

Filed 10/16/18 In re Derek E. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re DEREK E. et al., Persons  
Coming Under the Juvenile  
Court Law.

B285635  
(Los Angeles County  
Super. Ct. No. DK15105)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Appellant,

v.

RUDY E.,

Defendant and Respondent.

APPEAL from an order the Superior Court of Los Angeles  
County, Nichelle Blackwell, Commissioner. Affirmed.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Kimberly Roura, Deputy County Counsel, for Plaintiff and Appellant.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Respondent.

## **INTRODUCTION**

The Los Angeles County Department of Children and Family Services (Department) filed a petition under Welfare and Institutions Code section 342<sup>1</sup> alleging father Rudy E. sexually abused his then seven-year-old son Derek E. and then three-year-old daughter Genesis E. within the meaning of section 300, subdivisions (b), (d), and (j). The juvenile court amended the counts under section 300, subdivision (b) to allege that father inappropriately touched, rather than sexually abused, the children and sustained those counts as amended. It dismissed the counts under section 300, subdivisions (d) and (j). The Department appeals, contending the juvenile court erred in dismissing the counts alleging sexual abuse under section 300, subdivision (d). We affirm because the challenge to the dismissal of the sexual abuse counts is non-justiciable.

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<sup>1</sup> All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

## BACKGROUND

### *Section 300 Petition*

On January 11, 2016, the Department filed a section 300 petition. The petition alleged father and mother Brenda R.<sup>2</sup> had a history of engaging in physical altercations in the children's presence, father bit mother's hand, mother threw a bag of candy at father striking him in the face, father attempted to choke mother, father had a conviction for inflicting corporal injury on mother, and mother failed to protect the children when she allowed father unlimited and unsupervised access to them.

### *First Amended Section 300 Petition*

On February 25, 2016, the Department filed a first amended section 300 petition. The petition alleged, as further amended and sustained, father and mother had a history of engaging in physical altercations in the children's presence, father had been convicted of inflicting corporal injury on mother, and father had a history of alcohol abuse and was a recent abuser of alcohol.

### *First Section 387 Supplemental Petition*

On March 30, 2016, the Department filed a section 387 supplemental petition. The petition, as sustained, alleged mother allowed father to have unmonitored overnight visits with the children in violation of a juvenile court order. The Detention Report stated that on March 15, 2016, father told the social worker that Genesis had told him something very serious. The social worker advised father to call the child abuse hotline if it

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

concerned child abuse. Instead, father sent the social worker a video of himself interviewing Genesis. In the video, father asked Genesis, “[W]ho touched you there?” Genesis responded, “[M]y uncle.” Father asked, “[W]here does your uncle touch you?” Genesis responded, “[T]here,” pointing towards the “middle of her legs.” Father asked, “[W]hat does he tell you?” Genesis replied, “To tell mom to call aunt.” The social worker again advised father to call the child abuse hotline and father complied.

The Department and the Los Angeles Police Department conducted a joint investigation. During the investigation, Genesis disclosed that father touched her private area when she was in the restroom. She denied that her uncle touched her. Genesis poked a doll between its legs to demonstrate to a social worker how father had touched her. She said it did not hurt when father touched her, but he touched her hard.

Derek told the social worker that he had seen father over the weekend. Although there was a restraining order against father which protected mother and the children, and father’s visits were to be monitored, mother had permitted father to take the children to a restaurant. Father was supposed to return the children to mother, but he kept them overnight. Derek told the social worker that while staying with father, he slept on the floor and Genesis slept in bed with father.

Mother claimed that father was putting ideas in Genesis’s head and making her say things that had not happened. Mother believed father wanted to take the children from her and Genesis had become confused. Mother stated father had always changed Genesis’s diaper and helped her use the restroom. Father stated he touched Genesis’s private area when he changed her diaper or bathed her, but never did so in a sexual manner.

Genesis received a sexual abuse forensic examination. The examination neither confirmed nor ruled out sexual abuse. The Department found inconclusive the allegations of sexual abuse of Genesis by an unknown perpetrator or by father.

*Second Section 387 Supplemental Petition*

On November 29, 2016, the Department filed a second section 387 supplemental petition. The petition, as amended and sustained, alleged mother failed to participate in individual counseling and allowed father to have unmonitored visits with the children.

On November 16, 2016, the approved monitor reported to a social worker that father had posted pictures of himself and the children at the beach on November 13, 2016. The monitor was not with father and the children on that date.

The social worker interviewed Derek on November 22, 2016. She asked Derek if he had ever been hit or touched in his privates. Derek responded that father had touched his privates. Derek demonstrated how father had touched him by rubbing back and forth on the carpet. Derek said, "He does it every single day. I told him to stop and he doesn't."

The next day, the social worker again spoke with Derek. She asked him if he knew what his private parts were. He said he did and pointed to his private area. Derek added that father touched his penis. Derek said, "[M]y dad was just touching it for nothing." Asked how father touched him, Derek "put his fingers together and rubbed on the carpet, this time he also used his index finger to point, and with an open hand reached out." Derek reported that father touched him both over and under his clothes.

Derek said he showered by himself and father touched him from outside of the shower.

Derek said that father also frequently touched him when he was sleeping and that he did not like it and it made him feel bad. The social worker asked Derek how often father touched his penis. Derek responded, “[F]or every month.”

On November 28, 2016, a social worker interviewed mother. The social worker informed mother of father’s alleged sexual abuse of Derek. Mother denied that Derek had told her about father touching him. She said she had known father for a long time and he would never do something like that. Mother said that Derek lied sometimes.

The same day, a social worker interviewed father and asked him if he ever took showers with Derek or touched Derek’s penis. Father denied sexually abusing Derek.

In a second interview, on December 14, 2016, father admitted having unmonitored contact with the children, but only once when he took them to the beach. He said he believed Derek made up the sexual abuse allegations against him because he asked Derek to change his clothes in the car after Derek got wet playing at the beach. Derek did not want to change in the car, so father changed Derek’s clothes without his consent. Father helped dry Derek with a towel, but denied ever touching Derek’s private parts.

Father said he only undressed Derek to change him and Derek misinterpreted everything and made up the sexual abuse allegations as a result. He said he would never sexually abuse his own children because he knew how sex offenders are treated in incarceration. Father said he entered the bathroom while the

children were showering to ensure they were okay and had not slipped in the bathtub.

On December 8, 2016, a social worker spoke with Derek at his school. Derek told the social worker father had touched him everywhere, including his private parts. Asked how father touched him, Derek responded, “I don’t know why.” He said father touched him with his hand under his clothes and did it for what seemed like “a long time.”

In a February 1, 2017, interview, the social worker asked mother how she felt about the sexual abuse allegations against father. Mother said Derek was delicate and very conscious about others touching him. He did not like it when others dressed him. Mother believed Derek made up the allegations against father after their trip to the beach when father changed Derek’s clothes and dried him with a towel. Derek did not want to change in father’s presence and gave father a difficult time. According to mother, father did not touch Derek’s private parts.

#### *Section 342 Subsequent Petition*

On March 6, 2017, the Department filed a section 342 subsequent petition. The petition alleged father sexually abused Derek by fondling Derek’s penis, Derek felt sexually threatened and afraid of father, mother knew father was sexually abusing Derek and failed to protect him, and father’s sexual abuse of Derek and mother’s failure to protect placed Genesis at risk of harm. The petition alleged counts under section 300, subdivisions (b), (d), and (j).

On November 25, 2016, a Riverside County Sheriff’s Department deputy interviewed Derek at his foster home. The deputy asked Derek if father “did anything to him.” Derek

responded that father touched his private parts. Derek demonstrated by putting all of his fingers together and said father would hold Derek's private parts "in that way." Derek said that father touched him many times.

Derek told the deputy that father touched him both over his clothes and when he was naked. He said that father mostly touched his private parts over his clothes, but he remembered one time when father touched him right after he took a shower. Derek was not wearing clothes when father touched him on that occasion. Derek felt bad and did not like it when father touched him. Derek said that father never touched Genesis.

On January 30, 2017, Derek received a forensic interview. Derek told the interviewer that father used to touch Derek's private parts. He said that when he got out of the shower, father entered the bathroom and touched Derek's penis. Derek showed the interviewer how father touched him, "demonstrating a slow movement, in which he squeezed his fingers together on his thumb." Derek told father to stop, and father left the room.

The interviewer asked Derek how many times father had touched him. Derek said only once. The interviewer told Derek she had heard that father touched Derek's private parts while Derek was asleep. Derek denied father touched him while he was asleep and said that father touched him once, in November 2016.

On March 24, 2017, the social worker spoke with Derek about father's alleged sexual abuse. Derek gave conflicting information. He first reported that it had happened many times, but not during current visits. The social worker asked for clarification. Derek responded, "No, he never touched it before." The social worker said, "[T]ell me more." Derek responded that father touched his private parts but it was "[A] long time ago



when I was with my mom. . . With my mom it only happened one time but when they were together it happened a lot of times.” The social worker asked Derek to be honest. Derek replied, “I am telling the truth. . . My dad doesn’t want to get in trouble that’s why he wants to lie. . . He’s lying because I know he touched my private parts. . . He always touched it. . . My mom wasn’t there she was at work.”

On March 13, 2017, the social worker interviewed father. Father said he never touched or played with Derek’s private area. When Derek was “a child,” father would hold Derek’s private part to show him how to aim at the urinal. When they went to the beach, father forced Derek to remove his clothes. Mother was present. Derek did not speak to father the rest of the day.

On April 4, 2017, the social worker interviewed mother. Mother continued to deny that father touched Derek inappropriately. Mother then described an instance in 2016 when father “playfully” touched Derek’s penis. Father had spent the night at mother’s home. The next morning, father helped wake the children and get them ready for school. Mother told Derek to wake up. Father entered Derek’s bedroom. Derek, still asleep, had an erection. Mother said that “father playfully moved Derek’s penis side to side with an open hand to playfully wake the child up.” The touching occurred over Derek’s clothing. Genesis also was present.

Mother said that father did not do this with bad intentions. Father simply wanted to wake Derek so Derek could use the bathroom and did not have an accident in bed. Mother said that father’s conduct scared Derek, but reiterated that father had not touched Derek with bad intentions.

On March 30, 2017, the children's foster father called the social worker and reported that a foster child in the home claimed Derek touched that child's privates. When the children were being lectured and educated about the importance of not allowing anyone to touch their privates, Genesis stated, "It's because my dad touches Derek that way too. . . I saw him and my mom and then he (father) would fall asleep in the bathroom."

On April 3, 2017, the social worker received an email from a nurse at the LAC+USC Medical Center. The nurse reported that Derek disclosed that father touched his private part over and under his clothing multiple times. Derek did not quantify the number of times.

On April 12, 2017, the Department filed a Last Minute Information for the Court attaching a March 15, 2016, Sheriff's Department incident report concerning father's alleged sexual abuse of Genesis. According to the report, a Los Angeles Police Department officer asked Genesis if anyone had touched her. Genesis responded that father had touched her. The officer asked Genesis where she had been touched. Genesis responded, "Aqui," the Spanish word for "here."

A deputy sheriff contacted mother. Mother said that when she asked Genesis who touched her, Genesis said, "El perro," the Spanish words for "the dog." When mother asked Genesis where she had been touched, Genesis again said, "Aqui," while grabbing her vagina with both hands.

The deputy asked Genesis if she knew where urine came out of. Genesis pointed to her vagina. The deputy asked if anyone touched her. Genesis responded that father had touched her. The deputy asked Genesis where father had touched her. She pointed to her vagina with the index fingers of both hands

while making a pushing motion. Genesis could not identify where she was touched on a drawing of a child.

The deputy asked Derek if he and Genesis had stayed with father over the weekend. Derek said they had. He said he slept on the floor while father and Genesis slept in a bed. Father would not allow Derek to sleep in the bed with them. Derek did not see father touch Genesis.

A sheriff's department detective interviewed Genesis. Due to her young age, Genesis was not able to speak in full sentences. She did not disclose any inappropriate touching.

Father told the detective he became concerned that someone was touching Genesis inappropriately when he observed her touching her private part. Father told her to stop. Genesis told father an uncle touched her there. Father did not know whom Genesis was referring to, as neither he nor mother had family in the area.

Father denied that he had touched Genesis in an inappropriate manner. He said that because Genesis was three years old, he still had to help bathe and wipe her, so there were times when he had to touch her private area, but he never did so in an inappropriate manner.

On April 21, 2017, the social worker interviewed Genesis. The social worker asked Genesis if someone had touched her vagina. Genesis responded, "[M]i papi," whom she identified as father. She said father touched her vagina on Friday. Father's touching her private area made her feel "bad, [she] did not like that." She said that father did not continue to touch her inappropriately. Genesis said she saw father touch Derek while Derek was sleeping. Derek told father to stop.

On May 10, 2017, Genesis received a forensic interview. The interviewer asked Genesis if she had ever been touched inappropriately underneath her clothes. Genesis said father had touched her and her brother, and pointed to her vaginal area. Genesis said she was changing and father touched her with his hand. Father touched her one time. She said father touched Derek's penis with the soap while Derek was showering. At some point, the interviewer could not proceed with the interview as Genesis's speech was very limited and she was difficult to understand.

*First Amended Section 342 Subsequent Petition*

On May 15, 2017, the Department filed a first amended section 342 subsequent petition. The first amended petition retained the allegations concerning father's sexual abuse of Derek and added the allegations that father sexually abused Genesis by fondling and touching her vagina, Genesis felt sexually threatened and afraid of father, mother knew father was sexually abusing Genesis and failed to protect her, and father's sexual abuse of Genesis and mother's failure to protect placed Derek and Genesis at risk of harm. The first amended petition alleged counts under section 300, subdivisions (b), (d), and (j).<sup>3</sup>

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<sup>3</sup> The b-1, d-1, and j-1 counts alleged:

"On prior occasions, the children Derek E[.] and Genesis E[.]'s father, Rudy [ ] E[.], sexually abused the child Derek by fondling the child's penis. The child felt sexually threatened and afraid of the father. The child's mother, Brenda R[.], knew of the sexual abuse of the child by the father and failed to protect the child. Such conduct on the part of the father and the mother's failure to protect the child endanger the child's physical health and safety and place the child and the child's sibling, Genesis, at

### *Section 342 Adjudication Hearing*

At the adjudication hearing on the first amended section 342 subsequent petition, Derek testified there was a time that father touched him in a way he did not like. When Derek finished taking a shower and was putting on his underwear, father entered and touched his private part in the front. Derek had showered himself and father was not helping him. Father touched Derek hard. It lasted for about three seconds. In court, Derek made a motion with his fingers to demonstrate the touching. Derek was uncomfortable and did not like it when father touched him. He felt bad and told father to stop. Father left the room.

After father left, Derek used the restroom. As Derek was about to put on his pants, father entered again and touched his private part. Derek told father to stop and father complied. Father did not say anything to Derek. Father left the room. Father's touching made Derek feel "uncomfortable, like bad."

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risk of serious physical harm, damage, danger, sexual abuse and failure to protect."

The b-2, d-2, and j-2 counts alleged:

"On prior occasions, the children Derek E[.] and Genesis E[.]'s father, Rudy [ ] E[.], sexually abused the child Genesis E[.] by fondling and touching the child's vagina with both hands and with his index finger. The child felt sexually threatened and afraid of the father. The child's mother, Brenda R[.], knew of the sexual abuse of the child Genesis [E.] by the father and failed to protect the child. Such sexual abuse of the child on the part of the father and the mother's failure to protect the child endanger the child's physical health and safety and places the child and the child's sibling, Derek E[.], at risk of serious physical harm, damage, danger, sexual abuse and failure to protect."

Father touched Derek at father's house on a day in November. Derek did not have school that day and mother asked father to watch him so she could go to work. There was no other time after this that father touched Derek in a way that made him feel uncomfortable.

Derek denied that a lot of people had asked him questions about father's touching. He did not remember telling a social worker that father touched him more than once or that it happened many times. Derek did not tell mother that father had touched him. Derek did not feel sad about not living with father.

Derek denied he told a social worker that father touched him every day. He testified that father touched him twice on the same day.

The juvenile court dismissed the counts of sexual abuse under section 300, subdivisions (d) and (j), and sustained the counts under subdivision (b) with amendments. The court explained that it did not see evidence of "touching by the parents for the purpose of sexual gratification or arousal . . . ." In particular, the court found that the incident in which father moved Derek's penis from side to side to wake him was not sexual abuse under section 300, subdivision (d) because it was not done for the purpose of sexual gratification or arousal. Instead, the court found father's conduct constituted inappropriate touching under section 300, subdivision (b). The court also found that father acted inappropriately when he touched Derek's penis twice after Derek got out of the shower, supporting jurisdiction under section 300, subdivision (b).

Similarly, the juvenile court found a lack of evidence that father touched Genesis for the purpose of sexual gratification. The court concluded there was insufficient evidence to support

the section 300, subdivision (d) count concerning Genesis because her interviewers had not addressed the context in which father had touched her—i.e., whether he was engaged in normal caretaker responsibilities such as assisting her with wiping or with understanding how to keep herself clean.

The juvenile court found, however, that father had inappropriately touched Derek and Genesis. It therefore sustained the section 300, subdivision (b) counts, amending the counts to allege inappropriate touching instead of sexual abuse.<sup>4</sup> Believing the amended section 300, subdivision (b) counts covered

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<sup>4</sup> The amended and sustained section 300, subdivision (b) counts alleged as follows:

“b-1: On a prior occasion, the children Derek E[.] and Genesis E[.]’s father, Rudy [ ] E[.], inappropriately touched the child Derek’s penis. The child felt threatened and afraid of the father. The child’s mother, Brenda R[.], knew of the inappropriate touching of the child by the father and failed to protect the child. Such conduct on the part of the father and the mother’s failure to protect the child endanger the child’s physical health and safety and place the child and the child’s sibling, Genesis, at risk of serious physical harm, damage, danger, abuse and failure to protect.”

“b-2: On a prior occasion, the children Derek E[.] and Genesis E[.]’s father, Rudy [ ] E[.], inappropriately touched the child Genesis E[.]’s vagina. The child felt threatened and afraid of the father. The child’s mother, Brenda R[.], knew of the conduct by the father and failed to protect the child. Such conduct on the part of the father and the mother’s failure to protect the child endanger the child’s physical health and safety and places the child and the child’s sibling, Derek E[.], at risk of serious physical harm, damage, danger, abuse and failure to protect.”

the conduct at issue, the juvenile court dismissed the section 300, subdivision (j) counts.

The juvenile court ordered that Derek and Genesis would remain suitably placed and granted the parents monitored visits. As part of father's case plan, the juvenile court required father to participate in individual counseling that addressed the issues of sexual abuse or inappropriate touching of children and how that impacts their safety. As part of mother's case plan, the juvenile court required mother to participate in individual counseling that addressed child protection and safety and the effects of sexual abuse on children.

The Department appealed.<sup>5</sup> With its opening brief on appeal, the Department filed a motion for judicial notice of post-judgment minute orders dated January 29, 2018, in which the juvenile court (1) terminated father's reunification services with respect to Derek and Genesis and (2) released both children to mother. We granted the motion.

## **DISCUSSION**

The Department appeals the juvenile court's orders dismissing the section 300, subdivision (d) counts alleging father sexually abused Derek and Genesis. While the Department acknowledges the juvenile court sustained counts under section 300, subdivision (b), it urges us to "ma[k]e [the record] clear by correcting the juvenile court's error in dismissing the counts pursuant to subdivision (d) and striking all references to sexual abuse."

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<sup>5</sup> Mother and father have not cross-appealed.



Our Supreme Court has explained that “[w]hen 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.* (2013) 56 Cal.4th 766, 773.) In other words, when jurisdiction over a dependent child would exist regardless of our disposition of an appeal from the juvenile court’s decision to sustain only some but not all of the alleged bases for jurisdiction, the appeal is often not justiciable. (See, e.g., *In re Briana V.* (2015) 236 Cal.App.4th 297, 308, 310-311; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492; see also *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330 [declining to address challenge to remaining allegation after finding one allegation in dependency petition was supported].)

Here, no one is seeking reversal of the juvenile court’s order sustaining the section 300, subdivision (b) counts as amended. Thus, even if the juvenile court wrongly dismissed the section 300, subdivision (d) counts alleging sexual abuse, the sustained section 300, subdivision (b) counts would continue to provide a basis for juvenile court jurisdiction. Under the reasoning just mentioned, therefore, the Department’s appeal would be non-justiciable.

In some cases, however, section 361.5 may lead to a different result. Section 361.5, subdivision (b) provides in relevant part: “Reunification services need not be provided to a

parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:  
[¶] . . . [¶] (6)(A) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse . . . to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.” The statute further provides that a juvenile court “shall not order reunification for a parent or guardian described in paragraph . . . (6) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.” (§ 361.5, subd. (c)(2).)

Under these statutory provisions, the Department might argue, the appeal of the dismissed counts alleging sexual abuse is justiciable because – if the appeal was successful and the sexual abuse counts were sustained – the juvenile court could not order reunification services for father unless it found by clear and convincing evidence that ordering those services was in the best interest of Derek and Genesis. But on this record we find the juvenile court would make that finding. As noted, the juvenile court dismissed the sexual abuse allegations but also ordered father to participate in individual counseling to address “sexual abuse of his children,” indicating the juvenile court believed such tailored reunification services would not have been “fruitless.” (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.) Indeed, the juvenile court specifically stated the counselor should help father “understand the difference between [his] behavior with respect to touching the kids for purposes of parental supervision and touching the kids for purposes of annoying behavior, which

the kids can feel threatened by,” suggesting the court-ordered individual counseling was in the children’s best interest.

Thus, the dispositive question here is whether we would reverse an order granting reunification services—even assuming sustained sexual abuse findings—for lack of substantial evidence. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880 [reviewing for substantial evidence the juvenile court’s determination by clear and convincing evidence that reunification services were not in child’s best interest under section 361.5, subdivision (b)(2)]; see also *In re Gabriel K.*, *supra*, 203 Cal.App.4th at p. 196 [“We review an order denying reunification services by determining if substantial evidence supports it”].)<sup>6</sup> We would not.

At the jurisdiction/disposition hearing, the Department, asserting the children were victims of “severe sexual abuse” by father, asked the juvenile court to sustain the sexual abuse counts and “order parents into . . . programs to address these severe allegations so the parents can get the services they need to successfully reunify with their children.” Minors’ counsel agreed that the court should sustain the sexual abuse counts and order the parents to “enroll in classes for sexual abuse awareness.” The Department and minors’ counsel would not have made these arguments unless they believed that reunification services would be in the children’s best interest.

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<sup>6</sup> While the courts have treated our review as one for substantial evidence, some courts have, at the same time, reviewed whether the grant or denial of reunification services constituted a clear abuse of discretion. (See, e.g., *In re Gabriel K.*, *supra*, 203 Cal.App.4th at p. 197.) Under either standard, we would not disturb the juvenile court’s dispositional order here.

We agree with this conclusion. We note that the juvenile court ordered reunification services only after removing the children from the parents' custody, and the court permitted only monitored visitation with the children in the interim. Subsequently, as noted, the juvenile court (1) terminated father's reunification services with respect to Derek and Genesis and (2) released both children to mother, which only reinforces the present non-justiciability of the appeal notwithstanding section 361.5, subdivision (c)(2).

In asking us to reverse the juvenile court's orders dismissing the section 300, subdivision (d) counts and striking the petition's references to sexual abuse, the Department argues: (1) "Mother has a pattern of allowing the children to be with the father unmonitored in violation of court orders, which allowed father to sexually abuse Derek in November 2016," (2) "Father also still has the opportunity to file a section 388 petition seeking further services, liberalized visitation, or return of the children to his custody," and (3) "It is important for any juvenile court hearing officer asked to rule on future issues for this family to see clearly from the sustained petition that these children are at substantial risk of sexual abuse by father. This will allow the juvenile court to ensure that any future order takes into account the family's full history in order to keep the children safe." These arguments are speculative and insufficient to overcome the non-justiciability barrier to review on the merits.

Accordingly, because we find DCFS's appeal non-justiciable, we affirm the challenged juvenile court orders.

### **DISPOSITION**

The juvenile court's orders dismissing the section 300, subdivision (d) counts and striking all references to sexual abuse from the first amended section 342 subsequent petition are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

JASKOL, J.\*

We concur:

BAKER, Acting P. J.

MOOR, J.

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