

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re L.G. et al., a Persons Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MANUEL G.,

Defendant and Appellant.

B280097

(Los Angeles County  
Super. Ct. No. J988516)

APPEAL from orders of the Superior Court of Los Angeles  
County, Joshua Wayser, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Kim Nemoy, Principal Deputy  
County Counsel, for Plaintiff and Respondent.

---

## INTRODUCTION

Manuel G. appeals from the jurisdiction and disposition orders of the juvenile court. He contends there is insufficient evidence to support the order sustaining the subsequent petition. (Welf. & Inst. Code, § 342.)<sup>1</sup> He also contends that if we reverse the jurisdiction order we must reverse the ensuing disposition order. We conclude that the record supports the juvenile court's jurisdictional findings. Accordingly, we affirm the orders.

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. *the family's background*

Father and mother, Stacy M.,<sup>2</sup> had joint legal custody of L.M. (age 12) and A. (age 10) under a family law order. The children lived primarily with mother and had overnight visitation with father. In February 2016, the juvenile court declared the children dependents after sustaining a petition alleging that mother physically abused L.M.. (§ 300, subds. (b)(1) & (j).) Father was not named as an offending parent in the petition. The court released L.M. to father, awarded mother monitored visits, and released A. to both parents, but primarily to mother. The court scheduled a hearing in August 2016 to determine whether continued court supervision was necessary (§ 364).

### 2. *the subsequent petition*

In July 2016 the Department of Children and Family Services (the Department) filed the subsequent petition (§ 342) at issue here. It alleges that father “physically abused the child L.M.. The father grabbed the child L.M. by the blouse, pushed

---

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Mother is not a party to this appeal.

the child onto the bed, and got on top of the child's body. The father rolled the child onto the child's abdomen and handcuffed the child's arms behind the child's back. The father then handcuffed the child's arms to the bed post. The child A. is afraid of the child's father due to witnessing the child's sibling L.M. being handcuffed. The physical abuse to the child L.M. by the father endangers the children's physical health and safety and places the children at risk of serious physical harm, and damage." (§ 300, subds. (a) [serious physical harm], (b) [failure to protect] & (j) [abuse of a sibling].)

There is no dispute about what occurred. A. made three videos of the incident on her iPad. According to the social worker who viewed them, the first video showed L.M. and father exchanging words and father sending the child to her room. Less than 30 seconds later, L.M. opened the bedroom door and threw an object out. Father then "grab[bed] [L.M.] and appear[ed] to tackle her on a bed where he appear[ed] on top of her. Minor [L.M.] [was] heard screaming during this altercation." A. stopped recording at this point so that she could try to get father off L.M. by hitting him on his back. He picked A. up and moved her out of the bedroom. On the second recording, which was sound only and started 31 minutes later, L.M. stated that father handcuffed her to the bed and she could not get out. The third recording, started eight minutes later and showed only the ceiling, while L.M. sniffled. Father told L.M. that the sheriff's deputies would be coming in about an hour and that wherever they took her would be where she would be living. L.M. continued to sniffle and cry. Father took the handcuffs off L.M. after A. demanded it.

Father told the investigating social worker that he tried to talk to L.M. about her attitude and behavior. L.M. slapped him

in the face. At a loss about how to control the child, father put her on her stomach on the bed and restrained her while his girlfriend, Lucinda, got the handcuffs. As a former security guard, father was trained to restrain people who are out of control until they calm down. He was afraid L.M. would break something because he was a 270 pound man on top of a 70 pound girl. She kept kicking the door and so he handcuffed her to the bed post with her hands behind her back. He stated he removed the cuffs about 10 minutes later after she calmed down. He also threatened to handcuff L.M. again.

L.M. preferred living with father because he allowed her to do as she wished. She told A. that father was right to handcuff her because she had been wrong. She also hesitantly told the social worker that she felt “ ‘pretty much’ ” safe in father’s care. She only liked living there sometimes because father was often in a bad mood. She claimed she was blamed for everything while A. was not disciplined. For example, father blamed L.M. when his relationship with Lucinda became rocky.

A. thought this was an isolated incident, but was also unaware of how father normally disciplined L.M. Father was “really angry” that day and instructed A. not to tell anyone about the event. The incident made her afraid of father and she did not want to visit him or return to his house. She felt happy and safe in mother’s care.

There is no evidence that L.M. suffered marks or bruises. L.M. was able to make the third video of the ceiling because the handcuffs were fairly loose. The video established that L.M. was handcuffed for about 52 minutes.

Father immediately enrolled in anger management and parenting programs. He admitted the handcuffing was a bad decision.

### *3. the detention*

At the July 27, 2016 detention hearing, the juvenile court watched the videos and found they showed a “loss of impulse control by the father, and the issue of the use of handcuffs to handcuff a child, which I don’t think is contemplated by any case law.” The court found, while parents have the right to discipline a child in a reasoned and appropriate way consistent with criminal and tort law, no one could argue that the use of handcuffs is reasoned and appropriate. Finding that A. was “emotionally damaged” by the incident, the court placed her with mother and allowed father monitored visits with the child in a therapeutic setting. As for L.M., the court ordered that she remain with father, provided she spent the night with an appropriate relative, and that father and L.M. immediately start conjoint counseling.<sup>3</sup>

The juvenile court ordered A. to attend conjoint counseling with father, despite her refusal, stating, “Ten-year-olds do not get to make decisions regarding that issue.” A.’s therapist wrote to the Department that “[A.] does not feel safe with any type of contact with her Father.” A. told the therapist that she felt the need to videotape the handcuffing incident because no one believed her about how father behaved toward her and L.M.. After he handcuffed L.M., father told A. that “ ‘[L.M.] deserved it,’ ” causing A. to fear he might do something similar to her. A.

---

<sup>3</sup> In October 2016, the court allowed L.M. to spend Sunday nights at father’s house.

refused to have any contact with father because she was scared of him and afraid of retaliation for the videotape.

4. *the jurisdiction/disposition hearing and order*

Father testified at the November 30, 2016 jurisdiction hearing that he had learned in his 14 parenting classes and 12 anger management classes different ways to approach the situation and not to react impulsively. He admitted his conduct was inappropriate. He lost his temper.

The juvenile court sustained all counts in the petition (§ 300, subds. (a), (b) & (j)). Stating it was well aware of the case law governing the three-part test for the use of discipline, the court found that the incident was “pretty serious” and, even as a one-time event, “clearly exceeds the boundaries of what’s appropriate, given the nature and circumstances of it.”

As for the disposition, the juvenile court ordered L.M. returned to father’s home under the Department’s supervision. The court removed A. from father’s physical custody (§ 361, subd. (c)) and ordered her to remain with mother, also under the supervision of the Department. The court ordered family maintenance for mother and reunification services for father. Father’s services included continuing conjoint counseling with L.M. and beginning therapy with A. forthwith. The court specifically directed the Department and father to locate a new conjoint therapist if A.’s therapist was unwilling to provide joint counseling with father. The court awarded father monitored visits with A. after four sessions of conjoint counseling. Father’s appeal ensued.

## DISCUSSION

“In any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition.” (§ 342.)

The Department “ ‘has the burden of showing specifically how [the children have] been or will be harmed.’ [Citation.] This must be established by a preponderance of the evidence. [Citation.]” (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.) We review the jurisdictional findings for substantial evidence. (*Ibid.*) We view the evidence in the light most favorable to the juvenile court’s order, drawing all reasonable inferences from the record to support the findings and orders. (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.) We will affirm if there is reasonable, credible evidence of solid value to support the court’s finding. (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119.)

A child is defined by section 300, subdivision (b)(1) 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 . . . .” (*Ibid.*)

Admitting the handcuffing episode occurred, father contends it was a “one-time incident” and so the Department adduced insufficient evidence that his children had suffered any harm or that at the time of the jurisdiction hearing were at risk of suffering harm in his care. He observes that L.M. sustained no marks or bruises and accurately notes that the juvenile court initially declined the Department’s emergency detention request.

We are unpersuaded because dependency jurisdiction under section 300, subdivision (b)(1) is authorized by a showing “the child *has suffered* or there is a substantial risk that the child will suffer, serious physical harm or abuse.” (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261, citing § 300, subd. (b)(1).)

Both children suffered abuse. L.M. was tackled by a man four times her size and then handcuffed to a bed with her hands behind her back for almost *an hour* while she cried. Father cites no cases requiring evidence of marks or bruises to sustain an allegation under section 300, subdivision (b)(1). Moreover, father completely overlooks that A., who witnessed and videotaped the incident, was found by the juvenile court to be “emotionally damaged.” She was *scared of father* to such an extent that she has refused to see him or to undergo counseling with him. And father overlooks that he threatened to handcuff L.M. again.

Father argues he was merely disciplining L.M.. “[A] successful assertion of the parental disciplinary privilege requires three elements: (1) a genuine disciplinary motive; (2) a reasonable occasion for discipline; *and* (3) a disciplinary measure reasonable in kind and degree.” (*Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72, 91; accord, *In re D.M.* (2015) 242 Cal.App.4th 634, 641-643 (*D.M.*).)

Determination whether the conduct falls within the parents’ right to reasonably discipline their children is a factual question. (See *D.M.*, *supra* at p. 640.) Here, the juvenile court referred to the case law and found that the handcuffing incident “clearly exceed[ed] the boundaries of what’s appropriate, given the nature and circumstances of it.” Father relies on *Gonzalez* and *D.M.* *Gonzalez* is wholly inapposite as it held that spanking a child with a wooden spoon did not necessitate registration with Child



Abuse Central Index. (*Gonzalez*, at p. 94.) *D.M.* is distinguished because the juvenile court there failed to consider the three-part test concerning the parent’s right to discipline. (*D.M.*, at p. 642.) Here, the court considered the test and the evidence adequately supported the finding that father had already abused L.M. (§ 300, subd. (b)(1)), A.’s sibling (*id.*, subd. (j)).<sup>4</sup>

Father argues at length that he immediately enrolled in services where he learned better parenting techniques and learned that the handcuffing was a bad decision. Father is to be commended for his efforts. However, that fact does not obviate the need for state intervention to protect these children who have already been abused.<sup>5</sup> The court need not wait until the children are more seriously abused or injured to assume jurisdiction and take the steps necessary to protect them. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

---

<sup>4</sup> A child may be declared a dependent under section 300, subdivision (j) when “The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.”

<sup>5</sup> We will affirm the jurisdictional order if any of the grounds sustained by the juvenile court is supported by substantial evidence. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 “[a] reviewing court may affirm a juvenile court judgment if the evidence supports the decision on any one of several grounds”]; see also *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) In such a case, we need not consider whether any of the other alleged statutory grounds for jurisdiction is supported by the evidence. (*Ibid.*) In light of our conclusion that the court’s finding of jurisdiction under section 300, subdivisions (b)(1) and (j) is supported by substantial evidence, we need not address whether L.M. is also defined by subdivision (a) of section 300.

In view of our conclusion here, we need not address father's further contention that a reversal of the jurisdiction order would require reversal of the disposition order.

**DISPOSITION**

The orders are affirmed.

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

BACHNER, J.\*

We concur:

EDMON, P. J.

LAVIN, J.

---

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