victor, who was born in September 2002, is the biological child of Julieta R. (Mother) and Father. Lilly, who was born in February 2007, is Mother’s granddaughter and Father’s step-granddaughter.<sup>1</sup>

In 2010, Lilly’s mother, Stephanie P., arranged to have Mother and Father care for Lilly during Stephanie’s deployment to Iraq. Accordingly, Lilly lived with Mother, Father, and Victor from April 2010 to August 2011. During that time, Father sexually abused Lilly on a regular basis. After Mother left for work, Father would enter Lilly’s bedroom, remove both of their clothing, fondle her breasts and vagina, and place his penis between her legs and in her mouth.<sup>2</sup>

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<sup>1</sup> Lilly’s father, Samuel T., is Mother’s son from a prior relationship. The record indicates that Samuel passed away in 2008.

<sup>2</sup> Lilly stated that when Father (Tata) put his “weenie” in her mouth, he said it would “taste like candy,” but it tasted like “[n]othing.” When Tata touched Lilly, she cried for her parents, but Tata told her “to be quiet; that they’re not here.” Tata kept “coming in [Lilly’s] room” and left “the door open to sneak in to do that to [her].” When Lilly’s “grandma came home from work,” Tata went back to “his bedroom” and her

In January 2013, Lilly told Stephanie that Father had sexually abused her on a daily basis while she was living with Father, Mother, and Victor. After Stephanie reported Lilly's sexual abuse allegations to the police, Father was arrested and charged with a felony. However, the district attorney later dismissed the charge.

In February 2013, the Los Angeles County Department of Children and Family Services (the Department) filed the present dependency petition and obtained a court order for Victor's immediate removal. The petition alleged that Victor was at substantial risk of physical harm, damage, danger, and sexual abuse as a result of Father's sexual abuse of Lilly (Welf. & Inst. Code, § 300, subd. (d) [sexual abuse]), and Mother's knowing failure to protect Lilly and Victor from the abuse (Welf. & Inst. Code, § 300, subd. (b) [failure to protect]).<sup>3</sup>

At the contested detention hearing, the Department submitted a report that described Lilly's sexual abuse allegations. Significantly, the report also mentioned two prior referrals regarding Victor's family.

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grandmother "asked why he was still naked." "Every time [Tata] heard the door open he went to his room and asked [Lilly's] grandma for water and went back to bed."

<sup>3</sup> All further undesignated statutory references are to the Welfare and Institutions Code.

Section 300, subdivision (b) provides in relevant part that the juvenile court may find that a child is a dependent child if "[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."

Section 300, subdivision (d) provides in relevant part that the juvenile court may find that a child is a dependent child if "[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse."

The first referral was received in October 2004, when Victor was two years old. The caller stated that Mother and Father had allowed Victor's half-siblings—Valerie R. (Father's daughter from a prior relationship) and Samuel (Mother's son from a prior relationship)—to have sex with one another from the ages of 12 and 13. According to the caller, *"Valerie's father and stepmother have known about the children's sexual activity for some time but due to their continued lack of supervision have failed to put a stop to it. Caller states that the father's response to the situation has been, 'Kids will be kids.'"* According to the report, the referral was closed as unfounded because the sex was consensual.

The second referral was received in October 2007, when Victor was five years old. The caller stated that Victor had entered the girls' bathroom at school while a five-year-old female student was using the toilet. According to the caller, Victor had closed the stall door, pulled down his pants and underwear, and told the girl, "Let's do the nasty." When the female student tried to leave, Victor grabbed her bare bottom and tried to kiss her. Victor later explained to the principal that "his cousin Aaron showed him how to do the nasty." The report stated that Victor had seen 11- or 12-year-old Aaron engaging in sexual behavior with his eight-year-old female cousin Tina. According to the report, the referral was closed as unfounded after Mother and Father enrolled Victor in counseling.

At the conclusion of the detention hearing, Victor was detained and released to Mother under the Department's supervision.<sup>4</sup> Father, who was excluded from the family

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<sup>4</sup> At the detention hearing, the court imposed the following conditions on Victor's placement with Mother: (1) Victor could not be left alone with Father; (2) Mother could not monitor Father's visits; (3) Father's visits could not take place in the family home; (4) Mother could not be present during Father's visits; and (5) Mother and Father could not discuss this case with Victor.

The court advised Mother that even though Victor was being returned to her care, the court was maintaining its jurisdiction over Victor and was prohibiting her from changing residences or taking Victor outside the county, state, or country without notifying the Department. The court warned Mother that a violation of these orders could result in the issuance of a warrant, Victor's removal from her home, or criminal prosecution.

home, was granted monitored visitation. Mother was provided with referrals for sexual abuse awareness training, counseling, and parenting classes.

At the contested jurisdiction and disposition hearing, the Department urged the court to assume jurisdiction over Victor as a dependent child and to provide sexual abuse counseling and other treatment programs to his parents. The Department contended that Father had placed Victor at risk of harm by sexually abusing Lilly in their home, where Victor could have easily discovered or interrupted the abuse. The Department pointed out that under Penal Code section 647.6, the crime of child molestation may occur without physical contact where the defendant's behavior would be objectively irritating or harassing to a reasonable person.<sup>5</sup> The Department asserted that the abuse constituted a violation of the parental role that Father had assumed over Lilly, and that because Victor was now aware of that violation, it was imperative for the family to establish appropriate sexual boundaries.

In opposition, Mother, Father, and Victor argued the Department had failed to prove that Victor was at substantial risk of harm. In addition to denying the allegations in the petition, Father pointed out that: (1) the district attorney had dropped the criminal charge against him; (2) there was no sign that Victor had been physically or sexually abused; (3) Victor was doing well in school; (4) Victor liked and missed Father; (5) Victor denied that he was sexually abused; and (6) Victor denied any prior knowledge of Father's alleged sexual abuse of Lilly. Victor's counsel argued that although Lilly's allegations of sexual abuse were "very credible," the petition should be dismissed because "Victor is differently situated. He's ten years old. There's no evidence to show that he is at risk in his father's care."

After considering the evidence, the juvenile court found that Victor's family had "a distinct problem of inappropriate sexual boundaries." It found that as a result of

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<sup>5</sup> Penal Code section 647.6, subdivision (a)(1) provides: "Every person who annoys or molests any child under 18 years of age shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment."

witnessing “inappropriate sexual behavior” by “young people in his home,” Victor had been “sexualized at a young age” and had “acted out sexually” at school. It further found that Father, by sexually abusing Lilly on a regular basis in the family home, had placed Victor at risk of not only witnessing the serious abuse of a young child, but of imitating Father’s inappropriate behavior. In addition, the court found that “Mother knew or should have known” that Lilly was being abused, and by failing to protect Lilly, had also endangered Victor.

The court found, by clear and convincing evidence, that there was a substantial danger to Victor’s physical or emotional health and safety, that reasonable efforts had been made to prevent or eliminate the need for removing Victor from his parents’ home, and that there were no reasonable means of protecting him short of placing him under the court’s jurisdiction as a dependent child. The court sustained the petition’s allegations under section 300, subdivisions (b) and (d).

In its dispositional order, the court continued to allow Victor to live at home with Mother under the Department’s supervision. The court continued to exclude Father from the family home and ordered him to participate in counseling, parenting courses, and sex abuse counseling for perpetrators. The court ordered Mother to participate in parenting courses and sex abuse awareness counseling. The court set October 7, 2013, as the likely date for determining Victor’s permanent living arrangement.

Father timely appealed from the April 8, 2013 jurisdictional and dispositional orders.

## **DISCUSSION**

### **I. Standard of Review**

““On appeal, the “substantial evidence” test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.] The term “substantial evidence” means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid

value. [Citation.]’ (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) ‘In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]’ (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)” (*In re E.B.* (2010) 184 Cal.App.4th 568, 574-575.)

## **II. The Jurisdictional Findings Are Supported by Substantial Evidence**

Father contends that even assuming he sexually abused Lilly, the evidence was insufficient to show that Victor was at substantial risk of harm and, therefore, the jurisdictional order must be reversed. We are not persuaded. We conclude that both *In re Ricky T.* (2013) 214 Cal.App.4th 515 (*Ricky T.*) and *In re I.J.* (2013) 56 Cal.4th 766 (*I.J.*) support the order sustaining the allegations under section 300, subdivisions (b) and (d) in this case.

In *Ricky T.*, a grandfather, Juan T., appealed the jurisdictional findings and dispositional orders made with respect to his three-year-old grandson, Ricky T. The issue on appeal was whether Juan T.’s sexual abuse of his step-granddaughters, A.G. and D.G., then ages 12 and nine years, was sufficient to show that Ricky T. was at risk of harm in his grandfather’s care. In affirming the jurisdictional findings, Division Three of this district stated: “First, as noted by the Department, Juan T. boldly and brazenly committed sexual abuse of A.G. at the mall in the presence of other vendors before he was apprehended. Given that A.G. stated Juan T. also abused her in his home, the juvenile court reasonably could conclude Ricky T. was at risk of being exposed to Juan T.’s sexual abuse of other children in Ricky T.’s presence even if Ricky T. were not at risk of being touched inappropriately by Juan T. Sexual abuse of other children in Ricky T.’s presence would also constitute annoying or molesting Ricky T. within the meaning of Penal Code section 647.6. (See *In re Karen R.* [(2001)] 95 Cal.App.4th [84,] 89-90.) Thus, Ricky T. was at risk of being a victim of sexual abuse as defined in section 300, subdivision (d).” (*Ricky T., supra*, 214 Cal.App.4th at p. 523.)

In *I.J.*, the issue was whether a father's sexual abuse of his daughter over a three-year period supported "a determination that his *sons* are juvenile court dependents when there [was] no evidence the father sexually abused or otherwise mistreated the boys, and they were unaware of their sister's abuse before this proceeding began." (*I.J.*, *supra*, 56 Cal.4th at p. 770.) In finding that the sons were at risk of harm as a result of their father's sexual abuse of their sister, the California Supreme Court stated: "We conclude that a father's prolonged and egregious sexual abuse of his own child may provide substantial evidence to support a finding that all his children are juvenile court dependents." (*Ibid.*) The court further stated: "The majority below accurately described father's behavior as 'aberrant in the extreme: he sexually abused his own daughter "by fondling the child's vagina and digitally penetrating the child's vagina and forcefully raped the child by placing the father's penis in the child's vagina.'" Also relevant to the totality of the circumstances surrounding the sibling abuse is the violation of trust shown by sexually abusing one child while the other children were living in the same home and could easily have learned of or even interrupted the abuse. '[S]exual or other serious physical abuse of a child by an adult constitutes a fundamental betrayal of the appropriate relationship between the generations. . . . When a parent abuses his or her own child, . . . the parent also abandons and contravenes the parental role. Such misparenting is among the specific compelling circumstances which may justify state intervention, including an interruption of parental custody. (See § 300, subs. (d), (e), (j).)' (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76-77.) The serious and prolonged nature of father's sexual abuse of his daughter under these circumstances supports the juvenile court's finding that the risk of abuse was substantial as to all the children." (*Id.* at p. 778.)

Applying the reasoning of *Ricky T.* and *I.J.* to this case, we conclude that Father's lengthy and egregious sexual abuse of Lilly placed Victor at substantial risk: (1) of suffering serious physical harm or illness, as a result of the failure or inability of his parents to adequately supervise or protect him (§ 300, subd. (b)), and (2) of being sexually abused (§ 300, subd. (d)). Because another child in Victor's home was subjected to sustained and severe sexual abuse, the juvenile court could reasonably



conclude Victor was at risk of being exposed to that abuse, even if there were no indication that Father was interested in molesting Victor. (See *Ricky T.*, *supra*, 214 Cal.App.4th at p. 523.) Moreover, the sexual abuse of another child in Victor's presence could constitute a child molestation crime against Victor within the meaning of Penal Code section 647.6. (*Ibid.*) We conclude that Victor was at risk of being a victim of sexual abuse as defined in section 300, subdivision (d), even though Victor and Lilly are not siblings and Lilly was no longer residing in Victor's home at the time of the petition. (*Ibid.*)<sup>6</sup>

Although there was no evidence that Father had physically or sexually abused Victor, "section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only a 'substantial risk' that the child will be abused or neglected. The legislatively declared purpose of these provisions 'is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*' (§ 300.2, italics added.) 'The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.' (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)" (*I.J.*, *supra*, 56 Cal.4th at p. 773.)

### **III. Father's Appeal From the Prior Dispositional Order Is Dismissed as Moot**

At the Department's request, we have taken judicial notice of the juvenile court's recent October 7, 2013 ruling, which: (1) terminated the April 8, 2013 placement of Victor at home with Mother; (2) allowed Father to return to the family home; and

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<sup>6</sup> Father relies heavily on *In re Alexis S.* (2012) 205 Cal.App.4th 48, which the Supreme Court disapproved in *I.J.* to the extent that the opinion is inconsistent with the court's opinion in *I.J.* (*I.J.*, *supra*, 56 Cal.4th at pp. 780-781.) We conclude that *Alexis S.*, which did not address the propriety of the court's jurisdictional order in that case, is distinguishable from this case and does not support Father's position.

(3) placed Victor in the home of both parents under the Department’s supervision. In light of these significant changes, the Department correctly points out that the issues raised in Father’s appeal from the April 8 dispositional order are moot. We conclude the Department’s request to dismiss that portion of the appeal, which Father has not opposed, should be granted.

The law is well established that where an order has been terminated before the appeal could be heard, the appeal must be dismissed for lack of an existing controversy. (*Paoli v. California & Hawaiian Sugar Refining Corp.* (1956) 140 Cal.App.2d 854, 856-857.) “‘To invoke the jurisdiction of a court of justice, it is primarily essential that there be involved a genuine and existing controversy, calling for present adjudication as involving present rights, and although a case may have originally presented such a controversy, if before the decision it has, through act of the parties or other cause, lost that essential character, it is the duty of the court, upon the fact appearing, to dismiss it.’ [Citation.]” (*Id.* at p. 857.)

## **DISPOSITION**

The jurisdictional order is affirmed. The appeal from the dispositional order is dismissed as moot.

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

EDMON, J.\*

We concur:

WILLHITE, Acting P. J.

MANELLA, 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.