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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re VALENTINO O., a Person
Coming Under the Juvenile Court
Law.

B277329

(Los Angeles County
Super. Ct. No. DK17840)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KARLA O.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

Mother Karla O. appeals from the jurisdictional findings and dispositional orders of the juvenile court concerning her son Valentino O. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Valentino O., born in 2011 to Karla O. and Robert O.,¹ came to the attention of the Department of Children and Family Services on May 24, 2016, when Robert O. reported to police that Karla O. had physically abused Valentino O. Karla O. and Robert O. were in the process of divorcing; no family law custody and visitation order was in place at the time.

Robert O. told DCFS that Karla O. physically abused Valentino O., committed domestic violence against him (Robert O.) in Valentino O.'s presence, and refused to take medication to treat her bipolar disorder. Karla O. denied abusing Valentino O., said Robert O. was lying, and accused Robert O. of coaching Valentino O. to say that she had hurt him. She denied being diagnosed with bipolar disorder and pointed out that Robert O.'s abuse allegation came on the heels of her refusal to sign divorce documents without counsel. Karla O. alleged that Robert O. had verbally abused her for years in Valentino O.'s presence.

DCFS filed a petition alleging that Valentino O. was a dependent of the juvenile court under Welfare and Institutions Code² section 300, subdivisions (a) (serious physical harm) and

¹ Karla O. had another son, Jesus M. (born 2001), whose father was Miguel M. Initially Jesus M. was also a subject of the dependency petition, but the petition was later dismissed as to him, and he is not a subject of this appeal.

² All further statutory references are to the Welfare and Institutions Code.

(b) (failure to protect). In the supporting allegations, DCFS alleged that Karla O. had physically abused Valentino O., that she and Robert O. engaged in violent altercations, and her mental and emotional problems rendered her incapable of providing regular care to Valentino O.

I. Evidence at the Jurisdiction Hearing

The evidence before the juvenile court at the August 2016 jurisdiction hearing was in considerable conflict. We summarize the evidence on the primary issues before the court below.

A. Evidence of Physical Abuse

On May 24, 2016, Robert O. took Valentino O. to the police station and reported that Valentino O. said his mother pinched him. Valentino O. told police that the previous night Karla O. had become upset when he wandered away from her while she ordered food at a Popeye's Louisiana Kitchen restaurant. Valentino O. said Karla O. pinched his hands. The police saw a fingernail mark behind the thumb on each of Valentino O.'s hands.

Robert O. told DCFS in June 2016 that Karla O. had "always been unnecessarily aggressive" with Valentino O. but this was the first time there was a mark he could document. According to Robert O., Karla O. subjected Valentino O. to "long term physical abuse." She yelled in Valentino O.'s face to tell him to be quiet and put her hand over his mouth to silence him. He had seen Karla O. push Valentino O. into a wall. A neighbor saw Karla O. kick him. Robert O. reported that Karla O.'s actions had caused Valentino O. to regress to the point of urinating on himself and to act aggressively toward his father and

grandparents, placing his hand over their mouths and yelling in their faces.

The DCFS social worker who examined Valentino O. found that he had a small pink scar the size of a pen tip on his left hand, but no other marks indicative of abuse or neglect. In a June 2016 interview, Valentino O. told DCFS that Karla O. gave him the mark on his hand “because of Popeye’s.” He said she had hurt him before. Karla O. did not hit him, but she grabbed him by the hands and yelled a lot. Valentino O. said that it hurt his feelings when his mother yelled at him. He said he was left alone at home frequently. Valentino O. denied being asked to lie.

Robert O. told DCFS that on May 25, while the paternal grandparents were watching Valentino O., Karla O. came to the home and fled with Valentino O. The paternal grandmother, Nancy O., said that Karla O. packed her car, said she was going to do laundry, and abruptly left with Valentino O. Paternal grandfather Jeffrey B. described Karla O. as “running with the child” and said that she appeared to be dragging him. According to Nancy O., when Valentino O. returned home from this time with his mother, he began defecating in his pants and holding his bowel movements. She said that when he defecated, they found six suppositories that had been inserted into his rectum. Valentino O. developed an aversion to using the toilet.

On May 27, Robert O. obtained a temporary restraining order against Karla O.³ In his request for a restraining order, Robert O. alleged that Karla O. “kidnapped the minor child and refuses to reveal her location or that of the child,” and that “[s]he

³ Karla O. also obtained a temporary restraining order against Robert O. Ultimately, the dependency court entered a mutual stay-away order.

has a history of slapping, kicking and pinching our son to where he bleeds or is bruised.” He stated that Karla O. had pinched Valentino O.’s hands “until they bled to punish [the] child after attempting to suffocate the child.” Robert O. attested that Karla O. had “covered minor’s mouth and pinched his nose so he could not breath[e]. [Karla O.] stopped just before the minor passed out as a means to punish” him. He alleged that Valentino O.’s life was endangered by Karla O. Robert O. also alleged that on May 21 Karla O. had slapped Valentino O.

Nancy O. said Karla O. was using Valentino O. to “get back” at Robert O. She had once seen Karla O. put her hand over Valentino O.’s nose and mouth to cause him to be quiet and “knew” that Karla O. had kicked Valentino O. She said Karla O. was always physically aggressive with Valentino O., especially when he was acting hyperactive. Nancy O. reported that more than once she had heard loud bangs and the sound of Valentino O. screaming and crying coming from Karla O.’s bedroom. The paternal grandparents had never entered the room when they heard Valentino O. scream.

Nancy O. feared that Karla O. used cold medicine to drug Valentino O. so he would be less active, although she never saw Karla O. administer excessive amounts of it. She had never said anything about how Karla O. treated the child because she was afraid Karla O. would hide him from her. Jeffrey B. alleged that Karla O. was aggressive and started fights. He reported that Karla O. did not take care of her older son.

Jill K.,⁴ a former neighbor, told DCFS that she had seen Karla O. grab Valentino O. and hold his wrists together in a tight

⁴ The juvenile court sustained Karla O.’s hearsay objection under section 355, subdivision (c) to these statements attributed

grip. Karla O. “would just grab him with his arms behind his back and twist his arms behind his back. It was awful to see.” Jill K. had once seen Karla O. kick a dog; Valentino O. screamed. She also had often seen bottles of cold medicine in Karla O.’s home.

Karla O. denied physically abusing Valentino O. She said the mark on Valentino O.’s hand had resulted from play with another child at the park. Karla O. denied giving Valentino O. cold medicine or placing her hand over his mouth to quiet him. She denied disciplining Valentino O. inappropriately, attempting to suffocate him, holding his nose closed, or pinching him as punishment. She had never pushed him into a wall. Karla O. also told DCFS they had not gone to a Popeye’s restaurant on May 23, and she produced a credit card statement showing a charge from another restaurant that day.

Karla O. believed Valentino O. had been coached by his father. She explained Robert O. went to the police alleging abuse only four days after she had enraged him by refusing to sign divorce documents that would have denied her child support and divided custody of Valentino O. equally.

Karla O. specifically denied slapping Valentino O. on May 21, and stated that she was away from home at college most of that day. She had a letter from her professor verifying her attendance. Karla O. said that on May 25, the date that Robert O. alleged she had kidnapped Valentino O., she had left the family home with Valentino O. out of fear for their safety, but she disclosed their location to Robert O. by text message that day.

to Jill K. related in a DCFS report, stating that they could not be used as the sole basis for finding jurisdiction unless Jill K. was present to testify.

Karla O. submitted a copy of a text message to support this statement.

Karla O. also alleged that Valentino O. previously had suffered injuries while in Robert O.'s care that had not been satisfactorily explained to her.

Karla O.'s older son Jesus M. told DCFS that he was "not at risk of any abuse or neglect and he is well cared for." Jesus M. said he spent weekends with his mother and had never seen her be physically aggressive with Valentino O. She had not lost her temper with either him or Valentino O. and he had never seen her fight with anyone. She spoke nicely with Valentino O. Jesus M. said the mark on Valentino O.'s hand was just a scratch; he had not seen the mark but this was what Karla O. had told him. Karla O. had told him about the investigation and said Robert O. was unfairly trying to take Valentino O. away from her.

In a later interview Jesus M. reiterated that Karla O. had never been physically abusive toward him and that he had never seen her pinch or abuse Valentino O. When he and Valentino O. misbehaved, Karla M. remained calm and told them they were doing something bad; she never hit them. Jesus M. never felt unsafe with his mother.

Jesus M.'s father Miguel M. said that he had no knowledge of Karla O. abusing Valentino O., and Jesus M. had never disclosed any violence in her home. Miguel M. believed Jesus M. would tell him immediately if he experienced abuse or neglect.

Karla O.'s friend Cris R. told DCFS that Karla O. was a great mother who treated her children well and neither abused them nor yelled at them.

In August 2016, Valentino O. told DCFS that the police would not let his mother live with him because she gave him a

“boo-boo” on his hand. He said it hurt when it happened. Valentino O. denied being afraid of Karla O. and said he felt happy when he visited with her. Robert O., however, said that Valentino O. had stomachaches, diarrhea, and sleepiness after visiting his mother. Robert O. said that Valentino O. had separation anxiety and regular incidents of encopresis. Robert O. told DCFS that Valentino O. did not ask for his mother.

At the August 2016 jurisdiction hearing, Valentino O. testified both that his mother had never hurt him and that he was afraid of her. When asked why he was scared of Karla O., he said only, “[b]ecause I am.” He testified he was happy when he visited Karla O.

B. Evidence of Domestic Violence

Robert O. told DCFS that Karla O. had attacked him in Valentino O.’s presence. He said Karla O. had hit him in the past and pushed him when they were arguing. She had punched him in public and hit him in the head with shoes that had stiletto heels. He claimed that Karla O. had hit him on the back of the head while he and Valentino O. slept, then screamed at him in front of Valentino O. as he packed a bag to leave.

Robert O. denied failing to protect his son from Karla O., stating that he often tried to avoid conflict by leaving the house when she became aggressive. He said he was large enough to defend his son. Robert O. attributed Karla O.’s aggression in May 2016 to the fact that he had told her he no longer wanted to continue their relationship.

Nancy O. described an incident in which Karla O. began to harass Robert O. and accuse him of infidelity when a nurse was nice to him after surgery. Nancy O. said that not long after the

surgery she saw Karla O. pushing Robert O., but she stopped when she saw Nancy O. She said that Robert O. was often calm and avoided arguments with Karla O., who was “more aggressive.”

Karla O. denied being the aggressor and said Robert O. had physically and emotionally abused her. Once Robert O. had pushed her during an argument, causing her to fall backward into a door.⁵ When they separated in the past, Robert O. sent harassing text messages and threatened her. On May 20, when she refused to sign documents without an attorney, Robert O. called her a “stupid ass pathetic bitch” multiple times and confronted her aggressively enough that she feared he would push her or “get physical.” Valentino O. was in the room at the time.

Karla O. stated that on May 23, Robert O. confronted her again, called her a “bitch,” and blocked the doorway so that she could not leave the room. Valentino O. was present and told Robert O., “Stop! Stop!” Robert O. only let Karla O. pass after she threatened to call the police. She left the house with Valentino O., which led to Robert O. threatening her by text message and telling her that he was going to tell the police that she had kidnapped Valentino O. On May 26, Robert O. sent her a text message that said, “You’re going to get what’s coming to you.”

According to Karla O., Robert O. left her after she supported him through nursing school. She showed DCFS text messages in which Robert O. called her a bad mother and said

⁵ Robert O. denied pushing Karla O. backward into a door but acknowledged that when he pulled her out of his way she fell backward.

neither of her children liked her. She believed Robert O. had been unfaithful to her prior to an earlier separation and showed DCFS e-mail messages supporting her view. Karla O. said they had later tried to reconcile but their communication and trust issues continued. She understood now that it was unlikely that they could reconcile due to Robert O.'s verbal abuse and infidelity.

Valentino O. told DCFS that he had seen his parents "yelling when they get mad." He said he had never seen either one push or hit the other. At the jurisdiction hearing, Valentino O. testified that neither of his parents ever yelled at him and that neither said bad words to the other.

Jesus M. told DCFS that Robert O. was aggressive and rude to Karla O. He had never seen Robert O. and Karla O. engage in physical altercations, but he was aware of their conflict: "They wouldn't fight physically but they argue a lot and say bad words."

Jesus M.'s father Miguel M. was unaware of problems between Karla O. and Robert O. Karla O. had not been violent or aggressive when they lived together, although that was many years ago.

C. Evidence Relating to Mother's Mental Health

Robert O. claimed Karla O. had often told him that she was depressed, and she also said she had bipolar disorder. He alleged that more than once Karla O. had said she wanted to die, and that in May 2016 she threatened to kill herself with a carving

knife.⁶ Robert O. said that Karla O. threatened to harm herself when he attempted to end their relationship, stating, “She would be on the floor screaming and crying. Honestly, I think she is just crying wolf . . . anybody who says they are gonna [*sic*] hurt themselves is just crying for help[,] but if she can’t help herself, then no one can help her.”

In June 2016 Robert O. alleged that Karla O. refused to take Effexor, her medicine for her bipolar disorder, and that she would not regularly see a doctor as her condition and medication required. In August 2016 Robert O. said he had often seen bottles of medication in the home: “Effexor, Xanax, Prozac. I can’t list them all.” He said that Karla O. refused to take her medication because she did not like how it made her feel, even though he exhorted her to try other medications that could help her. He knew she was not medication-compliant because he saw the medication in the home and because of her behavior.

Valentino O.’s paternal grandparents told DCFS that Karla O. had “a lot of emotional problems” and described an incident when “she was just laying on her living room floor crying and it was like she needed to be on a 72 hour hold at an observation center.” They often went to Karla O.’s apartment to “keep an eye on Valentino and help Karla.” Nancy O. said that Karla O. regularly said inappropriate things and once said she could hire someone to kill Robert O. Karla O. kept a bag full of little pink pills in her dresser; Nancy O. said she put them in Karla O.’s medicine cabinet but they always ended up in the

⁶ In a later account of this incident Robert O. said Karla O. was swinging kitchen knives at him in addition to threatening suicide.

dresser again. Karla O. told her she did not like taking medication.

Karla O. said that she had neither been diagnosed with bipolar disorder nor prescribed Effexor. She said that she had no mental health issues but was taking a prescribed medication for anxiety because of what Robert O. was “putting her through.” Karla O. told DCFS that she had begun therapy in 2013 because of her relationship with Robert O. and his harassment. She began experiencing anxiety while caring for Robert O. after he had surgery while she also maintained a full-time job, raised Valentino O., and dealt with a troubled marriage. She took her anxiety medication when needed, approximately once per month. She did not believe that her depression or anxiety affected her parenting or her daily life, telling DCFS that she was working in accounting and going to school full-time in preparation for attending nursing school. Karla O. reported feeling sad because she did not have Valentino O. and because Robert O. was acting vindictively. Karla O. denied ever being suicidal, waving a knife, or threatening to commit suicide. She had never been placed on a psychiatric hold.

Karla O.’s psychiatrist, Francisco Gonzalez Franco, M.D., wrote a letter stating that Karla O. was “being treated with therapy and as needed medication for Major Depressive Disorder, mild to moderate degree and Anxiety Disorder. She has not been diagnosed with Bipolar disorder at any time.” Karla O. had tried antidepressant medications but Franco discontinued them because of excessive side effects. At present, Franco wrote, she took alprazolam sporadically as needed for anxiety. Franco wrote that Karla O. “has demonstrated no issues with judgment,

insight and impulse control that would lead me to believe that she is dangerous to [her]self or others including her children.”

When DCFS spoke with Franco, he confirmed that Karla O. was not bipolar and that she saw him every few months for medication management. According to DCFS, “When informed of the Department’s concerns and the information gathered during this investigation, Dr. [] Franco concurred that Mother is in need of ‘more intensive services as she is less functional than she led me to believe. She presented not so impaired.’” Franco said he would raise case issues at future appointments with Karla O. and he would consult her therapist about more acute services for her.

Jesus M. told DCFS he had never observed Karla O. being suicidal or acting unlike herself. He did not think Karla O. was bipolar, and he was unaware of her taking any psychotropic medication. He did not know of any incident involving Karla O. waving a knife. Jesus M. said Karla O. did not act irrational.

Cris R., Karla O.’s friend, told DCFS that Karla O. was very attached to Valentino O. and missed him very much while he was detained from her. Cris R. attributed any mental health issues Karla O. was experiencing to her separation from her son, noting that Karla O. had been upset but calm the first time Robert O. left her; but that now, without Valentino O., she was upset, cried frequently, and was very sad.

II. Jurisdictional Findings and Disposition

The juvenile court amended and found true the three allegations under section 300, subdivision (b). In count b-1, the court found that Karla O. had “physically abused the child Valentino by pinching the child’s hands, inflicting marks to the child’s hands. On a prior occasion, the mother pushed the child

into a wall. On prior occasions, the mother placed the mother's hands over the child's mouth. Such physical abuse was excessive and caused the child unreasonable pain and suffering. Such physical abuse of the child by the mother endangers the child's physical health and safety and places the child and the child's sibling, Jesus, at risk of serious physical harm, damage, danger, and physical abuse."

The court sustained count b-2, the allegation of domestic violence, finding that Karla O. and Robert O. "have a history of engaging in verbal and physical altercations and continue to have a volatile custody dispute. On prior occasions, mother struck and pushed the O[.] father, in the presence of the child Valentino. On a prior occasion, the O[.] father pushed the mother, causing the mother to fall backward into a door. Such violent conduct on the part of the mother and the O[.] father endangers the children's physical health and safety and places that children at risk of serious physical harm, damage and danger. The child is exhibiting physical manifestations of anxiety, including encopresis, bedwetting, stomach aches, and increased aggression."

Last, the court sustained the count b-3 allegation that Karla O. "has mental and emotional problems including a diagnosis of [d]epression and anxiety, which periodically render the mother incapable of providing regular care of the child. On a prior occasion in May of 2016, the mother threatened to kill herself by waving a knife in the child's home. Mother's current medication regime is not adequately addressing her mental health needs. Such mental and emotional problems on the part of the mother endanger the children's physical health and safety

and place the children at risk of serious physical harm, damage and danger.”

The court declared Valentino O. a dependent child of the juvenile court, removed him from the custody of Karla O., and ordered him placed in the home of Robert O. with monitored visitation and family reunification services for Karla O. Karla O. appeals.

DISCUSSION

I. Sufficiency of the Evidence for Jurisdiction

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) Substantial evidence is “evidence which is reasonable in nature, credible, and of solid value.” (*Ibid.*) We examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733.) We determine only whether there is any substantial evidence, contradicted or uncontradicted, that supports the juvenile court’s order, resolving all conflicts in support of the determination and indulging all legitimate inferences to uphold the ruling. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.) If substantial evidence supports the juvenile court’s findings, we must uphold them even if other evidence would support a contrary conclusion. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

Accepting the evidence most favorable to the judgment, as we must, there was substantial evidence before the juvenile court that Karla O. had physically abused Valentino O. on more than one occasion and that the parents’ extreme conflict played out in

ongoing emotional and physical abuse that Valentino O. witnessed. Valentino O. described his mother pinching him until she left marks, and those marks were observed by the police. Witnesses related other instances in which Karla O. physically abused Valentino O. Jesus M. and Valentino O. both told DCFS that Karla O. and Robert O. engaged in verbal altercations, and each parent attested to physical abuse by the other in the presence of Valentino O.

Karla O.'s arguments that the jurisdictional findings are not supported by substantial evidence are premised on her view that the statements made by Robert O. and the paternal grandparents were "unsubstantiated" and should not have been considered credible evidence, while the statements of her teenaged son and other evidence favorable to her should have been given more weight in the court's analysis. We cannot second-guess the juvenile court in this way. "It is the [juvenile] court's role to assess the credibility of the various witnesses, to weigh the evidence[,] to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

With respect to the b-1 count, Karla O. argues that even if the pinching incident did occur, it was an isolated incident and there was no evidence beyond speculation that it would recur, so Valentino O. was not at risk of harm. She contends that the court "based its true findings on a perception of mother as committing acts of physical abuse toward Valentino when there was no evidence to support such multiple abuse," that the

accusations concerned past conduct, and that there was “no evidence” that Karla O. had ever placed her hand on Valentino O.’s mouth. Karla O. contends that Jesus M.’s statements that his mother had not mistreated him and that he had never seen her behave inappropriately with Valentino O. “should have been given far greater weight.”

As we have already noted, however, there was evidence that the pinching incident was not the only instance of physical abuse. Valentino O. told DCFS that his mother had hurt him on other occasions. The paternal grandmother said she had seen Karla O. place her hand over his mouth. Other witnesses described seeing Karla O. drag Valentino O., slap him, and twist his arms painfully behind his back. On this record, we cannot say the court was acting on mere speculation when it concluded that Valentino O. was at substantial risk of serious physical harm due to physical abuse by his mother.

On the b-2 count concerning domestic violence, Karla O. argues that “no credible evidence was presented that anyone but father had engaged in verbal abuse.” She urges us to disregard as incredible the evidence provided by Valentino O.’s paternal family because they had not previously reported abuse to the authorities, and she particularly identifies Robert O.’s mother as biased based on her view of her son as a model parent. Here again Karla O. asks this court to reweigh the evidence and substitute our judgment for that of the juvenile court, which we may not do. Both Jesus M. and Valentino O. described verbal altercations between Karla O. and Robert O., and each parent demonstrated and described tremendous conflict in their marriage and its dissolution. As there was plentiful evidence that the parents’ high-conflict relationship, divorce, and custody

battle was playing out in front of Valentino O. and that they had engaged in verbal and physical altercations in Valentino O.'s presence, substantial evidence supports the court's finding on this allegation.

Finally, Karla O. contends that the b-3 finding that her mental health prevented her from providing regular care to Valentino O. and that her medical regimen was insufficient to address her needs was not supported by substantial evidence. She points to Jesus M.'s statement that she did not act irrationally and to Franco's statement that she demonstrated no impairment in judgment, insight, or impulse control that would suggest that she was a danger to herself or others. We need not determine whether this finding was supported by sufficient evidence because the other bases for jurisdiction are sufficient to uphold the juvenile court's order. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 [when one jurisdictional finding is supported by substantial evidence, appellate court need not consider sufficiency of evidence to support other findings].)

II. Sufficiency of the Evidence for Removal

The juvenile court removed Valentino O. from Karla O.'s custody. Section 361, subdivision (c)(1) permits removal of a child from his or her parent's custody if the juvenile court finds by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being" of the child if the child were returned home and "there are no reasonable means by which the minor's physical health can be protected without removing" the child from parental custody. We review removal orders at disposition for substantial evidence, bearing in mind the clear

and convincing evidence standard of proof at the juvenile court level. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

Karla O. argues that no substantial evidence supports the removal order and that the court removed Valentino O. because “it may have been concerned about the swirl of accusations made by father and his family.” The court, however, was entitled to credit the evidence of ongoing physical abuse by Karla O. and to conclude that this evidence demonstrated that there would be a substantial danger to Valentino O.’s physical health, safety, protection, or physical or emotional well-being if he were returned to her and that his physical health could not be protected by reasonable means short of removal.

Karla O. contends that no substantial evidence supports the removal order because her “one time incident of pinching a child’s hands,” though not “stellar parenting,” was insufficient to demonstrate that Valentino O. was unsafe in her care. But, again, there was evidence from which the court could conclude that this was not a one-time incident, including Valentino O.’s disclosure that his mother had hurt him before and witness reports of Karla O. pushing Valentino O. into a wall, placing her hand over his mouth, twisting his arm behind his back, and dragging him. Karla O. correctly notes that removal orders cannot be based on speculation of a possible future risk, but the danger here arose from ongoing physical abuse.

Karla O. argues that because Jesus M. was not removed from her custody and he said she had not mistreated Valentino O., “the law was satisfied” that Valentino O. was safe in her care. Jesus M. lived with his father and saw his mother only on weekends, he was nearly a decade older and much less vulnerable than Valentino O., and he reported that he had not

been abused. Because the children's situations were quite different, the dismissal of the dependency petition as to Jesus M. does not tend to demonstrate any error in the order removing Valentino O. It is irrelevant that Jesus M. "vouched for [Karla O.'s] appropriate treatment of Valentino O.," because the court was entitled to accept the evidence showing a substantial danger to Valentino O. in her custody.

Karla O. next argues that removal was inappropriate because Valentino O. said he was happy to see her and that she had not hurt him. Five-year-old Valentino O. made conflicting statements, first stating that Karla O. had made a painful "boo-boo" on his hand and that she had hurt him before, and then testifying that his mother had never hurt him. Here again, the juvenile court weighed the evidence and made credibility determinations, and neither Valentino O.'s conflicting reports nor his happiness at seeing his mother establishes error in the court's finding that being in her custody would present a substantial danger to his physical health, safety, protection, or physical or emotional well-being.

Next, Karla O. argues that "the fact that mother continued to be under psychiatric care and that her psychiatrist of two years had stated that he did not find mother to be a danger to herself or to others, including children, provided the court with ample assurance that Valentino would be safe in his mother's care." Franco made these statements in July 2016, but in August 2016, upon receipt of more information about the investigation, he concluded that Karla O. was more impaired and less functional than she had previously appeared, and that she required more intensive services. Karla O. has not demonstrated any error in the removal order with this argument.

Karla O. finally notes that the parents had agreed to abide by the mutual stay-away order, so Valentino O. would not have been exposed to any verbally or physically abusive encounters between the parents if he remained in his mother's custody. While a stay-away order would have greatly reduced the likelihood of Valentino O.'s exposure to altercations between the parents, the stay-away order would not have eliminated the substantial danger that remaining in Karla O.'s custody would have posed to his physical health, safety, protection, or physical or emotional well-being. Substantial evidence supported the court's removal order.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.