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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re MATTHEW H. et al., persons Coming Under the Juvenile Court Law.
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,  Plaintiff and Respondent,  v.  ALEXANDER J.,  Defendant and Appellant.

B287719

(Los Angeles County  
Super. Ct. No. DK23047)

APPEAL from orders of the Superior Court of Los Angeles  
County, Marguerite Downing, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of  
Appeal, for Defendant and Appellant.

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

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Appellant Alexander J. and N.A. (Mother) have two children, a son, Matthew H., and a daughter, “M.H.” Mother has three other young daughters, “M.A.,” “J.A.” and “G.A.”<sup>1</sup> The juvenile court asserted jurisdiction over Matthew and M.H. under Welfare and Institutions Code section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), (d) (sexual abuse), and (j) (abuse of sibling).<sup>2</sup> The jurisdictional findings were based on appellant’s alcohol abuse, multiple instances of domestic violence between appellant and Mother in which appellant physically attacked Mother, and appellant’s sexual abuse of Mother’s daughter, M.A. On appeal, appellant contests the finding that his children are at risk of sexual abuse as the result of his molestation of M.A., and the dispositional requirement that he participate in sexual abuse counseling for perpetrators. Finding no error, we affirm.

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<sup>1</sup> Neither Mother nor the fathers of her other children are parties to this appeal. Jurisdiction was asserted over M.A., J.A. and G.A., but they are not the subjects of this appeal.

<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

## **FACTUAL AND PROCEDURAL BACKGROUND**

The underlying proceeding began in May 2017, when M.H. was a few months old, Matthew was 17 months old, and their oldest half-sister, M.A., was 13.<sup>3</sup> Appellant and Mother had been in a relationship for three years, but he had been living separately from Mother and the children since October 2016. On April 30, 2017, appellant went to Mother's home while intoxicated, threatened to take her truck, and pushed and hit her with his fists and a belt when she jumped into the truck to stop him. The next day, Mother went to the police. Officers prepared a report, documented Mother's injuries, and assisted her in obtaining a temporary restraining order (TRO).<sup>4</sup>

The Department of Children and Family Services (DCFS) initiated an investigation. When interviewed by the caseworker, Mother said appellant had begun abusing her verbally and threatening to hit her five or six months earlier, always when under the influence of alcohol. She later said appellant had pulled her hair and slapped her on one earlier occasion in 2016. A maternal aunt told the caseworker the abuse was more frequent. She reported seeing bruises and marks on Mother's face on a consistent basis since the birth of Matthew. The aunt also reported that appellant drank a "twelve pack" on a regular

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<sup>3</sup> M.A.'s two younger half-sisters, J.A. and G.A., were nine and five.

<sup>4</sup> That TRO expired May 8. Mother obtained a second TRO on May 10. Appellant's attorney later told the court that the family court had issued a permanent restraining order, preventing appellant from monitored visitation with the children, but the caseworker received information that the family law proceeding had been dismissed for lack of prosecution.

basis, and became aggressive and violent when he was drunk. G.A., age five, had not witnessed the April 30 incident, but reported seeing appellant slap Mother and push her against furniture and onto the floor on another occasion.

The caseworker spoke to M.A. privately and separately. M.A. disclosed that in December 2015, when she was 12 years old, appellant sexually abused her, when Mother was in the hospital giving birth to Matthew. She said appellant lay down next to her when she was sleeping and touched her breasts and vagina. He told her not to tell Mother. M.A. confided that she had had thoughts of hurting herself because she felt nothing had been done about the abuse.

Mother initially denied that appellant was abusive toward the children. However, when the caseworker informed Mother of M.A.'s statements, Mother said she already knew and had known since December 2015. Mother continued to live with appellant and became pregnant with M.H. after learning of appellant's abuse of M.A. and, even after establishing a separate home for herself and the children in 2016, allowed appellant to spend the night.<sup>5</sup> She stated, however, that she never left the children unattended when appellant was in the family home.

DCFS's investigation revealed that on December 4, 2015, police were called to M.A.'s school after she mentioned the molestation to schoolmates, who informed school officials. M.A. provided more detail to the police officers than she had to the caseworker. She reported that when the sexual abuse occurred, seven-year-old J.A. was sleeping in the same bed. M.A. also told the officers that while fondling her, appellant had pressed his

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<sup>5</sup> Mother later claimed appellant "forced himself on her" during their relationship.

erect penis against her, and that he had pulled her pants and underwear down before she was able to get away from him by jumping over J.A. and putting her between M.A. and appellant. He remained in the bed, appearing to be asleep. M.A. lay on the other side of J.A., pulling her sister toward her, and stayed awake all night, afraid appellant would try to touch her again or touch her sister. M.A. further reported that on a previous occasion, appellant had called her to lie down next to him on his bed, where he began rubbing her stomach and saying how much he loved her and her sisters. He continued until M.A. became uncomfortable and left.

DCFS conducted an investigation into the incident in December 2015. At that time, Mother said she would seek a permanent restraining order and obtain sole physical and legal custody of the children.<sup>6</sup> The caseworker observed that the children appeared to be well cared for, and after conducting extensive interviews with Mother and other relatives and receiving assurances that Mother would not allow appellant to return to her home or have contact with the children, the referral was closed without a petition being filed.

Interviewed by the caseworker in May 2017, appellant denied abusing Mother, denied sexually abusing M.A., and denied having an alcohol problem. He asked that the children remain with Mother, and agreed to comply with court-ordered services to ensure the children's safety.

DCFS detained the children in May 2017, giving temporary custody of the three older children to the father of J.A. and G.A.

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<sup>6</sup> Mother obtained a TRO in December 2015, but did not return to have a permanent order issued.

and custody of appellant's children (Matthew and M.H.) to a maternal relative. Appellant was arrested in June 2017.<sup>7</sup>

At the November 14, 2017 jurisdictional/dispositional hearing, Mother submitted to jurisdiction. Counsel for appellant contended that the allegation that appellant's children were at risk of sexual abuse should be dismissed, arguing that even assuming the sexual abuse of M.A. occurred, DCFS failed to meet its burden to establish appellant was a risk to his own children or to Mother's other children, as it was a single incident, appellant's behavior was not extremely aberrant, there was no evidence he had been inappropriate with the younger girls or had a sexual interest in his biological children, and he was no longer living with Mother.

The court found that (1) appellant and Mother "have a history of engaging in violent altercations in the children's presence," including occasions when appellant pushed Mother, struck her in the face with his fists, struck her with a belt, and pushed her against furniture; (2) appellant sexually abused M.A. by fondling her vagina and breasts; (3) appellant had "a history of alcohol abuse and is a current abuser of alcohol," and was under the influence on at least one occasion when the children were in his care. The court further found that Mother failed to protect the children from the risk of sexual and physical abuse. The court concluded that the first and third findings supported jurisdiction under section 300, subdivisions (a) and (b), and that the second finding supported jurisdiction under section 300, subdivisions (b), (d), and (j).

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<sup>7</sup> The record does not reveal the charges pending against appellant.

Father's court-ordered reunification program included an alcohol abuse program, a 52-week domestic violence program, and sexual abuse counseling for perpetrators. Mother was ordered to participate in a domestic violence support group for victims and sexual abuse awareness counseling. The children were returned to Mother under the supervision of DCFS. Father appealed the jurisdictional and dispositional orders.

## DISCUSSION

### A. *Jurisdictional Order*

Appellant contends the finding that his sexual abuse of M.A. posed a risk of harm to his children, Matthew and M.H., within the meaning of section 300, subdivisions (b), (d), and (j) was not supported by substantial evidence. For the reasons discussed, we disagree.<sup>8</sup>

Section 300 permits the juvenile court to assert jurisdiction over a child who falls within the provisions of one of its subdivisions, including: a child who is at substantial risk of

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<sup>8</sup> Appellant challenges only one of the factual findings that supported assertion of jurisdiction over his children. As respondent points out, a single true finding can support the court's assertion of jurisdiction, and the reviewing court "need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In Alexis E.* (2009) 171 Cal.App.4th 438, 451.) However, appellant also contests the dispositional order requiring him to participate in sexual abuse counseling for perpetrators. Reviewing courts will generally consider the merits of a parent's appeal of fewer than all the jurisdictional findings when the contested findings "serve[] as the basis for dispositional orders that are also challenged on appeal [citation]." (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452, quoting *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.)

suffering serious physical harm or illness as a result of the failure or inability of his or her parent to adequately supervise or protect the child (§ 300, subd. (b)); a child who has been sexually abused or is at substantial risk of being sexually abused (§ 300, subd. (d)); or a child whose siblings have been abused in a manner that suggests the child is at risk of similar abuse (§ 300, subd. (j)). (See *In re I.J.* (2013) 56 Cal.4th 766, 772 (*I.J.*)). DCFS has the burden of proving by a preponderance of the evidence that the child falls under one of the subdivisions of section 300. (*Id.* 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. “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.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” [Citation.]” [Citation.]” (*Ibid.*)

“Cases overwhelmingly hold that sexual abuse of one child may constitute substantial evidence of a risk to another child in the household -- even to a sibling of a different sex or age.” (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 968; see, e.g., *In re Ana C.*



(2012) 204 Cal.App.4th 1317, 1322, 1332 [juvenile court’s finding that 11 and nine-year old boys were at risk of sexual abuse by father supported by substantial evidence where father sexually abused his girlfriend’s 11-year-old daughter]; *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1411-1415 [substantial evidence supported finding that two-year-old boy was at risk under subdivisions (b), (d), and (j) where father sexually abused boy’s 12-year-old and 14-year-old half sisters]; *In re P.A.* (2006) 144 Cal.App.4th 1339, 1345-1347 [father’s sexual abuse of daughter supported finding that he posed risk of sexual abuse to younger brothers approaching her age]; *In re Karen R.* (2001) 95 Cal.App.4th 84, 86, 88-91 [substantial evidence supported finding that eight-year-old boy was at risk of sexual abuse where father raped boy’s 13-year-old sister].)<sup>9</sup>

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<sup>9</sup> Prior to the Supreme Court’s decision in *I.J.*, *supra*, 56 Cal.4th 766, some courts had held that evidence of sexual abuse of a child of one gender did not justify the assertion of jurisdiction over a child of another gender. (See, e.g., *In re Rubisela E.* (2000) 85 Cal.App.4th 177, 198-199, disapproved in part in *I.J.*, *supra*, 56 Cal.4th 766; *In re Maria R.* (2010) 185 Cal.App.4th 48, 68, disapproved in part in *I.J.*, *supra*, 56 Cal.4th 766; see also *In re Alexis S.* (2012) 205 Cal.App.4th 48, 53, 55-56, disapproved in part in *I.J.*, *supra*, 56 Cal.4th 766 [leaving jurisdictional finding intact, but reversing dispositional order removing two boys from their father’s custody and restricting visitation to monitored where the father had twice inappropriately touched older stepdaughter].) Observing that “section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction,” but requires only a “substantial risk” of abuse, the Supreme Court found that the risk of sexual abuse to a child whose opposite gender sibling had been abused was not “nonexistent or so insubstantial that the juvenile court may not

Under the Supreme Court’s decision in *I.J.*, *supra*, 56 Cal.4th 766, whether a parent who has sexually abused an older child or step-child poses a risk to younger biological siblings of the same or opposite gender is a question left to the “best judgment” of the juvenile court acting as trier of fact. (*Id.* at p. 779.) The determination is based on “the totality of the circumstances of the child and his or her sibling[s].” (*Id.* at p. 774.) Juvenile courts may consider the following factors, derived from section 300, subdivision (j), to assist in determining the degree of risk of harm to a child whose sibling has been sexually abused: “the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.” (*I.J.*, *supra*, 56 Cal.4th at p. 774, quoting § 300, subd. (j).) Courts also may consider the “violation of trust” shown by sexually abusing one child at a time and place where other children “could easily have learned of or even interrupted the abuse” and the egregiousness of the abuse. (*Id.* at p. 778) “[T]he more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300. . . . [A]s the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.” (*Ibid.*)

Here, appellant molested his 12-year-old stepdaughter while her seven-year-old sister lay next to her. This was

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take steps to protect the [child] from that risk.” (*I.J.*, *supra*, at pp. 773, 780.)

extremely aberrant behavior, and involved a violation of trust, as he had been in a parental relationship with Mother's older daughters for several years at the time. Appellant points out that only inappropriate touching was involved. However, from M.A.'s description of the incident, it is clear that appellant was preparing to do more when she jumped to the other side of her sister. Appellant contends it was a single, isolated incident, but M.A. informed officers that this was not the first time he had touched her while both were lying on a bed. In addition, M.A. stayed awake all night, giving appellant no further opportunity to molest her on that occasion, and informed schoolmates and police officers the next day, giving him no opportunity to molest her later. Appellant further observes that between December 2015 and the date the underlying proceeding began in May 2017, there were no further incidents of a sexual nature involving him and any of the children. Mother moved herself and the children to a new home in 2016, and stated that after learning of the December 2015 incident, she never left the children unattended with appellant. The absence of further aberrant behavior was not evidence of appellant's remorse or reformation, but absence of opportunity. (See *Los Angeles County Dept. of Children & Family Services v. Superior Court*, *supra*, 215 Cal.App.4th at p. 970 [observing in response to father's argument that abuse of stepdaughter occurred years earlier that "it was mother's installation of locks on the doors and taking father's key that likely stopped the abuse, not any change in father's desire for sex with preteen girls"].)

The record reflects that the juvenile court considered all of the factors appellant raises on appeal -- the dissimilar ages of M.A. and appellant's children, his lack of biological connection

with M.A., the nature of his actions, and the number of incidents involved -- as they were raised in argument by his counsel at the jurisdictional hearing. The court's decision that appellant posed a risk of sexual abuse to his two children was based on the totality of the circumstance as required by the Supreme Court and is supported by substantial evidence.

B. *Dispositional Order*

Appellant contends that because the juvenile court's finding that he posed a risk of sexually abusing Matthew and M.H. was unsupported, the portion of the dispositional order requiring him to participate in sexual abuse counseling for perpetrators must be reversed. Because we uphold the court's jurisdictional finding, there is no basis for reversing the dispositional order or any part of it.

**DISPOSITION**

The court's jurisdictional and dispositional orders are affirmed.

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

MANELLA, P. J.

We concur:

WILLHITE, J.

MICON, J.\*

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