

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 FOUR

In re J.P., et al.,

Persons Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

P.D.,

Defendant and Appellant.

B270640

(Los Angeles County
Super. Ct. No. CK26148)

APPEAL from orders of the Superior Court for Los Angeles
County, S. Patricia Spear, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal for
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant
County Counsel, and Sarah Vesecky, Senior Deputy County Counsel,
for Plaintiff and Respondent.

P.D. (mother) appeals from the jurisdiction and disposition orders of the juvenile court with regard to her children J.P. and M.R. She contends that by the time of the adjudication hearing, which was held 10 months after the Welfare and Institutions Code section 300 petition was filed, mother had completed her case plan and complied with all court orders, and therefore the juvenile court should have dismissed the petition and allowed the matter to proceed in family court. We conclude there was sufficient evidence to support the juvenile court's jurisdiction findings, and affirm the court's orders.

BACKGROUND¹

A. Mother's Prior History

Mother has a long history with the Los Angeles County Department of Children and Family Services (the Department) and its predecessor, dating back to 1996.

From 1996 to 2001, a petition relating to her now-adult children was sustained, alleging that mother inappropriately delegated the care of one of her children, used inappropriate physical discipline on two of her children, and engaged in domestic violence with the father of a third child.

From 2003-2007, she was involved in another case relating to those children, in which a petition alleging physical abuse and neglect was sustained.

¹ Because this appeal is taken only by mother, our discussion of the facts is limited to those facts relevant to mother.

In 2011, the Department received a referral involving J.P. and one of the children who was involved in the earlier cases. The reporting party told the Department that a few months earlier mother had had a domestic incident with her then-boyfriend, and alleged that her children J.P. and the other child (who now is an adult) were exposed to domestic violence and emotional abuse. The Department was unable to investigate the allegations because it could not locate the family.

In 2013, the Department received another referral alleging emotional abuse of J.P. and M.R. The referral stated that M.R.'s father,² Lamar R., came to mother's home, but mother would not let him come in. Lamar then broke a window to gain access to the home. Mother did not call the police (because she was concerned about possible issues with her apartment manager), and allowed Lamar to spend the night there. The following morning, mother called a cousin and told the cousin what had happened. Lamar overheard mother's conversation and grabbed her by the neck, pushed her against the wall and choked her as she was holding M.R., who was a few weeks old at the time. Mother hit Lamar in the face, causing him to release her. J.P. was not home at the time. The Department closed the case as inconclusive.

In addition to her history with the Department, mother also has an extensive criminal history that includes multiple arrests, and convictions for fighting in a public place in 1992 and grand theft, using false identification, and obstructing a police officer in 2010.

² J.P. and M.R. have different fathers. J.P.'s alleged father is Jerry P.

B. *The Events Leading to the Present Case*

The events leading to the instant case took place on April 15, 2015, when the Department received a referral regarding a domestic violence incident involving mother and Lamar. According to the report, the Long Beach police were called to mother's home that morning. Mother and Lamar were arguing loudly. Neighbors heard the fight, and retrieved M.R., who was almost two years old, and brought him to their apartment before the fight got physical (it is unclear where J.P., who was eight years old, was at the time of the fight). Lamar threw a bag at mother and punched her in the face, knocking a tooth loose and causing a cut to her lip.

The next day, two social workers went to J.P.'s school to interview him. J.P. was reluctant to speak to them, stating that mother told him "not to tell." The social workers asked about substance abuse in the home, and J.P. said that mother and Lamar drink beer and wine, but he denied ever seeing them drunk. When asked about his relationship with Lamar, J.P. said that mother asked him to "spy" on him because she suspected Lamar was cheating on her. J.P. said that he would try to find out who Lamar was talking to on the phone so he could tell mother. With regard to discipline, J.P. told the social workers that mother pinches him on the ear or arm, or takes away his television or puts him into a corner; he also said that, in the past mother had ripped his shirt and "whooped" him with a belt. He told them that Lamar punches him in the chest when he gets into trouble. He said that "tears come down" when this happens. He also told them that mother had witnessed this and told Lamar, "[s]top punching my son" and "when he

grows up he's going to beat you up." He said that he was afraid of Lamar at times, and did not want mother to be with Lamar. He told the social workers that he could hear mother and Lamar arguing through the walls, but had never seen them fighting; he had, however, seen Lamar have a physical altercation with his uncle Freddy, in which Lamar knocked his uncle to the ground.

The social workers met with mother at her home the following day. Mother's lip was visibly swollen. The social workers discussed the allegations with her, and she said the report was accurate. She told them the argument with Lamar occurred because he became jealous of her. She said that he punched her in the mouth and left, and she called the police. She told them that Lamar no longer lived in the home, and said that his mother was going to come over to retrieve his belongings.³ In response to the social workers' question regarding the domestic violence incident from 2013, mother said that she "was the one beating up on him then." She also said that she sometimes slept in J.P.'s room to get away from Lamar.

During the social workers' interview with mother, mother expressed her unhappiness with being the subject of an investigation. She told them several times that she was the victim, and said that she would not call the police the next time if she were assaulted. When one of the social workers asked her why she allowed Lamar to stay at the home despite the prior domestic violence incident and her statements

³ During a tour of the home, the social workers observed men's clothes in mother's bedroom.

that she would not let him return, she said, “people get back together!” Before the social workers left, mother told them that she was going to get a restraining order against Lamar and would do whatever it took to keep her children safe.

At the social workers’ request, mother went to the Department a few days later for a more in-depth interview. During that interview, she told the social workers that Lamar was at her home about three times a week to visit M.R. With regard to the April 15 incident, mother said that she came home from washing clothes and Lamar was upset with her. She initially said that neither of her children were home, but then admitted that M.R. was there at first, until a neighbor came to get him when the argument began. She said, however, that the neighbor came to get M.R. because the neighbor always provides snacks for her children. When asked about previous domestic violence, mother initially denied there had been any prior incidents, then acknowledged the 2013 incident after the social worker raised it. She told the social workers that she had enrolled in a program for domestic violence counseling, and would be getting a restraining order as soon as she left their office. She called one of the social workers the following day to inform her that she had obtained the restraining order against Lamar⁴ and would be attending a domestic violence class that day.

⁴ The temporary restraining order ordered Lamar not to contact, harass, or threaten mother, J.P., and M.R., and to stay at least 100 yards away from them. The order was issued on April 21, 2015, with an expiration date of May 12, 2015.

A week later, one of the social workers spoke with Georgette Brewer, J.P.'s counselor. Brewer explained that mother had asked J.P.'s school for a referral to get a diagnosis for J.P., because she believed that J.P. had a learning disability (Brewer stated that J.P. was displaying symptoms of ADHD, but there would likely be a different diagnosis due to domestic violence in the home). The social worker asked Brewer about the family dynamics in mother's home. Brewer said that she had met mother three times, and that mother appeared to be a "loving mom" and was "very resourceful." She told the social worker that she offered mother parenting classes, and that mother would be attending one that week.

C. The Petition and Detention Hearing

On April 29, 2015, the Department filed a petition alleging counts under section 300, subdivisions (a), (b) and (j). There were three counts alleged under subdivision (a), one based upon mother's and Lamar's history of domestic violence, the second based upon mother's alleged physical abuse of J.P. (and her prior physical abuse of her now adult children), and the third based upon Lamar's alleged physical abuse of J.P. and mother's failure to protect. The petition also alleged the same three counts under subdivision (b), and the first two counts under section 300, subdivision (j).

In an addendum report filed for the detention hearing, the Department recommended that the children remain in mother's home, with monitored visits for Lamar and no visits for J.P.'s father, Jerry P., until he contacted the Department. The Department also recommended

that mother be ordered to participate in domestic violence counseling, anger management counseling, parenting classes, and individual counseling, and that she be required to take four random drug and alcohol tests and, if any tests were positive, that she be ordered to complete a substance abuse and rehabilitation program.

At the detention hearing, the juvenile court found Lamar to be M.R.'s presumed father and Jerry P. to be J.P.'s alleged father. The court found that a prima facie case for detaining the children was established as to Lamar, and ordered the children released to mother. The court ordered the Department to provide mother with a family preservation referral, and ordered individual counseling for J.P.; the court also ordered that Lamar was not to visit J.P., and that mother was not to monitor Lamar's visits with M.R. Finally, the juvenile court issued a temporary restraining order against Lamar, ordering him not to contact and to stay at least 100 yards away from mother, J.P., and M.R., except when visiting M.R. in accordance with the court's visitation order.⁵

⁵ The temporary restraining order was reissued on May 19, 2015, to remain in effect until July 18, 2015. The juvenile court signed another order reissuing the temporary restraining order on May 27, 2015, and again on July 28, 2015. The court granted mother a permanent restraining order on October 6, 2015, until December 17, 2015, the date set for the jurisdictional hearing. When the jurisdictional hearing was continued, the court granted mother's request for a stay away order.

D. *The Jurisdiction/Disposition Report*

The Department filed its jurisdiction/disposition report on July 28, 2015. It included summaries of the dependency investigator's interviews with J.P. and mother.

J.P. told the investigator that he had not seen his father in a long time. When asked about Lamar, J.P. told the investigator that he did not see him anymore, and that he did not live with them. He denied ever hearing mother and Lamar arguing or fighting, and said that he was not ever scared at home. He said that Lamar did not ever discipline him, and had never hit him. He also told the investigator that mother disciplines him by turning off the television, and denied that mother ever spanked, slapped, pinched, or poked him. In its report, the Department noted the differences between J.P.'s responses to the investigator and his earlier responses to the social worker.

Mother told the investigator that she and Lamar broke up after the 2013 domestic violence incident; she said that he moved out of her home in August 2013 and did not move back into her home at any time after that. However, she said that he still frequented her home to visit M.R. She said there had been only two domestic violence episodes with Lamar, the 2013 incident and the 2015 incident. With regard to the 2015 incident, she said that Lamar "sucker punched" her, and that she called the police. She told the investigator that M.R. was not home at the time of the incident. When the investigator asked why M.R. was not at home, if the reason for Lamar being at her home was to visit M.R., mother said that her downstairs neighbor had taken him downstairs before the incident occurred. She denied that the neighbor

took M.R. because she and Lamar were fighting; she said that the neighbor just enjoyed spending time with him. She also denied that any domestic violence ever occurred in front of her children. With regard to the petition's allegation that she or Lamar physically abused J.P., mother denied ever pinching or hitting him. She told the investigator that she disciplines J.P. by taking his television away, and that she does not discipline M.R. because he is too young. She said that, to her knowledge, Lamar did not hit J.P. except one time in 2013. She explained that J.P. was playing around and took a swing and hit Lamar, and Lamar playfully punched J.P. in the torso; she said that the punch may have been a bit too hard, but that she told Lamar that it was not okay for him to hit J.P.

The Department reported that mother enrolled in a domestic violence program at SHIELDS for Families on May 15, 2015, and as of June 24, 2015, she had attended five classes. The facilitator of the program told the dependency investigator that mother was an "active participant" in the program, and had consistently attended the weekly classes until June 19, 2015, when she did not attend. The Department reported that mother also enrolled in the parenting program at SHIELDS for Families. The facilitator of that program reported that mother attended the first two sessions, on June 3 and 10, 2015, missed the next session, and arrived 30 minutes late for the most recent session. Finally, the Department reported that mother began participating in weekly individual therapy about a month before the report.

In its assessment, the Department observed that mother was cooperative with the social worker and investigator, and expressed her willingness to address her issues. It noted that she had already enrolled in programs and was reported to be an active participant in them, although she did not have perfect attendance. It also noted that she expressed her love and concern for her children and was open to any services that could benefit her family. Nevertheless, the Department pointed out that mother appeared to have issues with domestic violence that needed to be addressed in order for the children to safely remain in her care. Therefore, the Department recommended that the children be found to be dependent children of the juvenile court, that they remain in the care of mother, and that mother be provided with six months of family maintenance services.

In a last-minute information report also filed on July 28, 2015, the Department reported that the dependency investigator spoke with the detective assigned to the criminal case arising from the April 15, 2015 domestic violence incident. The detective told the investigator that there were two cases, one in 2013 and one in 2015, and that the district attorney had rejected both cases because the victim -- mother -- was not being cooperative.

In another last-minute information report filed on July 28, 2015, the Department reported on the dependency investigator's interviews with each of the fathers, Jerry and Lamar.

Jerry told the investigator that he had last seen J.P. in March 2015. When asked why it had been so long since he last saw J.P., Jerry said that he and mother "have issues"; he said that mother "kind of

threatened [his] life” and was “manipulative.” He told the investigator that he would like to have sole custody of J.P., and that if the court ordered shared custody he likely would not see J.P. if he had to deal with mother. When asked if he had any idea how J.P. was disciplined or whether he was ever hit while in mother’s care, Jerry said he never saw any bruises on J.P., but that J.P. told him that mother punches him in the chest and “whoops him.”

Lamar spoke with the investigator about the April 15, 2015 incident. He said that mother was late coming home, and they got into an argument. He told the investigator that mother pushed him and “was in a rage of violence.” He said that he put his hands up to push mother away and mother “got hit,” but he did not intend to hit her. He also told the investigator that he and mother were together as a couple for about two years, although they did not live together, and they broke up after this incident.

E. *The Jurisdictional Hearing is Continued Several Times*

The jurisdictional hearing was originally scheduled for July 28, 2015. At that hearing, Lamar’s counsel asked that the matter be continued because it was Lamar’s first appearance, and counsel had just received all the paperwork. The court granted counsel’s request and continued the hearing to October 6, 2015. Before adjourning, counsel for J.P. reported to the court that J.P. told him that he was “hearing people in his head and it makes him mean. He reports there are whispers that make him do it. He has pushed his one-month-old brother and pinched him because the people made him do it. He’s

reported he may want to harm others due to what these voices are telling him.” The court ordered the Department to interview mother regarding her concerns about J.P.’s mental health and to determine whether it would be appropriate to keep the child released to mother.

The Department filed a last-minute information report a few days before the October 6, 2015 hearing. The Department reported that J.P. had been admitted to a psychiatric hospital for several days, and was discharged with a diagnosis of “Psychosis D/O NOS.” He was prescribed psychotropic medication for his psychosis. He spoke to the social worker about a month and a half after he was discharged, and reported that the voices he had been hearing had gone away. Mother also informed the social worker that J.P. was able to function much better than he had before taking his medication.

The Department also reported that mother had lost her apartment, and she and the children were staying with relatives. Although mother had found an apartment in Lancaster, the family had not yet moved; mother was making arrangements for J.P. to stay with a friend of hers in Long Beach because an IEP had been initiated for J.P. at his school, and she wanted J.P. to remain at his school until the IEP was completed. Mother noted (and the social worker confirmed) that if a child enrolled in a new school, the IEP process would have to start all over again. Finally, the Department reported that the social worker submitted a referral for family preservation services for mother, but when family preservation contacted mother, mother told them she was only interested in moving funds to facilitate her move to Lancaster.

At the continued hearing on October 6, 2015, Lamar's attorney asked that the matter be continued. She explained that she had asked that J.P. be present and available to testify about the allegations, but mother had not brought him to the hearing.⁶ The court granted counsel's request, and continued the hearing to December 17, 2015. Before ending the hearing, the court admonished mother, telling her that a condition of the release of her children to her was that she participate in family preservation, and that mother was in violation of the court's order by declining family preservation. Mother explained that when family preservation called her, she already was involved in individual and conjoint therapy. The person who called told her that she already was doing everything, so she asked mother what she wanted them to help her with, and mother said she needed help with the deposit for her new apartment and beds.

In a last-minute information report filed for the December 17, 2015 hearing, the Department reported that mother had successfully completed the SHIELDS for Families 12-week domestic violence course, and that she was currently enrolled in the parent support group with COACH for Kids. The dependency investigator called the facilitator of the support group to obtain information regarding mother's participation; the facilitator reported that mother had been attending the group, but that it had been a while since she last attended. The Department also reported that J.P.'s IEP had been completed, and that

⁶ Mother explained that the school had just started J.P.'s IEP, and the principal asked that he not miss any more days of school.

he and mother were actively participating in therapy sessions. It noted that although mother had moved to Lancaster, she arranged for J.P. to live at the home of his maternal great aunt during the week so he could continue to attend school in Long Beach, and spend weekends in Lancaster with mother. The Department reported that the arrangement appeared to be working well for J.P.

The December 17, 2015 had to be continued to February 4, 2016 due to lack of time, because the matter was not called until 4:10 p.m.

F. *Final Jurisdiction/Disposition Hearing*

The Department filed a last-minute information report for the February 4, 2016 hearing. It reported that mother was currently enrolled in a parent support group with COACH for Kids, and completed parenting classes with COACH for Kids on January 20, 2016. It also reported that mother was on a waiting list for family preservation services in the high desert area. Although J.P. moved to Lancaster to be with mother full time, he continued to receive therapeutic services with the full services partnership program at Harbor View Community Services Center in Long Beach; his therapist told the social worker that she would continue to provide services to J.P. until he was connected with services in the high desert area. Mother provided J.P.'s new school in Lancaster with his IEP, and said his needs were being accommodated by the school.

Mother was not present at the February 4 hearing.⁷ The Department introduced, and the court admitted into evidence the detention and jurisdiction/disposition reports, as well as the last-minute information reports filed on July 28, 2015, October 6, 2015, December 7, 2015, and February 4, 2016. Mother offered a document into evidence, but the court declined to admit it on hearsay grounds. No other documentary evidence was offered, but mother called J.P. to testify. The court asked J.P.'s counsel to qualify J.P. to testify. Counsel began to ask J.P. about his understanding of the difference between the truth and a lie, but when J.P. showed some confusion, the court stopped the questioning and asked to see all counsel in chambers. After returning from its conference with counsel, the court excused J.P. and put the matter over to second call. The court explained that it believed that J.P. was not competent to testify.

The court heard argument from counsel.

Counsel for the Department asked the court to sustain the domestic violence counts under section 300, subdivisions (a) and (b). Counsel argued that mother failed to protect the children by failing to cooperate in the prosecution of Lamar with regard to both the 2013 incident and the 2015 incident, and she allowed Lamar to frequent the home and babysit after the 2013 incident. Counsel also asked the court to sustain the physical abuse by mother counts under section 300, subdivisions (a), (b), and (j), based upon J.P.'s initial interview with the

⁷ The hearing was held before Judge S. Patricia Spear, who had not presided over the matter until then; previous hearings were held before Commissioner Emma Castro.

social workers, in which he said that mother pinches him on the ear or arm as a form of discipline and that in the past, he would get whooped with a belt. Counsel acknowledged that J.P. had since recanted his statement, but counsel argued that, given J.P.'s statement that mother told him "not to tell," it is likely that J.P. was pressured by mother to change his story.

M.R.'s counsel asked the court to sustain the domestic violence count under section 300, subdivision (b), and to sustain the physical abuse by mother counts under section 300, subdivisions (b) and (j).

J.P.'s counsel argued that the Department proved the domestic violence counts under section 300, subdivisions (a) and (b) by a preponderance of the evidence. He noted that the evidence showed that mother and Lamar had ongoing mutual domestic violence with each other, given mother's admission that she was the one who hit Lamar in 2013, and that she allowed Lamar to stay in her home after that, but sometimes had to sleep in J.P.'s room to get away from Lamar. With regard to the physical abuse by mother counts, counsel stated that he was "in . . . a predicament" because J.P. also changed his position in statements he made to counsel; therefore, counsel suggested it was up to the court to determine which statements were more reliable.

Mother's counsel asked the court to dismiss mother from the domestic violence counts. Counsel argued that the evidence showed that mother did call the police with regard to the 2013 incident, and even though she and Lamar reunified after that incident, she called the police after the 2015 incident and obtained a restraining order against him. Counsel also noted that mother then completed a domestic

violence program. With regard to the physical abuse by mother counts, counsel noted that mother denied the allegations, and asked the court to consider that the only evidence was statements made by J.P., whom the court determined was not qualified to testify.

After hearing the arguments of counsel, the juvenile court sustained the domestic violence counts under section 300, subdivisions (a) and (b), and sustained the physical abuse by mother counts under section 300, subdivisions (b) and (j). The court dismissed the remaining counts, including the counts alleging physical abuse by Lamar.

Moving to disposition, mother's counsel asked the court to terminate dependency jurisdiction with a custody order, because mother had already completed parenting and domestic violence programs, and had had J.P. in appropriate therapy and treatment since the case was filed. Counsel for the Department asked the court to keep jurisdiction over the family for at least the next period of review, especially since mother had not yet received family preservation services because she was still on the waiting list. Counsel for M.R. and J.P. joined in the Department's request.

The court declared both children dependent children of the court, ordered M.R. removed from Lamar, and ordered both children placed with mother. The court ordered that mother be given family maintenance services, that she have conjoint counseling with her children if appropriate, individual counseling to address domestic violence and case issues, and that she be referred to, and cooperate with, family preservation. The court set a section 364 hearing for July

28, 2016, at which the Department should address termination of jurisdiction with a family law order.

Mother timely filed a notice of appeal from the jurisdiction and disposition orders.

DISCUSSION

On appeal, mother contends that, under the reasoning of *In re A.G.* (2013) 220 Cal.App.4th 675, the trial court erred in sustaining the petition because mother established that she was able to properly care for her children. She also contends there was insufficient evidence to support the juvenile court's jurisdiction findings with regard to the domestic violence and physical abuse allegations. We disagree.

A. *In re A.G. Does Not Support Mother's Contention That the Juvenile Court Erred*

Mother contends that "[t]he facts and holding of *In re A.G.*[, *supra*, 220 Cal.App.4th 675] compel a reversal of the [juvenile] court's order maintaining jurisdiction in this matter." She observes that in that case, the appellate court found that the juvenile court erred in sustaining a petition that alleged that the mother was mentally ill and unable to care for her children when the father had always been, and was capable of, properly caring for them. The appellate court held that the juvenile court should have dismissed the petition at the jurisdictional hearing and stayed the order until the father obtained from the family court an award of custody to him and monitored visitation to the mother. (Citing *In re A.G.*, *supra*, 220 Cal.App.4th at p. 686.)

Mother argues here that the evidence showed she was able to protect the children from Lamar, because she immediately sought and obtained a restraining order after the 2015 incident. She further contends the evidence showed she was able to properly care for the children, pointing to evidence that she took the initiative in seeking out referrals for J.P.'s possible learning disabilities and then making arrangements, after she moved to Lancaster, to keep J.P. in his Long Beach school until his IEP was completed. Therefore, she contends that under *In re A.G.*, the juvenile court should have dismissed the petition at the jurisdictional hearing and stayed the order until mother obtained an award of custody from the family court with monitored visitation for Lamar.

Mother's reliance on *In re A.G.* is misplaced. In that case, the father was not named in the petition as an offending parent. (*In re A.G.*, *supra*, 220 Cal.App.4th at pp. 681-682.) In contrast, in this case mother is an offending parent and, as discussed, *post*, substantial evidence supports the juvenile court's findings and order sustaining the petition. Moreover, unlike the father in *In re A.G.*, mother here has a long child welfare history, including domestic violence involving another man, and thus has not shown that she had always been properly caring for her children. Finally, mother told the social workers who interviewed her that if she were involved in domestic violence in the future she would not contact the police in order to avoid being investigated by the Department; in effect, she admitted she would not

protect her children in the event of another domestic violence incident. In short, the reasoning of *In re A.G.* does not apply in this case.

B. *Substantial Evidence Supports the Juvenile Court’s Jurisdictional Finding for the Domestic Violence Counts*

Mother concedes that, in general, jurisdiction can be found under section 300, subdivisions (a) and (b) based upon a child’s exposure to domestic violence. (Citing *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) She contends, however, that there is insufficient evidence to support the juvenile court’s finding of jurisdiction in this case because the conduct at issue -- the 2013 incident and the 2015 incident -- did not rise to the level of violence found in other cases involving domestic violence, and in any event, there was evidence that mother protected the children by breaking up with Lamar and obtaining a restraining order against him. We disagree.

““In reviewing the sufficiency of the evidence, our review requires that all reasonable inferences be given to support the findings and orders of the juvenile court and the record must be viewed in the light most favorable to those orders. [Citation.]” [Citations.] ‘Evidence sufficient to support the court’s finding must be reasonable in nature, credible, and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case. [Citation.]’ [Citation.] ‘[W]e . . . must uphold the trial court’s findings unless it can be said that no rational factfinder could reach the same conclusion. [Citation.]’ [Citation.]” (*In re Athena P.* (2002) 103 Cal.App.4th 617, 628-629.)

In making her argument, mother minimizes or ignores evidence in the record indicating that, in fact, the violence -- particularly in the 2015 incident -- was significant, and that she failed to protect the children after the 2013 incident. For example, the referral related to the 2013 incident indicated that Lamar grabbed mother by the neck, pushed her against a wall, and choked her as she was holding the infant M.R., and that mother hit Lamar in the face to get away. And, in the 2015 incident, Lamar threw a bag at mother, then punched her in the face, knocking a tooth loose and causing a cut to her lip. In addition, there was evidence that M.R. was present when mother and Lamar started fighting, and was removed from the scene only when a neighbor heard the fighting and came to take M.R. to her apartment. This evidence is sufficient for the juvenile court to conclude that the altercations between mother and Lamar were violent and presented a serious threat to mother's children.

Although mother contends that she protected the children by calling the police after both incidents, breaking up with Lamar after the 2013 incident, and obtaining a restraining order after the 2015 incident, there was evidence before the juvenile court that undermines this contention.

First, although mother called the police after both incidents, the district attorney rejected both cases due to mother's failure to cooperate.

Second, mother told the social workers who were investigating the 2015 referral that she would not call the police if she were assaulted again because she did not want another investigation by the Department.

Third, although mother asserted that she broke up with Lamar immediately after the 2013 incident, other evidence suggests that mother was not truthful. For example, when the social workers met with mother at her home two days after the 2015 incident, they observed men's clothing in mother's bedroom, and mother told them that she sometimes slept in J.P.'s room to get away from Lamar (indicating that Lamar was staying overnight with her), that Lamar's mother was going to come to her home to retrieve Lamar's belongings, and that she allowed Lamar to stay at the home despite the prior domestic violence incident because "people get back together."

In light of this evidence, the juvenile court reasonably could conclude that, based upon mother's past conduct, her statements, and her lack of truthfulness, M.R. and J.P. were at substantial risk of suffering serious physical harm as a result of domestic violence. (See, e.g., *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [even when domestic violence took place outside the presence of the children, "the children were put in a position of physical danger from this violence, since, for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg, or by [their stepmother] falling against them"].) Therefore, we conclude substantial evidence supports the juvenile court's order finding jurisdiction over the children under section 300, subdivisions (a) and (b) based upon mother's involvement in domestic violence.

C. *Substantial Evidence Supports the Juvenile Court's Jurisdictional Finding for the Physical Abuse Counts*

Mother contends there was insufficient evidence to support the juvenile court's jurisdictional findings under section 300, subdivisions (b) and (j) based upon mother's physical abuse of J.P. because the only evidence to support the findings was a single statement by J.P., which he later recanted, that mother disciplined him by pinching him on the ear or arm, and that she had ripped his shirt and spanked him with a belt at one time. She argues that the juvenile court gave undue weight to J.P.'s statement in light of the court's ruling that he was not competent to testify, and that the conduct J.P. described does not rise to the level necessary to find the children were at risk of physical harm. We disagree.

First, the juvenile court was entitled to rely upon J.P.'s statement, even though he later recanted; it presents a matter of credibility, which is a matter for the juvenile court, rather than the appellate court, to decide. (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193.)

Second, mother ignores Jerry P.'s statement that J.P. told him that mother punches him in the chest and "whoops him," which reinforces J.P.'s statement that mother used improper physical means to discipline him.

Finally, mother ignores the evidence of her long history of inappropriate discipline of her children. Thus, even if J.P.'s statement to Jerry P. were inadmissible, the juvenile court reasonably could conclude that mother's current use of pinching to discipline J.P. was inappropriate and, in light of her history of inappropriate discipline --

and J.P.'s statement to the social workers that mother had "whooped" him with a belt in the past -- put J.P. and M.R. at substantial risk of harm. Therefore, we conclude that substantial evidence supports the juvenile court's finding of jurisdiction under section 300, subdivisions (b) and (j) based upon mother's physical abuse of J.P.

DISPOSITION

The jurisdiction and disposition order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.