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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

B285353

(Los Angeles County
Super. Ct. No. DK21165)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

CHEQUITA C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Marguerite Downing, Judge. Reversed in
part.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

Chequita C., the mother of now 11-year-old R.R. and six-year-old Blake C., appeals the juvenile court's June 21, 2017 jurisdiction findings and disposition order declaring R.R. and Blake dependents of the court pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).¹ Chequita contends the court's jurisdiction findings were not supported by substantial evidence. We affirm in part and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

1. Blake's Injury and the Resulting Investigation

On December 21, 2016 Chequita and her fiancé, Kenneth S., brought Blake to the emergency room because he was complaining of pain in his arm. An examination revealed Blake had a fractured arm bone, bruising on his arm, torso and thigh and abrasions on his shins. The treating physician noted Blake appeared "anxious and in mild pain." Chequita and Kenneth told hospital staff they had no idea how Blake had sustained his injuries. Blake was not able to explain his injuries due to developmental and verbal delays. Suspecting abuse,

¹ Statutory references are to this code unless otherwise stated.

hospital staff alerted police and the Los Angeles County Department of Children and Family Services (Department).

Chequita and Kenneth told the responding police officer Blake had tripped over a large toy and fallen into a wall the previous night. They said he did not complain of pain at the time, but it could have been how he was injured. The officer did not suspect abuse and did not write a criminal report. Blake was released from the hospital to Chequita and Kenneth.

The next day a Department social worker visited the family's home. Chequita was polite and cooperative. She told the social worker Kenneth lived with her and the children, but he was not their biological father. R.R. and Blake have different fathers, but neither was involved in the boys' lives. Chequita denied hitting or spanking her children. Chequita told the social worker Blake did not have an official diagnosis, but he received speech therapy and occupational therapy services through his school for autism. Chequita said Blake was an extremely active child who had a "habit of running, sliding and jumping off his toys" and often wrestled with his older brother. She reported she had learned of Blake's injury when she arrived home from work and he complained of pain in his arm while changing his shirt. She "knew something was wrong and immediately" took him to the hospital. The social worker also interviewed Kenneth during the visit. He said he loved R.R. and Blake like his own children and had never hit them.

Blake told the social worker he did not know how he hurt his arm. The social worker stated in his report Blake appeared confused by the interview questions, but was adamant that no one was hitting him. R.R. also said he was not being abused and had never seen anyone hit Blake. He explained Blake "likes to

slide and run” through the house and sometimes “falls hard to the ground.”

On January 5, 2017 another social worker went to the family’s home for a follow-up visit. Chequita again stated she did not know how Blake broke his arm and added he is a very active child. She repeated her suspicion he had been injured when he tripped over a large toy the night before the hospital visit. However, she was “puzzled” because he did not tell her it hurt until the following night. She also said he could have fallen getting out of the top bunk in the middle of the night to go to the bathroom. Even after Blake said his arm hurt, Chequita explained, she did not think it was broken because Blake did not cry when Kenneth moved it to examine the injury; he only winced. Chequita had already taken Blake to a follow-up appointment and had a second doctor visit scheduled for the following day.

The social worker interviewed R.R. and Blake and stated in her report they appeared happy and healthy. Blake was unable to make a statement due to his speech delay. When the social worker asked if anyone hits him, Blake shook his head “no.” The social worker conducted a visual inspection of Blake’s torso and did not observe any marks or bruises. R.R. again denied anyone was hitting him or his brother. He said he was afraid of his mother because she “screams loud” and is a “good fighter,” but he said she would never hurt him or his brother. He said he feels safe in his home.

Kenneth denied ever “whooping” the boys, but acknowledged he occasionally slapped them on their hands. Kenneth said Blake woke up crying for his mom on the day of the hospital visit. Because she was already at work, they video-

chatted with her. Kenneth then took R.R. and Blake to court with him for an appearance related to his probation for driving under the influence of alcohol. He said Blake was calm the entire time. Kenneth then dropped Blake off at his maternal grandmother's house. Kenneth again said he did not know how Blake broke his arm but recalls him tripping in the living room.

On January 12, 2017 the Department social worker received a telephone call from a police detective. The detective stated there had been a miscommunication between the hospital staff and the responding officer on the night Blake was treated. The responding officer was apparently not told the hospital staff suspected abuse. The detective stated a criminal report should have been filed and Blake should have been detained that night. The detective asked whether the Department intended to remove Blake from the home. The social worker responded she would talk to her supervisor.

2. Detention of the Children

On January 18, 2017 the Department obtained an expedited removal order for R.R. and Blake and immediately removed the children from the home. Chequita became very upset during the removal, yelling at the social worker and calling her names. During the car ride to their foster home, R.R. said he is happiest when he is with his mother and grandmother. He again denied any physical abuse in the home and said he did not know how Blake broke his arm. He said Blake liked to play a lot and was not careful of his arm even now that he had a cast. Later, while still awaiting foster home placement, Blake repeatedly asked for his mother. He said he did not know how he hurt his arm but said his mother knew. The next day Chequita had a supervised telephone call with R.R. during which she acted

appropriately. She asked when she could visit the children and said she would take time off work to do so.

On January 23, 2017 the Department filed a petition to declare R.R. and Blake dependent children of the juvenile court under section 300, subdivisions (a) (serious physical harm inflicted nonaccidentally) and (b)(1) (failure to protect). The petition alleged Blake's injuries were "suspicious for Child Abuse. Further the child's injuries are of such a nature as would ordinarily not be sustained except as the result of unreasonable and negligent acts and omissions of the child's mother who has the care, custody and control of the child. Such physical abuse to the child by the child's mother endanger the child's physical health and safety and place the child and the child's sibling [R.R.] at risk of serious physical harm, damage, danger, and physical abuse."²

The accompanying detention report included information regarding prior Department referrals of the family. Between 2009 and 2016 the Department had received a total of five reports, one alleging physical abuse of R.R. by Chequita, one alleging physical abuse of Blake by his maternal grandmother, one alleging a filthy home and marijuana use on the part of Chequita, and two alleging domestic violence between Chequita

² The petition also contained a second count under section 300, subdivision (b)(1), alleging Chequita had established a dangerous home environment because she allowed her mother and Kenneth to use marijuana while the children were present and a count under section 300, subdivision (j), alleging danger to R.R. based on the abuse of Blake. These two counts were dismissed at the jurisdiction hearing.

and former boyfriends. Each report was investigated by the Department and deemed unfounded and/or inconclusive.

The detention report stated the whereabouts of the boys' fathers were unknown and recommended no reunification services be provided to Chequita.

At the detention hearing on January 23, 2017 the court found a prima facie case for detaining R.R. and Blake and ordered them placed with their godmother, Lishanna G. During the hearing the children's counsel stated R.R. and Blake consider Kenneth to be their father and wanted to have visits with him. The court ordered monitored visits with Chequita and Kenneth as frequently as could be arranged.

3. The Jurisdiction/Disposition Report

In a March 8, 2017 jurisdiction/disposition report the Department summarized additional interviews with the family and the children's caregivers. In a February 16, 2017 interview R.R. again stated he did not know how Blake had broken his arm. He repeated the theory Blake was injured when he tripped over a large toy the night before the hospital visit. R.R. said Blake "fell down really hard and he just got up like it was nothing." The next day Blake "didn't want to walk all day, he was being spoiled." R.R. said that evening his grandmother tried to change Blake's clothes and he "kept saying 'Ow!'" When they took off his shirt, they saw the bruises and called Chequita, who then took Blake to the hospital. Throughout the interview R.R. referred to Kenneth as "dad."

Blake was also interviewed by the Department social worker on February 16, 2017. The social worker noted, "Blake was very active during the interview and was observed jumping on and around the couch in the living room. [The social worker]

had to redirect the child several times.” The social worker also reported Blake appeared not to understand all the questions directed to him. When asked what happened to his arm, Blake said “I got a cast off. I jumped off the bed.” He denied getting spankings. Blake also referred to Kenneth as “daddy.”

In an interview the same day Chequita repeated she did not know how Blake had been injured. She again speculated it could have been when he tripped over a toy and ran into a wall or he could have fallen getting out of bed in the middle of the night. She said he was sluggish the morning of the hospital visit.

The report included information regarding a January 2017 telephone conversation between a social worker and Crystal B., the boys’ maternal grandmother. Crystal said that, when Blake was dropped off with her on December 21, 2016, he pointed to his arm and said “hurt.” He then said, “Daddy hurt me.” In a February 23, 2017 interview Crystal again said that, when she asked Blake what happened to his arm, he said, “Daddy.” Regarding Kenneth, Crystal said he had only been with Chequita for five months. She said “he was disciplining but I don’t know if it was physical or not.” Crystal said Chequita is “an awesome mom. I can definitely tell you she didn’t hurt that baby.”

Lishanna, with whom the boys were then residing, was also interviewed on February 16, 2017. She said she had a close relationship with the family and Chequita was like a daughter to her. She reported Blake had told her no one had hurt him. Lishanna also said Blake was an active child. A few weeks before he broke his arm, she saw him jump off the bunk bed. When she told him not to do that, he did it again, hit his head on the ceiling and continued jumping. Lishanna reported Chequita’s parents did not like Kenneth, and Lishanna thought they repeatedly

asked Blake if Kenneth hurt him. She said she was “kind of wondering if they were trying to make him say that.” R.R. had also told Lishanna no one hurt the boys, and she believed him because he would usually tell her when something was wrong. Lishanna said Chequita is a “really good mom.”

Kenneth was interviewed on February 23, 2017. He reiterated Blake was an extremely active child. Kenneth recalled Blake had fallen the night before the hospital visit and the next day “he was acting very down, like depressed, or sleepy or tired.” When Blake said that evening his arm hurt, Kenneth moved it around to see what was wrong; Blake told him it hurt.

The boys’ initial foster mother told the social worker Blake said, “Daddy hurt me” and made a twisting motion to his arm.

The Department recommended reunification services be provided to Chequita.

4. The Last Minute Information Reports

In a last minute information filed March 21, 2017 the Department reported Kenneth was no longer living with Chequita. In addition, Chequita had enrolled in a parenting class. The instructor stated Chequita “tends to minimize and appears to have difficulties thinking things through before making decisions for herself and the children.”

In a second last minute information the Department submitted the report of an April 6, 2017 forensic interview of Blake by Kimberly Tran, a social worker and forensic evaluator. Tran observed Blake’s development appeared delayed and he was distracted and unable or unwilling to give answers at times. He was further unable to demonstrate an understanding of the guidelines for the interview. Blake told Tran that Kenneth had once hit him on the mouth and another time hit him on the arm.

When asked directly whether “daddy” hit him, Blake replied, “yeah . . . he hit children.” Blake also said “daddy hit mom,” but he could not provide any details. Tran noted Blake appeared anxious during the interview and became visibly uncomfortable when discussing being hit by Kenneth.

A letter dated March 6, 2017 from Dr. Thomas Grogan, an orthopedic surgeon, was also submitted to the court. Dr. Grogan had reviewed Blake’s medical records related to the broken arm and concluded, “In my opinion, [Blake] had a fracture caused by a fall on an outstretched arm. Although it is possible that he could have been pushed by someone to cause the fracture, this typical fracture is the result of a fall and is typically accidental in nature.”

A hearing was held on May 11, 2017 at which the jurisdiction/disposition hearing was continued to allow for a mandatory settlement conference. During this hearing the children’s attorney recommended the boys be returned to their mother because there was no indication she had abused them. The court denied that request but, over the Department’s objection, ordered unmonitored visitation and overnight visits for Chequita.

On June 20, 2017 the Department submitted yet another last minute information, which included a letter from Dr. Catherine DeRidder, a child abuse pediatrician. Dr. DeRidder had examined Blake in January 2017 and had reviewed Blake’s medical records and Dr. Grogan’s letter. Dr. DeRidder wrote Blake’s fracture “could have been caused by a major fall/impact Although, this is not a common location or common type of fracture to sustain in a fall on an outstretched hand. . . . [¶] It is not impossible for this fracture to be sustained

by a fall but I think it is less likely and think that if it was a fall, this incident would have been a very obvious event and one that could have been readily recalled by a caregiver.” Dr. DeRidder further stated her opinion was based, in part, on the disclosures of abuse Blake had made to his grandmother and prior foster mother.

The last minute information also reported Chequita had been interviewed again on June 13, 2017 and she maintained she had no knowledge of how Blake was hurt. Chequita “adamantly” denied Kenneth was the cause of Blake’s injury, and she said she did not believe Blake had ever accused Kenneth. Chequita reported she had completed a one-on-one parenting education program.

5. The Jurisdiction Hearing

The jurisdiction hearing was held on June 21, 2017. The Department’s reports and attachments were admitted into evidence, as were Chequita’s certificate of completion of a 10-week parenting course and final evaluation. No witnesses were called. The children’s counsel urged the court to dismiss the petition in its entirety, arguing Chequita had been consistent in her explanations of how Blake may have been injured. The children’s counsel further stated Blake was an active child and there was no evidence Chequita had abused or neglected him. In addition, counsel explained Kenneth was no longer living in the home and the children had been on overnight visits with Chequita without any incident. Chequita’s counsel also argued the petition should be dismissed in its entirety. He argued Blake’s statements that “daddy” hit him were vague and it was not clear Blake understood what was being asked or what he was saying.

The juvenile court sustained the petition under section 300, subdivisions (a), serious physical harm nonaccidentally inflicted, and (b), failure to protect from child abuse. The court stated, “[T]here is no explanation as to why Blake or how Blake hurt his [arm]. So it’s concerning when the parents -- when the mother has given some explanations and Blake is saying daddy. . . . I also note that, although this child is supposed to be very, very hyper, he was not jumping up and down in the video [of the forensic interview] It was difficult to understand him. He was not very clear. But the fact that on repeated occasions he said daddy, in response to how the injury happened, for this court is a sign that the department has met their burden.” As to the children’s placement, the court acknowledged Kenneth was no longer living in the home and Chequita had been following her case plan. Accordingly, the court released R.R. and Blake to Chequita under the supervision of the Department and ordered there be no contact between the children and Kenneth.³ Chequita was ordered to comply with her case plan, which included completion of a parenting program, individual counseling and speech therapy for Blake.

6. Termination of Jurisdiction

On December 22, 2017, while Chequita’s appeal of the jurisdiction findings and disposition order was pending in this court, the juvenile court held a six-month review hearing (§ 364) at which it determined R.R. and Blake should remain dependents of the court. However, the court ordered Chequita to submit a custody order within two weeks. On January 2, 2018 the court

³ Neither R.R.’s father nor Blake’s father could be located by the Department, and neither appeared in the case.

found the conditions that would justify initial assumption of jurisdiction under section 300 no longer existed and terminated jurisdiction. The custody order signed that date gave Chequita sole legal and physical custody of R.R. and Blake.⁴

DISCUSSION

1. *The Jurisdiction Findings Are Reviewable*

After the juvenile court terminated its jurisdiction and the custody order was entered, the Department moved to dismiss Chequita's appeal as moot. "As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but 'must be decided on a case-by-case basis.'" (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) Reviewing courts have exercised their discretion to consider an appeal of jurisdiction findings despite the subsequent termination of jurisdiction when the jurisdiction findings "could be prejudicial to the appellant or could impact the current or any future dependency proceedings" or "the finding[s] could have consequences for the appellant beyond jurisdiction." (*In re J.C.* (2014) 233 Cal.App.4th 1, 4; accord *In re C.C.*, at p. 1488-1489 ["[a]n issue is not moot if the purported error infects the outcome of subsequent proceedings"].)

In her opposition to the motion to dismiss, Chequita argues we should reach the merits of her appeal because the challenged

⁴ At the request of the Department and without objection from Chequita, we take judicial notice of the juvenile court's minute orders dated December 22, 2017 and January 2, 2018 and the custody order dated January 2, 2018. (Evid. Code, §§ 459, 452, subd. (d).)

findings under section 300, subdivisions (a) and (b), that she intentionally harmed her son could have severe consequences, such as preventing reunification services if she is involved in a future dependency proceeding. Failure to consider her arguments on the merits, she asserts, will prevent her from challenging a finding that imputes a high degree of blameworthiness and stigma. Chequita also contends the juvenile court's subdivisions (a) and (b) jurisdiction findings will affect her detrimentally because it will cause her to be included on the Child Abuse Central Index (CACI), which in turn could adversely impact her ability to secure future employment requiring a license or background check and prevent her from being approved as a foster or adoptive parent.⁵

⁵ “The CACI consists of an index of all reports of child abuse and severe neglect submitted to the [Department of Justice] pursuant to the [Child Abuse and Neglect Reporting Act] under Penal Code section 11169.” (*Saraswati v. County of San Diego* (2011) 202 Cal.App.4th 917, 921, fn. 1; see Pen. Code, §§ 11165-11174.3.) The Department is required to report known or suspected cases of “child abuse or neglect, as defined in [Penal Code] section 11165.6,” to the Department of Justice (DOJ) for inclusion on CACI when an investigator determines it is “more likely than not” child abuse has occurred. (Pen. Code, § 11165.12, subd. (b).) Penal Code section 11165.6, in turn, defines “child abuse or neglect” to include “physical injury or death inflicted by other than accidental means upon a child by another person . . . [and] neglect as defined in Section 11165.2 [to mean ‘the negligent treatment or the maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare’].” The Department is required to notify an individual that he or she has been reported to the DOJ. (Pen. Code, § 11169, subd. (c).)

The Department argues the potential consequences of the jurisdiction findings cited by Chequita are purely speculative and do not justify reaching the merits of her appeal. Specifically, the Department contends there is currently no indication a future dependency or family matter will arise and, if it does, the court in any such future proceeding would be able to consider the evidence in this case, including the medical opinions that Blake's injuries raised suspicions of child abuse. Further, the Department states, any future dependency proceeding would necessarily be based on circumstances existing at that time. As to CACI, the Department argues there is no evidence in the record Chequita was actually reported to the DOJ or included on CACI. The Department contends a sustained jurisdiction finding of abuse does not automatically result in an individual's inclusion on CACI.

Although we agree with the Department there is no evidence in the record Chequita has been included on CACI, the Department's response on this point is troubling. The standard for a juvenile court to sustain an allegation in a section 300 petition is preponderance of the evidence. (§ 355, subd. (a).) The standard for the Department to report an individual to the DOJ for child abuse or neglect is "more likely than not." (Pen. Code,

After receiving Chequita's opposition to the motion to dismiss, we requested she provide documentation supporting her assertion she had been reported for inclusion on CACI. In response, Chequita provided a copy of the CACI website homepage, which contains general information regarding CACI, and a copy of the CACI website "self inquiry" page, which provides instructions for individuals to inquire whether they are included on CACI. We granted Chequita's unopposed request to take judicial notice of these documents.

§ 11165.12, subd. (b).) There is no meaningful difference between those two standards. (See *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879 [stating “more likely than not” standard means evidence “would constitute a preponderance of evidence”]; *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1205 [“[T]he party with the burden of proof must convince the trier of fact that its version of a fact is more likely than not the true version. . . . ‘[A] degree of proof usually described as proof by a preponderance of the evidence.’”].) Thus, if, as the Department argues, sustaining an allegation of abuse does not require the Department to report the underlying incident to the DOJ, it would mean the juvenile court had found it more likely than not that abuse had occurred, but a Department investigator disagreed. Counsel’s suggestion that the Department would file a petition containing allegations the Department itself did not believe were supported by a preponderance of the evidence is, to say the least, disconcerting.

To clarify this apparent contradiction, we requested the Department provide an explanation of the analysis undertaken to determine whether a CACI referral should be made. In response, in a letter to the court the Department described the procedures for making CACI reports and the standards for juvenile court findings at detention and jurisdiction hearings that a child falls under one or more of the provisions of section 300. The Department further stated, “[D]ependency petitions and CACI reports are not determinative as to one another. A dependency petition does not automatically trigger the submission of a CACI report involving a parent, as the alleged parental conduct in the petition may not be reportable for CACI purposes. Likewise, a CACI report that involves a parent does not automatically trigger

the filing of a dependency petition where the child may be appropriately protected by other means, such as voluntary services contact with the family that can ensure the child's safety." Whether a section 300, subdivision (a), finding of serious physical harm inflicted nonaccidentally would ever remain unreported to the DOJ, and, if so, why, was not addressed.

Whether or not there is any reason to believe Chequita may have been included on CACI, we exercise our discretion to review her appeal on the merits and deny the Department's motion to dismiss. We agree with Chequita a finding of intentional abuse could have a lasting impact on an individual and create the possibility of prejudice in subsequent family law or dependency proceedings. (See *In re D.P.* (2014) 225 Cal.App.4th 898, 902 [exercising discretion to consider merits of appeal because "finding that mother intentionally hurt her daughter has the potential to impact future dependency proceedings"]; see also *In re C.C.*, *supra*, 172 Cal.App.4th at p. 1489 [exercising discretion to consider appeal despite "highly speculative" nature of future prejudice "because dismissal of the appeal operates as an affirmation of the underlying judgment or order"].) Further, if Chequita was reported to the DOJ and included on CACI, the jurisdiction finding by the juvenile court would deprive her of her right to challenge her inclusion on that list. (Pen. Code, § 11169, subd. (e) [request for hearing to challenge inclusion on CACI "shall be denied when a court of competent jurisdiction has determined that suspected child abuse or neglect has occurred"].) Failure to address Chequita's appeal on the merits would thus leave Chequita with no recourse for challenging the potentially detrimental findings. (See *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 ["Because the jurisdictional issues were actually

litigated in the dependency proceeding, appellant is collaterally estopped from relitigating those issues in the family law court. . . . [¶] . . . Moreover, refusal to address such jurisdictional errors on appeal by declaring the case moot has the undesirable result of insulating erroneous or arbitrary rulings from review.”].)

2. *Governing Law and Standard of Review*

The purpose of section 300 “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; see *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) Section 300, subdivision (a), provides that jurisdiction may be assumed if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm inflicted nonaccidentally by the child’s parent. Section 300, subdivision (b)(1), allows a child to be adjudged a dependent of the juvenile court when “[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 a custodian with whom the child has been left”

Although section 300 requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re D.L.* (May 3, 2018, B284646) __ Cal.App.5th __ [2018 Cal.App. Lexis 399], 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 Kadence P.* (2015)

241 Cal.App.4th 1376, 1383; *In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child presently needs the court's protection. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215-1216; *In re N.M.*, at p. 165.) A parent's "[p]ast conduct may be probative of current conditions' if there is reason to believe that the conduct will continue." (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In Kadence P.*, at p. 1384.)

"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.""
(*In re I.J.* (2013) 56 Cal.4th 766, 773.) We 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. (*Ibid.*; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

3. *Substantial Evidence Does Not Support the Juvenile Court's Jurisdiction Finding Under Section 300, Subdivision (a)*

As discussed, a finding of jurisdiction under section 300, subdivision (a), requires a showing the child has suffered, or there is substantial risk the child will suffer, serious physical

harm inflicted nonaccidentally by the child's parent or guardian. To that end, the petition alleged Blake's injuries were sustained as the result of "physical abuse to the child by the child's mother." However, the evidence supporting a finding of nonaccidental physical abuse pointed not to Chequita, but to Kenneth as the perpetrator, specifically Blake's repeated statements "daddy" had hurt him. It was this evidence the juvenile court relied upon in finding the Department had met its burden to prove the allegations of physical abuse.⁶ The record contains no evidence of any physical abuse of either Blake or R.R. by Chequita. The jurisdiction finding under section 300, subdivision (a), is reversed.

4. *Substantial Evidence Supports the Juvenile Court's Jurisdiction Finding Under Section 300, Subdivision (b)*

Chequita argues there was not substantial evidence of her failure to supervise or protect the children from Kenneth because the evidence could not support a finding Kenneth had abused Blake.⁷ Specifically, Chequita argues, Blake's statements "daddy" hurt him, although admissible, lacked "the recognized

⁶ Because Kenneth is neither a parent nor a guardian of Blake, he was not the subject of any of the jurisdiction allegations. Any physical abuse by Kenneth would not support a jurisdiction finding under section 300, subdivision (a).

⁷ Chequita also argues there was not substantial evidence to support a jurisdiction finding of neglect absent abuse because it was reasonable for Chequita not to know how Blake was injured. Because we find substantial evidence supports the finding Chequita failed to supervise or protect from Kenneth's conduct, we need not address this argument.

indicia of reliability to support a jurisdictional finding.”

Chequita’s argument misapprehends the applicable law.

Pursuant to certain limited exceptions, section 355, subdivision (b), permits the juvenile court to rely on hearsay evidence contained in Department reports when making jurisdiction findings. (See *In re E.B.* (2010) 184 Cal.App.4th 568, 577 [social study is legally admissible evidence on which the court may rely at a jurisdiction hearing “despite the fact that a social study is itself hearsay and may contain multiple levels of hearsay”]; see also *In re I.C.* (April 26, 2018, S229276) __ Cal.5th __ [2018 Cal. Lexis 2982] “[i]n cases of suspected child abuse or neglect, however, strict adherence to the rule [against hearsay] would lead to the exclusion of firsthand reports of many victims in the very proceedings that are designed to protect them from harm”].) One exception was stated in *In re Lucero L.* (2000) 22 Cal.4th 1227, in which the Supreme Court held, “[S]ection 355 notwithstanding, the out-of-court statements of a child who is subject to a jurisdictional hearing and who is disqualified as a witness because of the lack of capacity to distinguish between truth and falsehood at the time of testifying may not be relied on exclusively unless the court finds that ‘the time, content and circumstances of the statement provide sufficient indicia of reliability.’” (*In re Lucero L.*, at pp. 1247-1248.)

Contrary to Chequita’s contentions, the additional requirement of “indicia of reliability” established by *In re Lucero* applies only when the child has been disqualified as a witness due to lack of capacity. Nothing in *In re Lucero* suggests a broader application of the “indicia of reliability” test, and Chequita has not cited any authority that a child’s hearsay statements are insufficient to sustain jurisdiction absent indicia

of reliability when the child has not been found incompetent to testify.⁸ The juvenile court here was entitled to rely on Blake's multiple hearsay statements to various individuals that he had been injured by Kenneth. Those statements, in addition to the

⁸ After briefing was completed in this case, the Supreme Court decided *In re I.C.* (April 26, 2018, S229276) __ Cal.5th __ [2018 Cal. Lexis 2982], in which the Court held the juvenile court had erred in sustaining jurisdiction based solely on a child's uncorroborated hearsay statements when the statements did not bear "special indicia of reliability as required by *Lucero L.*" (*In re I.C.*, at p. __.) The Court applied the indicia of reliability test despite the fact the juvenile court had not made a finding the child lacked the capacity to testify. The Court stated the social services agency had forfeited the argument the *Lucero* test did not apply by failing to raise it until oral argument. (*Id.* at p. __, fn. 5.) Thus, we do not believe *In re I.C.* alters our conclusion the indicia of reliability test applies only where a finding of incompetence to testify has been made. *In re I.C.* is further distinguishable from this case because the Court found there was "no adequate basis to support an implied finding" of reliability when "I.C. was not telling the truth at several points during the interview" and "inconsistenc[i]es and inaccuracies . . . were woven through her core allegations." (*Id.* at pp. __, __.) The Court also emphasized the "unusual situation" in *In re I.C.* in which the child had been previously abused by a third party, whom she encountered for the first time since the abuse a few days prior to making "strikingly similar" allegations against her father. (*Id.* at p. __.) The Court found the probability I.C.'s statements regarding her father were actually a result of the "surprise encounter with her abuser just days earlier, cannot be ignored." (*Id.* at p. __.) Here, by contrast, there were no unusual circumstances undermining the reliability of Blake's statements, which were consistent and did not contain the type of inaccuracies present in *In re I.C.*

physician reports that Blake's injury appeared to be caused by abuse, although contested, constituted substantial evidence to support a finding Chequita failed to protect R.R. and Blake from Kenneth's conduct.

Finally, Chequita argues the trial court's finding of jurisdiction was error because she and Kenneth were no longer in a relationship at the time of the jurisdiction hearing, thus there was no danger of Kenneth having access to the children. (See *In re D.L.*, *supra*, __ Cal.App.5th __ [2018 Cal.App. Lexis 399] [section 300 "effectively requires a showing that *at the time of the jurisdictional hearing* the child is at substantial risk of serious physical harm in the future"].) This argument is unavailing. Although Kenneth and Chequita had been in a relationship less than six months at the time of the boys' detention, Kenneth stated he loved the boys like his own children. The boys, too, appeared bonded to Kenneth, referred to him as their father and sought visitation with him. At the time of the jurisdiction hearing Kenneth had been out of the home less than four months. In addition, the instructor of Chequita's parenting class stated Chequita tended to minimize issues and had trouble thinking things through before making decisions for her children. On this record, it was reasonable for the trial court to conclude there was a realistic possibility Kenneth would remain present in the children's lives and there remained a substantial risk of harm from his conduct. (See *In re S.O.*, *supra*, 103 Cal.App.4th at pp. 461-462 [substantial risk of harm remained despite domestic violence occurring one year prior to jurisdiction hearing and father being out of home for nine months].)

DISPOSITION

The juvenile court's order sustaining jurisdiction under section 300, subdivision (a), is reversed. The juvenile court's order is affirmed in all other respects.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.