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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B234159  
(Los Angeles County  
Super. Ct. No. CK86315)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ERICA P.,

Defendant and Appellant.

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

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and  
Appellant.

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

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Erica P. (mother) appeals from the juvenile court's jurisdictional and dispositional findings and orders pursuant to Welfare and Institutions Code sections 300, subdivision (b) and 361, subdivision (c)(1).<sup>1</sup> She raises three arguments on appeal: (1) Mother claims that the juvenile court erred when it did not provide her advisements of her rights when she submitted at the adjudication hearing; she contends that she would have pursued her right to a contested hearing had she understood her rights and that there is a reasonable probability that a more favorable outcome would have resulted. (2) She contends that substantial evidence does not support the juvenile court's jurisdictional findings that the children, Daniel P., Jr. (Daniel, born Feb. 2000), Jordan P. (Jordan, born Apr. 2003), Jaiden P. (Jaiden, born Jan. 2008), Tristan P. (Tristan, born June 2006), and Alex P. (Alex, born Sept. 2008), were at substantial risk of serious harm as a result of the alleged domestic violence between mother and Daniel P., Sr. (father). (3) Mother asserts that the evidence was insufficient to justify removal of the children from her care.

We conclude that mother's arguments are unavailing. Accordingly, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *Detention*

#### 1. Information from Officer Bustos

This family came to the attention of the Department of Children and Family Services (DCFS) on January 26, 2011, when it received a referral of allegations of emotional abuse of all of the children by mother. Officer Bustos informed the social worker that she responded to the family home around 9:00 a.m. regarding a reported stabbing. When she arrived, father came out of the home with blood on his shirt and visible injuries. Father said that he wanted to go to the hospital but did not want to involve law enforcement.

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

Alex was the only child at home at the time, and he was asleep in the bedroom. The other children were at school. Mother was not home because she had left to pick up Tristan from preschool.

Father was taken to Los Angeles County/University of Southern California hospital for his injuries. Officer Bustos did not think that father's injuries were life threatening. She reported that father had been stabbed three times, once on his arm, once on the left side of his back, and once on his shoulder.

According to Officer Bustos, while law enforcement was still at the family home, mother returned home with Tristan. She told the officers that father had always been physically and emotionally abusive to her and the children. Mother said that father was constantly cheating on her and would "throw it in her face." Mother told Officer Bustos that father was out at his girlfriend's home the previous night and when he came home, mother wanted to kick him out. Father called mother names, and they were arguing and fighting. She indicated that she stabbed father out of self-defense because he was choking her. Officer Bustos reported that mother had no visible injuries. Mother was detained at the Montebello Police Station.

When Officer Bustos ran mother's criminal background check, she discovered that mother had a 2003 arrest for battery against another female. As against father, mother was being charged with assault with a deadly weapon.

## 2. Interview with mother

The social worker interviewed mother. She saw no visible injuries on mother. Mother informed the social worker that father had a history of being physically and emotionally abusive to her and the children. Mother said that the abuse started as early as when she gave birth to Daniel. Father called her "big nose, bitch and slut." Mother reported that father had pushed, hit, and slapped her in the past. According to mother, father once chipped her tooth when he dragged her down the stairs. Mother explained that the domestic violence incidents happened over time in different homes. She had been afraid to report father for domestic violence or for being physically or emotionally abusive to the children because the family depended on him for income. In the past,

when father had left her for a couple of weeks, mother and the children ended up homeless. Mother said that she may have hit father during some of their fights, but it was in self-defense. She disclosed that she stabbed father that morning because he was choking her. Only Alex was home during this incident, but he was in the bedroom and might have been sleeping.

Mother further stated that father had told the children that he “‘hate[d]” them and “‘want[ed them] to die.” Father used curse words when yelling at the children and called them names like “‘pendejos’ and ‘pinchi cabron.” Father often got upset and yelled at the children if they came out of their room when he was trying to watch television in the living room. Mother denied that the children were in their room because they had to sleep, as the incidents of father yelling at them occurred in the afternoon and early evening. Mother stated that father hit the children with his hands, shoes, and even a belt. When the children were hit, she had to tell father to stop. Furthermore, father hit Daniel in the mouth when Daniel was seven years old. Father had pulled Tristan’s hair, and Jordan had a scar on the back of his ear from when father scratched him a couple of months prior. Mother disclosed that father also scratched the children “hard.” She explained that she never reported the abuse and left father because she was afraid that she would “‘have [nowhere] to go.” She indicated that she had called a shelter in the past and that the shelter staff told her that they could not help.

While mother denied that she had had any history with DCFS, she revealed that father had a history with DCFS regarding his daughter Justine, who was eventually adopted.

Mother denied hitting the children. She admitting to spanking them on the buttocks when they were young, but now that they were older, she took away games and television privileges as a form of discipline. She denied any substance abuse by her or by father. She denied mental illness. She claimed that father had a mental illness because “‘he is always just so angry and mean.” She denied any criminal history. She said that she wanted a divorce from father, but that he would not pay for it.

### 3. Information from Officers Summerhays and Rodriguez

Officers Summerhays and Rodriguez reported that they were part of the team that responded to the call at the family home. They said that only Alex was present and that later mother brought Tristan home from daycare. The home was clean and tidy. When mother returned home with Tristan, he asked Officer Summerhays, “Is my mommy going to jail?” Officer Summerhays surmised that mother may have been expecting law enforcement and had already talked to Tristan in the car. Tristan did not report any abuse or neglect, and Alex was too young to speak.

### 4. Information from Detective Garcia

Detective Garcia reported that mother told responding officers that there was a reported domestic violence incident between her and father when they lived in Pico Rivera. However, Detective Garcia was unable to find any reported history in the county-wide database. Detective Garcia did not think that mother would post bail anytime soon, but would inform the social worker when mother was released. Mother’s arraignment hearing was scheduled for January 28, 2011 (two days later).

### 5. Interview with Tristan

The social worker observed a crescent-shaped scratch on the left side of Tristan’s back and a light thumb-sized bruise below it. Tristan was unable to explain how the injuries occurred. He informed the social worker that he felt safe and happy in the family home. He disclosed: “Yes, mommy hits” and “Yes, daddy hits.” He was unable to provide any further information on how he or his siblings were hit. He denied being afraid of his parents. He was unable to tell the social worker whether his parents hit or yell at each other.

### 6. Interview with Daniel

Daniel said that he stayed “at [his] grandma’s [house] a lot.” He said that when he was home and his parents were arguing, he did not “really pay attention” because he would be watching television in his room. He denied observing his parents argue or hit each other. The social worker noted that Daniel answered questions about his grandmother’s home and school freely, but when he was asked questions about physical

abuse or domestic violence, he said he did not know and looked away. The social worker thought that Daniel appeared to be hesitant in answering questions about abuse.

#### 7. Interview with Jordan

The social worker observed that Jordan had a faint scratch behind his ear. He was unable to say how he got that scratch. He did not know if either of his parents caused the injury. When the social worker asked if he liked living at home, he replied, “‘Not that much.’” Jordan explained: “‘My dad keeps hitting me, my mom hits me’ and ‘I didn’t do anything bad and they just hit me.’” Jordan stated that mother “‘smack[ed]’” his head, as well as his siblings’ heads. Sometimes, mother “‘smack[ed]’” his head “‘hard.’” Father had hit Jordan and his siblings with his hands and once even used a belt. When father hit Jordan, it caused Jordan pain and would sometimes result in a red spot. He would hit Jordan and his siblings with a belt when they wanted to buy toys, which caused father to become upset. Father had hit Jordan on his arms and legs, causing the areas to be red for five days. Jordan indicated that mother used to hit him, but now only takes away his videogames. Father still hits him “‘a lot.’” When asked if he was afraid of mother or father, Jordan said, “‘Only my dad. When he gets mad, my tears drop down because I get scared.’”

Jordan reported that mother and father hit each other a lot. Once, Jordan saw mother hit father on the head with a spoon. While Jordan admitted that father used his hands to hit mother, he could not elaborate. Father called mother names, like “‘big nose,’” and mother called father “‘big ears.’” Jordan disclosed that mother and father used bad words, but he declined to repeat them. Jordan said: “‘I don’t really like my mom and dad because they always fight. It happens a lot.’” During these fights, mother tells father “‘to get out of the house.’” According to Jordan, sometimes father would leave and sometimes he would not and the parents would continue fighting. Father told Jordan not to tell anyone or he would “‘get in trouble.’”

The social worker observed that Jordan had a one-inch white mark on the bottom of his neck. It appeared that the skin on the part of the neck was healing from a scab.

#### 8. Interview with Jaiden

Jaiden liked living at home and felt happy and safe. He denied that he was ever hit or yelled at by his parents. He denied that his parents fought or hit each other.

#### 9. Interview with the maternal grandmother

The maternal grandmother, Delores A. (Delores), suspected that mother was having problems with father, but mother did not really tell Delores “anything.” Delores believed that father was verbally abusive to mother and the children because he had been seen verbally abusing mother years earlier. Delores thought that there was domestic violence and physical abuse between mother and father. Delores did not have any information on whether the children were being physically abused.

#### 10. Interview with father

The social worker spoke with father the following day. He stated that he had been released from the hospital. He said that mother lied and was not a good mother. He explained that on the day of the stabbing, he worked overnight. When he got home in the morning, mother was upset and kicked him twice in the stomach. He was eating and mother threw his food in the trash. She said that she hated him and threatened to stab him. He did not believe mother and followed her into the kitchen. Mother grabbed a knife and stabbed him three times. Only Alex was home at the time, but he was not in the kitchen and did not witness the incident. Father denied being physically or emotionally abusive towards mother, and he denied hitting the children.

#### 11. The children are placed with Delores

The children were detained and placed with Delores.

#### *Section 300 Petition and Detention Hearing*

On January 31, 2011, DCFS filed a section 300 petition on behalf of the children. In count b-1, the petition alleged that the parents “have a history of engaging in violent altercations, in the children’s presence.” The petition specified various incidents of domestic violence including the incident on January 26, 2011, as well as prior occasions in which father had physically harmed mother and mother had struck father. “Such violent altercations on the part of the mother and the father endanger[] the children’s

physical and emotional health and safety and places the children at risk of physical and emotional harm, damage and danger.” In count b-2, the petition alleged that father “inappropriately physically disciplined the children,” that such discipline was excessive and caused the children unreasonable pain and suffering. Moreover, mother knew that father had physically disciplined the children but failed to protect them. “Such physical discipline of the children by the father and the mother’s failure to protect the children endangers the children’s physical and emotional health and safety and creates a detrimental home environment and places the children at risk of physical and emotional harm, damage, physical abuse and failure to protect.” Count b-5 alleged that mother engaged in inappropriate and excessive physical discipline, including by striking the children, thereby creating a detrimental home environment that placed the children at risk of physical and emotional harm, damage, and physical abuse.

At the detention hearing, mother waived further reading of the petition and statement of rights and entered a general denial. The juvenile court found a prima facie case for detaining the children and placed them with Delores.

The matter was set for an adjudication hearing.

*March 3, 2011, Jurisdiction/Disposition Report*

1. Interview with Daniel

DCFS reported that initially Daniel seemed comfortable with the social worker. He smiled and answered questions about his family without any problems. But, when he was asked about the allegations in the section 300 petition, he became guarded and would not provide answers or elaborate. He stated that he could not remember and that his head hurt when asked questions regarding physical abuse and domestic violence in the family home.

2. Interview with Jordan

Jordan stated that he was not home to see mother pull a knife on father. He had heard and observed his parents yell at each other and call each other “bad names.” Also, he had seen his parents push each other. He never saw his parents hitting each



other, but he had seen a lot of pushing. He felt sad whenever his parents argued or pushed each other.

Jordan disclosed that sometimes father would use his hands to hit Jordan “real hard,” causing Jordan pain. In October, father hit Jordan with a shoe on Jordan’s foot. Mother was not home during this incident. Jordan did not recall being hit by a belt by father, but father would hit his siblings with a shoe and a belt on their legs. Mother would see father hitting the children and yell at him to stop. Jordan’s brothers were last hit in October. He said that he was not hit by mother and had never observed mother hitting his siblings.

### 3. Interview with Jaiden

Jaiden denied being hit by his parents and had never observed his siblings being hit. He never saw domestic violence between the parents.

### 4. Interview with mother

Mother reported that father was verbally and physically abusive to her since the inception of their relationship. In 2002, she filed charges in West Covina for domestic violence against father, but he made her withdraw the charges after he threatened to kill her. She claimed that father cheated on her and had shown up at the family home with “hickies” on his neck. He had failed to come home “for days” and had openly teased her about his infidelity.

According to mother, father was constantly verbally abusing her in the presence of the children by calling her names, insulting her, and cursing at her. Mother stated that father’s physical and emotional abuse including pushing, punching, yelling, cursing, and threats in the presence of the children. The night before their confrontation on January 26, 2011, father did not come home to sleep, which led to the verbal argument the following day. Father then began pushing her, cursing at her, and choking her. She said that she had to defend herself by grabbing a knife and stabbing him. Only Alex was at home at the time, and he was in the other room. Mother disclosed that the children had observed father hit or push her on multiple occasions.

Mother said that in the past, she had suffered bruises and scratches. Furthermore, father had pulled her hair and choked her. She had injuries throughout her entire body as a result of father striking her. Mother had tried to leave father, but she always returned because he always promised to change, said he was sorry, and said that he would not hit her again.

Mother denied kicking or hitting father with a spoon. She had only tried to defend herself by pushing him.

Mother disclosed that father had hit all of the children except Alex. Once, father “busted” Daniel’s lip. Mother told Daniel not to say anything to anyone out of fear that the children would be taken away or that father would be arrested. She was afraid that she would not be able to survive without father’s income. Mother said that she and father were talking with the door locked when Daniel came knocking on the door. Father became angry and took Daniel into the other room. Mother heard Daniel screaming, and when she went into the other room, she saw blood on Daniel, the floor, and the bed. Daniel’s gums were bleeding. Mother yelled at father and asked him what he had done. Father said, “He made me do it.” Mother said that father had a “very short temper” with the children and “everything the children [did] bother[ed] him.”

Mother further reported that she had observed father get a belt and take the children to another room. She would hear the children yelling and crying, but she had never actually observed the children being hit. She said that the children obviously had been hit because father was holding a belt in his hand and the children were complaining of having been hit with a belt. Mother had yelled on many occasions for father to stop, but this usually led to loud verbal arguments in which father cursed at her and the children.

Mother did not recall the children being hit with shoes or having their hair pulled. The children had told her that father used his hands to strike them on the head and stomach.

Mother believed that father needed counseling because he was ““sick.”” She stated that father picks on Daniel the most, but because Daniel is so afraid, he usually keeps quiet.

Mother reported that father had left her and the children homeless on various occasions because he was the main financial provider. She indicated that father was verbally and physically abusive to the entire family.

Mother denied hitting any of the children.

The social worker reported that mother was attending parenting classes, domestic violence classes, and anger management classes.

#### 5. Interview with father

Father reported that mother had stabbed him with a knife while Alex was in another room in the house. On prior occasions, mother had slapped, pushed, and kicked him in the ribs. He did not believe that the children had witnessed these confrontations because they were usually in the other room. He believed that the children might have heard loud arguing between him and mother, which consisted of yelling and cursing at each other.

He denied ever striking mother in any way. He might have pushed mother aside on a few occasions while he was trying to leave from mother’s aggression.

Father claimed that mother had been unfaithful to him as she continued a relationship with an inmate who was incarcerated for murder. Father observed a ““hickie”” on mother and had discovered letters between mother and the inmate. He found revealing photographs of mother that she had sent to the inmate. Father stated that despite their marital problems, he missed mother and wanted to reunify with her as soon as possible.

Father denied ever hitting any of the children with a belt or shoe. He said that he might spank them occasionally on the buttocks area, but it was not done with the intention to inflict harm or pain. Father did not recall ever hitting the children; he never hit Daniel to cause him to bleed from the mouth.

Father witnessed mother striking the children ““a couple of times.”” He did not recall the exact circumstances. About three months prior, he observed mother striking Jaiden on the head with her hands. Mother told father that she struck Jaiden because he made her forget her purse. Jaiden did not cry or act like he was in pain after mother struck him.

6. Mother is charged with a crime

The social worker reported that mother had been charged with Penal Code section 273.5 [domestic violence].

7. Police reports

In the January 26, 2011, police report, the officer reported that father had three stab wounds and a cut on his left hand. Mother had used a five-inch steak knife.

Father informed the police that mother had kicked him twice in the stomach with her right foot and grabbed a kitchen knife and stabbed him.

Mother said that father began pushing her, grabbed her neck, and choked her. Fearing for her safety, mother grabbed a knife and stabbed father.

Daniel denied that his parents hit him or his brothers; he said that he was happy at home.

Jordan reported that his parents argue and call each other names. He did not like living at home because his parents argue, and father hit him on the head. He denied that father hit his siblings.

Jaiden denied that his parents argue. He said that they do not hit him or his brothers.

In a supplemental police report, mother disclosed that father hit and yelled at the children and that the children had received bruises from father.

The police officer reported that Tristan had a three-inch bruise on the center of his back. Tristan said, ““My mom hit me because I didn’t listen.””

#### 8. Social worker's report

The social worker reported that the children had adapted well to Delores's care. According to Delores, the children ate and slept well and had no problems. The parents visited the children weekly.

#### *April 11, 2011, Adjudication Hearing*

At the hearing, the juvenile court received various reports into evidence. It then stated that mother's portion of the case was going forward<sup>2</sup> as father had settled. In response, mother's counsel stated: "Mother has no further evidence, including no further witnesses or further documents. At this point, she submits the matter to the court's decision."

Ultimately, the juvenile court sustained the allegations and declared the children dependents of the court. It found that a substantial danger existed to the physical health of the children and that the children were suffering severe emotional damage, and that there were no reasonable means to protect the children without removing them from the parents' physical custody. The juvenile court ordered reunification services for the parents and set the matter for a six-month review hearing on October 3, 2011.

#### *Appeal*

Mother's timely appeal ensued.

### **DISCUSSION**

#### *I. Mother's Due Process Rights*

Mother contends that at the April 11, 2011, adjudication hearing, her attorney indicated that mother submitted pursuant to *Malinda, supra*, 51 Cal.3d 368.<sup>3</sup> Mother argues that the juvenile court erred because it did not advise her of her rights.

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<sup>2</sup> The April 11, 2011, minute order indicates that the allegations against mother were sustained pursuant to *In re Malinda S.* (1990) 51 Cal.3d 368 (*Malinda*).

<sup>3</sup> As set forth above, the minute order indicates that the allegations were sustained pursuant to *Malinda, supra*, 51 Cal.3d 368. However, according to the reporter's transcript, the case proceeded against mother, with her attorney representing that mother had no further evidence and was therefore submitting.

Assuming, without deciding, for purposes of this appeal that the juvenile court erred, any error was harmless. (Cal. Const., art. VI, § 13; *In re Monique T.* (1992) 2 Cal.App.4th 1372, 1377–1378.) Mother was represented by counsel throughout the proceedings and she was afforded the right to a trial. As discussed below, there was overwhelming evidence of the parents’ domestic violence as well as evidence of their physical and emotional abuse of the children. And, mother has not shown how she could have offered different or more favorable evidence or witnesses. Accordingly, we conclude that any alleged error was harmless and does not warrant reversal. (*In re Monique T.*, *supra*, at pp. 1378–1379.)

## II. *Substantial Evidence Supports the Juvenile Court’s Jurisdictional Findings*

### A. Standard of Review

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

### B. Analysis

“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.’ [Citation.]” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.)

With that in mind, section 300 provides, in relevant part: “Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] (b) The 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, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical

treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b), italics added.)

Mother objects to the juvenile court's findings regarding all three sustained counts of the section 300 petition. We address each in turn, remembering that we may affirm a juvenile court's jurisdictional findings if substantial evidence supports any one of the counts involving the children. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875–877; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.)

1. *Count b-1 (domestic violence)*

Mother does not dispute the evidence of domestic violence between herself and father. Her sole argument is that “there was no evidence that the children suffered or were at substantial risk of suffering ‘serious physical or emotional harm’ as a result of these altercations.” Case law compels us to disagree.

“[D]omestic violence in the same household where children are living is neglect; it is failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the harm.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) “‘Both common sense and expert opinion indicate [that] spousal abuse is detrimental to children.’ [Citations.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.) It is a form of secondary abuse; children are affected by what happens around them as well as by direct harm. (*In re Heather A., supra*, at p. 195, fn. 11; see also *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562.)

Here, there is ample evidence that the domestic violence between the parents caused the children to suffer and/or placed them at risk of suffering serious physical or emotional harm. Daniel stated that he preferred being at Delores's home and admitted that when his parents fought, he watched television in his room. Jordan disclosed that his parents hit each other a lot. Once, he saw mother hit father on the head with a spoon, and he had seen father hit mother with his hands. He also stated that he saw his parents pushing each other. In fact, Jordan told the social worker that he did not like his parents

because they always fight. Even mother admitted that father's physical and emotional abuse had occurred in the children's presence.

Moreover, during the latest incident of domestic violence, mother stabbed father three times with a kitchen knife and then left the home, leaving two-year-old Alex alone with father, who was bleeding and required medical assistance.

The fact that father may be intent on becoming a better parent is only part of the issue. Mother needs to acknowledge that she is also an aggressor in the domestic violence. And, there is no indication that the parents are progressing in their parenting classes and domestic violence and anger management classes.

2. *Count b-2 (failure to protect from father's physical abuse)*

The three elements for jurisdiction under section 300, subdivision (b) are: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) a substantial risk of serious physical harm or illness. (*In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1396.) "The third element . . . 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 (e.g., evidence showing a substantial risk that past physical harm will reoccur)." (*Ibid.*)

Substantial evidence supports the juvenile court order sustaining the allegations of count b-2; father physically harmed the children and mother failed to protect them. The arguments in her appellate briefs notwithstanding, mother admitted that father physically and emotionally abused the children. She explained that father hit the children with his hands, shoes, and even a belt. Jordan corroborated mother's statement by stating that mother witnessed father hitting the children. While mother may have yelled at father to stop, her efforts were insufficient as the physical abuse of the children continued.

Mother claims that the physical harm will not recur as father is taking parenting and domestic violence classes and the parents are separated. However, there is no evidence or citations to the record to support this contention. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) We do not know that father is taking the appropriate classes to address his issues related to his children. And, mother's reliance



upon the parents' alleged separation is unavailing. Father indicated that he wanted to reunify with mother as soon as possible, and mother always returned to father because she depended on him for financial support.

3. *Count b-5 (inappropriate physical discipline)*

Substantial evidence also supports the juvenile court's order sustaining count b-5 of the section 300 petition. Both Tristan and Jordan indicated on more than one occasion that mother hits them. Their statements are enough to affirm the juvenile court's findings.

III. *Substantial Evidence Supports the Juvenile Court's Removal Order*

A. Standard of Review

We will affirm a removal order so long as it is supported by substantial evidence. (*In re Javier G.* (2006) 137 Cal.App.4th 453, 463.)

B. Analysis

The juvenile court is empowered to remove a dependent child from the physical custody of the parent with whom the child resided when the section 300 petition was filed if the juvenile court finds clear and convincing evidence that "(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).)

For the same reasons set forth above, substantial evidence supports the juvenile court's removal order. There is ample evidence that the children were and are at risk as a result of the parents' physical abuse and mother's inappropriate discipline. While the parents may not be living together, father indicated that he wanted to reunify with mother as soon as possible and the appellate record confirms that mother had always returned to father because he was the sole financial provider. There is no reason to believe that mother will not return home or contact father.

Mother suggests that a less drastic measure of removal would have been to return the children to her custody contingent upon her remaining in Delores's home or complying with DCFS's services and supervision. However, mother did not raise this possibility with the juvenile court, thereby forfeiting the issue on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, superseded by statute on other grounds as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 962; see also *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339.)

### **DISPOSITION**

The juvenile court's findings and orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
DOI TODD