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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B294315

(Los Angeles County
Super. Ct. No.
18CCJP01875)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and
Respondent,

v.

R.T.,

Defendant and
Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Daniel Zeke Zeidler, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

R.T. (father) appeals from jurisdictional and dispositional orders made pursuant to Welfare and Institutions Code¹ section 300 removing his infant son, O., from his custody. Father claims there is insufficient evidence to support a finding of a substantial risk of harm to his son based on allegations that he sexually abused his stepdaughter. We disagree and affirm.

FACTS AND PROCEDURAL BACKGROUND

A. *Initial Detention and Section 300 Petition*

Father and M.P. (mother) have one son, O. (born 2018).² Mother also has four children with Johnny P. (Johnny): adult son R., minor sons E. (born in 2002) and D. (born in 2003), and daughter L. (born in 2005).³

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on March 16, 2018. At that time, E., D., L., and O. were living with mother. DCFS received a report stating that L. disclosed to her maternal

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

² The dependency petition and detention report refer to the child by a different first name, but mother confirmed his first name is O.

³ O. is the only child at issue in this appeal. Mother and Johnny are not parties.

aunt that father had sexually abused her when she was eight years old (in approximately 2013) and again in January 2018. Maternal aunt called the police, who interviewed L. L. reported that in January 2018, when mother was at work, father came into the room where she was watching television and told her, “I could be your sugar daddy if only you make a (sex) video.” Father pulled down L.’s pants and underwear and fondled her vagina and breasts, skin to skin. L. stated that she was very afraid and told father “no.” She tried pushing father away but he would not stop. L. also reported that father digitally penetrated her when she was eight years old. L. stated she told mother about the abuse the day before reporting it to maternal aunt. L. referred to father as “stepfather” and mother’s “ex-boyfriend” and stated that father did not live in the home but was there most of the time.

A DCFS children’s social worker (CSW) interviewed maternal aunt on March 16, 2018. She stated that L. came to her home unannounced earlier that evening and broke down crying. L. then began to disclose the abuse by father. L. said she told mother and mother told her not to tell anyone. Maternal aunt stated that mother broke up with father about a year ago. Maternal aunt and her husband stated they were willing and able to care for L. during the investigation.

A CSW also interviewed L. at maternal aunt’s home. L. reported three separate incidents of abuse by father, each while she and father were home alone. When she was about nine years old, father partially undressed her and used his hands to fondle and penetrate L.’s vagina. He also fondled her breasts under her shirt. Then, in October or November 2017, father again partially undressed L. and used his hands to fondle her vagina and breasts. Father also stated that he could be her “sugar daddy” if

she made a video with him. L. stated that she told father “no” and denied being shown any sexually explicit material. L. stated that she disclosed the abuse to mother after this second incident. According to L., mother appeared upset and told L. that she believed her and they must confront father together. L. was scared to confront father, so she recanted her allegations. Then, in January or February of 2018, father fondled her breasts under her shirt. L. again disclosed the abuse to mother on March 15, 2018. She told mother that the prior sexual abuse did happen, that father was touching her and she wanted it to stop and did not want to see father. When father arrived at the family home the next day, L. was afraid, so she walked to maternal aunt’s home. L. told the CSW that she was very afraid of father.

DCFS interviewed mother on March 16, 2018. She reported that Johnny left the country years ago and his current whereabouts were unknown. She had been in a relationship with father for six years and they continued to have a romantic relationship. Mother confirmed that L. previously reported being “touched” by father, but then recanted. L. told her again on March 15, 2018 that father was touching her, but mother did not react to this information because she was not sure L. was being truthful. When father arrived the next day to visit O., L. left and went to maternal aunt’s home. Mother agreed that L. could stay with maternal aunt during the investigation and would not have any contact with father.

E. and D. spoke with a CSW on March 17, 2018. E. stated he considered father to be a positive influence and denied any abuse in the household. D. also denied any abuse. He was aware of the allegations made by L., as she told him on March 15, 2018.

The CSW also observed infant O., who showed no signs of abuse or neglect.

DCFS also noted the family's history with the department. In 2010, when L. was five years old, she reported that she was sexually abused by her brother R., who was 12 at the time. The allegations were substantiated but no action was taken as R. was a minor at the time.

DCFS also interviewed father by phone on March 20, 2018. Father was living with his girlfriend and their three children. Regarding the allegations by L., father stated he was disgusted and felt betrayed because the allegations were false. Father also referred to L.'s past allegations of abuse against R. as false.

In the detention report, DCFS noted that L. had provided "consistent, detailed accounts of each incident" to DCFS and the police. DCFS was concerned that father "will not take responsibility for his actions as he attempts to use the child's previously substantiated sexual abuse as a means of proving a pattern of the child making false allegations." DCFS recommended that O. be removed from father and all four children remain in mother's care.

The detention report also included a copy of the police report, revealing further details from L.'s interview with police. L. stated that father touched her in late 2017 and again in January 2018. She described the January 2018 incident, which occurred when she was watching television in the living room one evening while mother was at work. Father leaned over and asked her if she wanted him to be her sugar daddy. L. said "no," but father continued, saying that all she had to do was allow him to do a video with her. L. again said "no." Father grabbed L. around the waist and forcibly pulled down her pants and

underwear. L. continued to say “no” and “stop” but was unable to push father away. Father fondled L.’s vagina with his hand for several minutes, while she “laid in bed in immense fear and tears.” When she tried to push his hand away, father grabbed both of her wrists with one hand, while continuing to fondle her vagina and breasts with his other hand. Once he let her go, L. ran to the bathroom, where she sat in tears for several hours until mother returned home. She did not tell mother at the time because she was too afraid.

L. also told the police that father had previously abused her when she was eight, by placing his fingers in her vagina. Father also fondled her sometime in 2017.

On March 22, 2018, DCFS filed a dependency petition naming E., D., L., and O. under section 300, subdivisions (b)(1), (d), and (j).⁴ The petition alleged in count b-1 that on “numerous prior occasions,” father sexually abused L. Specifically, the petition alleged the following: in January 2018, when L. was twelve, father pulled L.’s pants and underwear down to her knees and held L.’s wrists with one hand as he touched and fondled her

⁴ Section 300 states, in relevant part, “A 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)(1) 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 . . . to adequately supervise or protect the child. . . . (d) The child has been sexually abused, or there is substantial risk that the child will be sexually abused, . . . by his or her parent or guardian or a member of his or her household . . . (j) The child’s sibling has been abused or neglected . . . and there is a substantial risk that the child will be abused or neglected. . . .”

vagina with the other hand. Father also touched and fondled L.'s breasts. In October or November 2017, father touched and fondled L.'s vagina and breasts underneath her clothing. In January or February 2017, father touched and fondled L.'s breasts underneath her clothing. Further, when L. was approximately eight or nine years old, father touched and digitally penetrated her vagina and fondled her breasts under her clothing. Mother knew of the sexual abuse, but failed to protect L. by telling her not to disclose the abuse to anyone and continued to allow father to have unlimited access to the child. The petition further alleged that this conduct by father and mother endangered L.'s health and safety and placed her and her siblings at risk of serious physical and emotional harm. The petition contained the same allegations for counts d-1 and j-1.

At the detention hearing on March 23, 2018, the court found a prima facie case for jurisdiction over all four children and for detaining O. pursuant to section 300. The court ordered O. released to the home of mother, with monitored visitation for father.

B. *Adjudication*

DCFS filed the jurisdiction/disposition report on May 1, 2018, reporting that L. continued to live with maternal aunt and the other three children remained with mother. In interviews with CSWs, E. and D. both denied being touched inappropriately by father.

L. was interviewed on April 17, 2018 and described the allegations in detail. In January 2018, she and father were alone in the home and he held her arm and fondled her vagina under her clothing. She told him to stop but he did not. Afterward, she went to the bathroom until mother came home. She also

described similar fondling incidents in October or November of 2017 and January or February of 2017. During the incident in early 2017, her brothers were asleep in the bedroom. In the incident when she was eight, her brothers were also present in the home, asleep, while her mother was at work.

Father was interviewed the same day and denied the allegations. He stated that he was very close with L. but she “started acting different when she found out [mother] was pregnant” with O. He stated that L. was “like my own child.”

L. submitted to a forensic interview with a social worker on June 5, 2018. L. told the interviewer that father abused her for the first time when she was nine, but she did not remember that incident very clearly. She had better recollection of an incident in the living room, when she was nine or ten. Father pulled down her pants and underwear and touched her vagina so that it “hurt.” The most recent time, in January 2018, father fondled her breasts and vagina.

At a trial setting conference on July 24, 2018, the court released O. to father, over DCFS’s objection, and ordered DCFS to make unannounced home visits.

In a last minute information filed on October 31, 2018, DCFS concluded that the children “appear to be safe in the home” and that mother and father reported they were no longer in a relationship and “there have been no reported or observed concerns.” DCFS recommended that the court declare the children dependents and order them to remain placed in mother’s home.

The court held the adjudication hearing on November 15, 2018. Mother and father presented as evidence their stipulation

that they would testify consistently with their statements in the reports.

Father moved to dismiss the petition. Counsel for DCFS opposed the motion, arguing that there was a preponderance of evidence to sustain the petition based on L.'s consistent statements about the abuse in the forensic interview, and her interviews with DCFS and the police. The court asked counsel to articulate the nexus between father's purported actions toward L. and a risk to O. DCFS counsel responded that father stated he treated L. "like a daughter," and that the abuse occurred on multiple occasions in the family home.

The court granted father's motion to dismiss the petition as to E. and D. in its entirety, and denied it as to L. With respect to O., the court initially granted dismissal as to father, stating that although O. was prepubescent, father "only targeted the female child [L.] and not the older boys [E. and D.] when they were younger and prepubescent."

However, father's counsel then continued to argue for dismissal of the petition in its entirety, stating that there was insufficient evidence that L. was sexually abused. In particular, father's counsel argued that L. made up the allegations because she was upset with father, and that father had a "strong bond" as a father figure to E., D., and L., and they "looked up to him." The court then indicated it was "reconsidering the motion to dismiss." Based on father's argument "that he had a parental role in L.'s life, viewed her as a daughter," the court decided to deny dismissal "in terms of the risk he poses to his own child and nexus to risk to his own child." In light of father's argument that he viewed himself as a parental figure to L., the court found that father's counsel had "basically provided support to the

department's position that he poses a risk of sexual and/or physical harm to his own child." The court therefore denied the motion to dismiss as to O.

The court found jurisdiction over L. pursuant to section 300, subdivisions (b) and (d), and over O. pursuant to subdivisions (b), (d), and (j). The court reasoned that it found L.'s statements "very credible" and that O. was at risk of harm because L. "was prepubescent and viewed by the father . . . as his own child, thereby placing his child . . . at risk." The court further found it was reasonable and necessary to remove O. from father, and ordered L. and O. to remain in mother's home, with monitored visitation for father and O.

Father timely appealed.

DISCUSSION

For the purposes of this appeal, father does not challenge the court's finding that he sexually abused L. But he argues substantial evidence does not support the assertion of jurisdiction over O. based on his abuse of L. We disagree.

A. *Standard of Review*

"In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." [Citation.] "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.

[Citations.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].””” (In re I.J. (2013) 56 Cal.4th 766, 773.)

B. The Jurisdictional Order

The juvenile court exercised its jurisdiction over O. under section 300, subdivisions (b)(1), (d), and (j). “The legislatively declared purpose of these provisions ‘is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*’ (§ 300.2, italics added.) ‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’” (In re I.J., supra, 56 Cal.4th at p. 773.) “The purpose of dependency proceedings is to prevent risk, not ignore it.” (Jonathan L. v. Superior Court (2008) 165 Cal.App.4th 1074, 1104.)

When, as is the case here, “a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (In re I.J., supra, 56 Cal.4th at p. 773.) We turn first to subdivision (j).

“Subdivision (j) applies if (1) the child’s sibling has been abused or neglected as defined in specified other subdivisions and (2) there is a substantial risk that the child will be abused or neglected as defined in those subdivisions. (§ 300, subd. (j).)” (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.) As noted, father does not challenge the court’s finding that he sexually abused L. Thus, only the second requirement under subdivision (j) is at issue.

“[S]ubdivision (j) includes a list of factors for the court to consider: ‘The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.’ (§ 300, subd. (j).)” (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.) Subdivision (j) “thus allows the court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under one of those subdivisions. [¶] The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.” (*Ibid.*)

Our Supreme Court has recognized that “the more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a

substantial risk of abuse or neglect under section 300. If the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 778.)

We must determine whether, under the totality of the circumstances, substantial evidence supports the court’s finding that father’s sexual abuse of his stepdaughter, L., creates a substantial risk of harm to his son, O. Father asserts that his abuse of L. was not sufficiently prolonged or egregious enough to support a finding of a risk of harm to O. He also contends that the age difference between O. and L., and the fact that O. is his biological child, while L. is not, are factors that undercut the court’s finding of a substantial risk to O. We disagree and hold that substantial evidence supports the trial court’s finding.

First, father contends that his sexual abuse of L. is “far less severe” than the conduct at issue in *In re I.J.*, *supra*, 56 Cal.4th 766. There, the court described the father’s behavior as “aberrant in the extreme,” as he sexually abused his daughter over a three-year period, including digital penetration, oral copulation, and rape. (*Id.* at pp. 771, 778.) Based on that conduct, the court upheld jurisdiction as to the father’s three sons. (*Id.* at p. 779.)

While father’s conduct here is not as extreme, this does not mean the risk to his young son “is nonexistent or so insubstantial that the juvenile court may not take steps to protect the son[] from that risk.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 780.) Father’s repeated sexual abuse of his young stepdaughter constitutes aberrant sexual behavior and a violation of her trust. L. detailed

between three and five incidents,⁵ starting when she was eight or nine years old and continuing until she was 12, during which father forcibly removed her clothing and fondled her breasts and vagina, ignoring her pleas to stop. On at least one occasion, father also held her wrists and digitally penetrated her vagina, causing her pain. These incidents occurred in the family home, while father was watching the children and mother was at work; on at least two occasions, L. stated that her brothers were also at home asleep.⁶ As our Supreme Court has stated, “sexual or other serious physical abuse of a child by an adult constitutes a fundamental betrayal of the appropriate relationship between the generations. . . . When a parent abuses his or her child, . . . the parent also abandons and contravenes the parental role. Such misparenting is among the specific compelling circumstances which may justify state intervention, including an interruption of

⁵ L. consistently described three incidents – one when she was eight or nine years old, one in late 2017, and one in January 2018. While not entirely clear, her statements during the forensic interview suggested that there might have been two incidents when she was eight or nine. L. also told DCFS during one interview that father engaged in another incident of fondling in early 2017.

⁶ Although O. was not yet born at the time, the court was entitled to consider father’s willingness to abuse one child while other children were present in the home as relevant to the current risk of harm to O. (See *In re I.J.*, *supra*, 56 Cal.4th at p. 778 [noting “the violation of trust shown by sexually abusing one child while the other children were living in the same home and could easily have learned of or even interrupted the abuse”].) The finding of a risk of harm to infant O. is not invalidated by the court’s finding that there was insufficient evidence of a *current* risk to support jurisdiction over E. and D., who were 16 and 15 years old at the time of the hearing.

parental custody.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 778, quoting *In re Kieshia E.* (1993) 6 Cal.4th 68, 76–77.) Father’s conduct was an appropriate basis for the court’s finding of risk to O.

Our sister court reached the same conclusion in *In re P.A.* (2006) 144 Cal.App.4th 1339, a case cited favorably by the Supreme Court in *In re I.J.*, *supra*, 56 Cal.4th at pp. 775–776. There, the mother, father, and their three children shared the single bedroom in their apartment. The nine-year-old daughter slept on the top of the children’s bunk bed, and her two younger brothers shared the bottom bunk. (*In re P.A.*, *supra*, 144 Cal.App.4th at p. 1342.) The daughter reported that on two consecutive nights, after she had gone to sleep, her father stood over her and rubbed her vaginal area. (*Ibid.*) There was no evidence that the father had sexually abused his sons or that the boys were aware of the abuse of their sister. (*Id.* at pp. 1342–1343.) The court upheld the assertion of jurisdiction over the boys (eight and five years old), based on the lower court’s finding that the boys were at risk of harm because they were approaching the age at which father had begun to abuse his daughter and father had access to the boys because he routinely awoke during the night to cover them. (*Id.* at p. 1345.)

We find the conduct at issue here more egregious, both in number of incidents and degree of abuse, than *In re P.A.* Thus, on this record, we agree with the trial court that father’s conduct with L. placed his son, O., at risk of harm.

Second, father argues that *In re I.J.* is distinguishable because O. is not approaching the age at which father’s abuse of L. began. He points out that the age difference relied on by the courts in *In re I.J.*, *supra*, 144 Cal.App.4th at p. 771 (three years)

and *In re P.A.*, *supra*, 144 Cal.App.4th at p. 1345 (four years) was smaller than the seven to eight year difference here between O. and L.’s age when the abuse began.

We are not persuaded that this factor is sufficient to undercut the trial court’s finding here. In *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1414–1415, the court affirmed a jurisdictional finding over the father’s two-year-old son, based on his sexual abuse of his 12- and 14-year-old stepdaughters. Citing with approval *In re P.A.*, *supra*, 144 Cal.App.4th at p. 1347, the court concluded that “aberrant sexual behavior by a parent places the victim’s siblings who remain in the home at risk of aberrant sexual behavior.” (*In re Andy G.*, *supra*, 183 Cal.App.4th at p. 1414.) The court noted that the child, Andy, was “only two and one-half years old at the time of the court’s orders, so he was not ‘approaching the age at which [his sisters were] abused.’” (*Ibid.*) However, the court found that other factors supported the trial court’s determination that Andy was at risk, including that he was in the room when father exposed himself to the victim, which “evinces, at best, a total lack of concern for whether Andy might observe his aberrant sexual behavior.” (*Ibid.*) Here, father’s violation of his parental role over L., as well as his lack of concern for potentially exposing the other children to such abuse, supports jurisdiction over O., even assuming a seven-year age difference is outside the bounds of what could be considered “approaching the age” at which L. was first abused.

We also reject father’s argument that this case is analogous to *In re B.T.* (2011) 193 Cal.App.4th 685, 687, abrogated by *In re R.T.* (2017) 3 Cal.5th 622. There, the mother engaged in a sexual relationship with B.T.’s father, when the father was 14 or 15 years old. (*Id.* at p. 688.) The juvenile court found jurisdiction,

reasoning that because the mother had a sexual relationship with the teenaged father, her infant daughter was at risk of sexual abuse. The appellate court reversed, finding it a “complete non sequitur” to “assume[] an adult woman who has had a consensual sexual relationship with an unrelated 15-year-old boy will probably sexually abuse her infant daughter.” (*Id.* at p. 694.) Those circumstances are far different from those present here and in the cases discussed above, in which the father assumed a parental role over the victim. (See *id.* at p. 695 [distinguishing cases such as *In re P.A.* and *In re Andy G.*, “which involved adults in some sort of parental role forcing themselves on unwilling and helpless children residing in their homes.”].)

Third, father contends that, unlike in *In re I.J.*, his biological child, O., was not at risk because his sexual abuse was directed towards L., a non-biological child. We disagree. There was substantial evidence that both father and L. viewed their relationship as one of father and daughter. Indeed, the court relied heavily on this finding in concluding there was jurisdiction over O., and father has not challenged the court’s factual finding on appeal.

For the same reason, courts have rejected a distinction between a biological and non-biological child for the purpose of determining risk of harm. “The juvenile court’s distinction between a stepdaughter and a biological daughter is contrary to the holdings and language of the cases that suggest sexual abuse of one child in the household puts at risk other children in the household. As one authority has written, “Incest,” as used herein encompasses not only sexual relations between a child and a biological parent, but also between a child and an adult who has assumed a parenting role towards the child, whether that adult is

married or cohabits with the child's parent.' [Citation.]" (*Los Angeles County Department of Children and Family Services v. Superior Court of Los Angeles County* (2013) 215 Cal.App.4th 962, 970.)

Considering the totality of the circumstances, we conclude substantial evidence supports the juvenile court's exercise of jurisdiction over O. under subdivision (j). As such, we need not review the court's findings under subdivisions (b) and (d).

C. *The Dispositional Order*

Father does not separately challenge the juvenile court's dispositional order, apart from his arguments regarding the court's exercise of jurisdiction over O. As discussed above, the court's jurisdictional order was supported by substantial evidence. We therefore affirm the dispositional order as well.

DISPOSITION

The orders of the juvenile court are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.