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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.G., a Person Coming
Under the Juvenile Court Law.

B282096

(Los Angeles County
Super. Ct. No. DK17876)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.G.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Kristen Byrdsong, Temporary Judge. (Pursuant to Cal. Const., art. VI, §21.) Affirmed.

Linda J. Vogel, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tracey Dodds, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Roberta G. is the biological grandmother and adoptive mother of three boys, An., Ai., and N. Roberta also served as the legal guardian of the boys' teenage sister, T., and allowed their adult brother, J., to live in her home. After T. reported that J. had sexually abused her, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition on behalf of the boys under Welfare and Institutions Code section 300, subdivisions (b) and (d),¹ alleging they were at risk of serious physical harm and sexual abuse. The juvenile court sustained the allegations, ordered the boys placed in Roberta's home under DCFS supervision, and ordered Roberta to participate in sexual abuse awareness counseling. Roberta appealed.

We affirm. There is substantial evidence that Roberta took no protective action toward T. or the boys upon learning of the abuse. She refused to acknowledge even the possibility of abuse and allowed J. to remain in the home and have contact with the boys despite a court order to the contrary. These actions placed the boys at substantial risk and supported the court's jurisdictional and dispositional orders.

FACTUAL AND PROCEDURAL BACKGROUND

Roberta adopted her grandsons An. (now 13), Ai. (now 10), and N. (now seven) during a previous dependency case involving their biological mother, Roberta's adult daughter. Roberta

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

became the legal guardian of the boys' older sister, T. (now 17), in 2013 or 2014. The family lived in Roberta's home with Roberta's father, G., and the children's adult brother, J. According to Roberta, J. was born in 1993; the record contains very little additional information about J.

Referral

The family came to the attention of DCFS on May 17, 2016, when T.'s therapist contacted DCFS to report that T.'s stepmother, Desiree, had told her of T.'s alleged sexual abuse by J.² According to the therapist, T. told Desiree that J. "has been touching her breasts and vaginal area both over and under the clothes" and also "kisses her mouth to mouth." T. told Desiree she had reported the abuse to Roberta, and that the abuse stopped for awhile after Roberta confronted J. However, the abuse resumed, with one incident occurring in January 2016 and two more in February 2016. Desiree told the therapist that T. was currently staying with her because she did not feel comfortable returning to Roberta's home.

Investigation

DCFS initiated an investigation into T.'s allegations. Desiree confirmed the therapist's report. Desiree further reported that she immediately confronted Roberta about T.'s allegations. According to Desiree, Roberta "stated that she knew about the incident approximately one year ago and when she found out she slapped J[.] across the face because she was angry."

² The therapist also reported concerns a few days earlier that Roberta was insufficiently engaged in T.'s mental health treatment. DCFS investigated that referral in conjunction with this one. The record indicates it was "expected to be closed as inconclusive."

Roberta allowed Desiree to take T. home with her, where she remained.

Desiree told a DCFS social worker that T. could stay with her as long as she liked; T. had lived with Desiree and T.'s father for much of her life. Desiree expressed a willingness to become T.'s legal guardian. The social worker did not have any concerns about T. staying in Desiree's home.

The social worker interviewed T. independently. T. was irritable during the interview and stayed quiet when the social worker asked her about her relationship with J. She "began to tear up and did not answer" when the social worker asked if J. ever touched her inappropriately. T. said she wanted to reside with Desiree and did not want to go back to Roberta's home.

T. later told a nurse practitioner J. began abusing her in October 2015 and continued doing so until February 2016. The abuse occurred in the car and consisted of J. fondling T.'s breasts over and under her clothing, fondling her vagina over her clothing approximately three times, and fondling her thigh. T. also told the nurse that J. kissed her on the mouth three times and made her orally copulate him once. T. told the nurse she told Roberta about the incidents but Roberta "didn't do anything about it."

The social worker interviewed Roberta on May 18, 2016. Roberta told the social worker that T. had disclosed the alleged sexual abuse to her "a while back," and that she had responded by becoming angry and slapping J. across the face. Roberta also stated that, "as time went on, she began not to believe the allegation" because T. "acted like 'nothing ever happened'" and "was always asking J[.] for rides to go to places."

The social worker told Roberta that DCFS had some concerns about her allowing J. to remain in the home with T. and the boys after T. alleged the abuse. Roberta reiterated that she did not believe the alleged abuse occurred; she remarked that T. had “anger issues,” threw “hissy fit[s],” and always wanted things her way. Roberta agreed to relinquish legal guardianship of T. to Desiree and further stated she would “do anything” to prevent the boys from being abused or placed in foster care, including removing J. from the home.

The social worker interviewed An. and Ai. about the allegations; N. “was upset about his brother using his toy and was crying and refused to speak” to the social worker. Both An. and Ai. denied ever seeing J. touch T. inappropriately. They also denied that J. ever touched them inappropriately. The social worker did not see any bruises or marks on any of the three boys.

The social worker made a follow-up visit to Roberta’s home one week later. She spoke to maternal great-grandfather G., who informed her that Roberta “takes good care of all the children in the home” and that he did not have any concerns about her ability to care for the children. G. denied that any abuse occurred in the home and stated that T.’s allegations were not “not true.” The social worker observed the children and again did not see any marks or bruises on them. All three boys said they were doing fine.

Roberta informed the social worker that J. had been “taken away by the police” and interviewed, but “was released and was not charged with anything criminally.” She further stated that J. was still living at the house. The social worker again expressed concern about J. remaining in the home—and sharing a bedroom with—the boys in light of T.’s allegations. The social worker

asked if Roberta would be interested in a voluntary safety plan that removed J. from the home. Roberta initially responded that she did not see a need for such a plan because J. had not been charged with a crime. However, after the social worker explained that DCFS conducts a separate investigation to ensure the safety of the children, Roberta, though “irritable,” “stated she is willing to have a safety plan in her home to prevent A[i.], A[n.], and N[.] going into foster care.” The social worker then implemented a safety plan calling for J. to voluntarily leave the home and have no contact with the boys. Both G. and Roberta signed the safety plan, and G. agreed to enforce it. The social worker did not speak to J. about the plan because she “did not obtain clearance from the detective to speak to J[.] at that time.”

The social worker asked Roberta if she would be interested in participating in a voluntary family maintenance case, in which DCFS would provide oversight and services without court intervention. Roberta declined, stating she did not want to do any more counseling “because she went through that for a long time already,” and she did “not want DCFS in her and the children’s lives for very long. The social worker “informed” Roberta that a voluntary family maintenance case would not be suitable for the family if she was not cooperative.

Over the next week, the social worker requested and received information about T. and the boys from their schools and care providers. None of the children’s schools, including T.’s, reported any concerns of abuse or neglect. T.’s therapist stated that she made her first call to DCFS because she believed Roberta was “neglectful” and “unresponsive” to T.’s mental health needs. According to the therapist, Roberta “appears to be overwhelmed” but “shows more interest in” the boys.

The social worker also corresponded with law enforcement. Detective Cynthia Tonne informed her that although J. was not arrested, his file was being sent to the district attorney. Later, Detective Tonne reported that the district attorney rejected the case due to a lack of corroboration. The record indicates that the social worker requested the police report at least three times, but does not contain the police report.

Section 300 Petition and Initial Hearing

DCFS filed a “non-detention” petition under section 300 on June 14, 2016. It alleged the three boys, An., Ai., and N., were at risk of “serious physical harm, damage, sexual abuse and failure to protect” in the “detrimental home environment” created by J.’s sexual abuse of T., Roberta’s disbelief of her allegations, and Roberta’s failure to protect T. and the boys from J. when she knew or reasonably should have known of the ongoing sexual abuse.³ The petition did not contain any allegations on behalf of

³ The full allegation, pleaded under both section 300, subdivision (b) and subdivision (d), states: “On prior occasions in 2015 and 2016, the children An[.], Ai[.] and N[.]’s adult sibling, J[.], sexually abused . . . sixteen year old. . . T[.], in the children’s home. Such sexual abuse consisted of, adult sibling fondling [T.]’s vagina and breasts. The adult sibling forced [T.] to orally copulate the adult sibling’s penis. The adult sibling repeatedly kissed [T.]’s mouth. The children’s mother, Roberta G[.], who is also the maternal grandmother/legal guardian to [T.], failed to protect [T.] when the mother knew or reasonably should have known of the ongoing sexual abuse of [T.] by the adult sibling. Further, the mother did not believe the sexual abuse disclosure of [T.]. [T.] does not want to reside in the children’s mother’s home and care. The mother failed to protect the children and allowed the adult sibling to continue to reside in the children’s home and to have unlimited access to the children. Such sexual abuse of

T., which DCFS later explained was due to the transfer of T.'s legal guardianship from Roberta to Desiree.

At the initial hearing on the petition, the court ruled that An., Ai., and N. were to remain released to Roberta. It further ordered that J. was not to reside in the family home or have any contact with An., Ai., or N. The court ordered DCFS to make random, unannounced home visits at least once per month. The court scheduled the adjudication hearing for August 22, 2016.

Jurisdiction/Disposition Report

DCFS prepared a jurisdiction/disposition report in advance of the scheduled hearing. In doing so, it re-interviewed Roberta, T., G., and the boys. During her interview, Roberta told the dependency investigator that the allegations in the petition made her "sick." Roberta reiterated that she had slapped J. when T. made her initial allegations. She further stated that J. then "immediately went into the room to confront" T. After that point, Roberta explained, "I had them stay away from each other. I didn't believe what T[,] had said but I didn't want to take any chances. I spoke with the little ones and they didn't report anything." She further stated that T. "continued to seek J[,] for rides" despite her allegations that the abuse occurred in the car, and continued to "joke around" with J. despite Roberta's entreaties that T. leave J. alone. Roberta told the investigator she had adopted An., Ai., and N. to prevent them from being in "the system," and said she was "tired of being in the system"

[T.] on the part of the adult sibling and the failure to protect [T.] and the children on the part of the mother, endangers the children's physical health, safety and well-being, creates a detrimental home environment and places the children at risk of serious physical harm, damage, sexual abuse and failure to protect."

again. She stated that she wanted her life “back the way it was,” and wanted all of the family members’ lives “to go back to normal.”

T. told the investigator that Roberta had gotten mad at J. and “yelled at him” when T. told Roberta about the abuse. T. said that J. nevertheless “continued to do it,” touching her “private areas, in my chest and thighs.” T. never saw J. touch her younger brothers inappropriately, but she reported that he hit them “with his hand or whatever he had in his hand” if they did not listen to him.

All three boys were free of marks and bruises and denied that J. touched their private parts. They also denied that he hit them, though all three said he yelled at them when they did not listen. An., then 12, stated that he always felt safe in Roberta’s home and did not know anything about J. touching T. inappropriately. He told the investigator that J. and T. “used to get along,” and that T. frequently asked J. to take her places or give her money to go to the store. Ai., then eight, also stated that J. and T. “got along very good” and “never fought or smacked each other.” He “never saw anybody touching each other’s private areas.” N., then six, told the investigator that he did not “know what happened. I heard something about J[.] and T[.] messing around and now T[.] and J[.] are gone.” All three boys told the investigator they were happy living with Roberta and wanted to remain in her care.

G., the maternal great-grandfather, told the investigator that he did not believe T.’s allegations about J. He further stated there was no sexual abuse of the boys. G. also reiterated his earlier opinion that Roberta was able to care for the boys. He said he loved the boys and wanted them to stay at the house with

him and Roberta.

DCFS noted in its report that Roberta declined its offer of a voluntary family maintenance case and refused to participate in counseling. It described her as “non-compliant” and “uncooperative.” DCFS concluded the boys faced a high risk level and informed the court it filed the “non-detained petition to ensure the children’s safety.” It recommended the court sustain the allegations and order family maintenance services for the family and a child sexual abuse awareness program for Roberta.

Attempts at Informal Resolution

The court continued the original August 22, 2016 adjudication date to September. At the September hearing, Roberta’s counsel requested another continuance “to be able to show the department that she is certainly willing to participate in any and all services that the department thinks is [*sic*] necessary to address the concerns that they have.” DCFS agreed with the request and noted the possibility that the parties could reach an agreement under section 301.⁴ The court continued the adjudication hearing to November 16, 2016.

DCFS filed an interim review report with the court on the date of the hearing, November 16, 2016. In that report, DCFS stated that Roberta “has not enrolled in sexual abuse awareness counseling and has been in denial of the abuse despite the child T[.]’s consistent statements of the abuse.” DCFS expressed concern that, “without Court intervention, [Roberta] will not follow through with enrollment in a child sexual abuse awareness program to increase her knowledge of child sexual abuse and help protect the children from sexual victimization.” DCFS thus

⁴ Section 301 gives DCFS the discretion to engage a family in a program of voluntary supervision. (§ 301, subd. (a).)

concluded that a section 301 contract would be inappropriate and requested that the court declare An[.], Ai[.], and N. dependents.

At the hearing, Roberta's counsel informed the court that Roberta was not present because she was downstairs enrolling in a child sexual abuse awareness program. Counsel further stated that Roberta wanted to resolve the case with informal supervision, and requested a continuance to enable her to complete the program. Neither DCFS's nor the boys' counsel objected to a continuance, which the court granted.

DCFS filed a last-minute information on January 4, 2017, the day of the continued hearing. In that filing, DCFS again reported that Roberta "has not enrolled in sexual abuse awareness counseling and has been in denial of the abuse despite the child T[.]'s consistent statements of the abuse." DCFS reiterated its opinion that a section 301 contract was inappropriate and its recommendation that the boys be declared dependents. The January 4, 2017 hearing was continued to February 23, 2017 so that Roberta's counsel could attend.

Last-Minute Informations

DCFS filed two last-minute informations on February 23, 2017. In the first, it reported that a social worker visited the family on January 12, 2017. During that visit, N. told the social worker that J. "is still staying with them but he is not allowed to tell . . . because she will take them away and he will no longer be able to see his family." The social worker noted that Ai., who was sitting nearby, "nudged" N., made a face at him, and attempted "to look at where [Roberta] and [G.] were sitting to see if they had overheard the conversation." Ai. denied that J. was still living in the home. He also told the social worker that J. and N. were close and that J. told N. not to say his name after he moved out of

the house. The social worker observed several bags of adult male clothing in the boys' bedroom, which Roberta informed her belonged to J. Roberta denied that J. was living in the home.

The last-minute information also documented a second unannounced visit on February 16, 2017. The family was not home at that time, but the social worker spoke to a neighbor who said he used to play basketball with a younger man, around 22 years old, who lived at the family's home. The neighbor did not know the man's name and said he last saw him at the home on Monday. He and another neighbor told the social worker they saw the man's silver Toyota at the home "not every day but quite frequently." The social worker noted in the report that she saw a silver car parked near the neighbor's home on February 13, 2017 but was not able to ascertain whether it was J.'s Toyota because the gate was locked.

In the second last-minute information dated February 23, 2017, DCFS reported that Roberta still had not enrolled in sexual abuse awareness counseling despite DCFS providing "additional referrals" on February 13, 2017. DCFS reiterated its concern that Roberta would not enroll in such a program without a court order.

Adjudication Hearing

At the February 23, 2017 hearing, the court admitted into evidence all of DCFS's reports and last-minute informations.

Roberta's counsel requested that the court dismiss the petition because "it's clear that the minors report never witnessing any sex abuse, not even having a general awareness that anything happened regarding sexual abuse, and reporting that they feel safe." He argued that even if the court credited T.'s allegations, she was no longer living in the home and the boys

were “differently situated and not at risk of sexual abuse because they don’t report any sex abuse and they don’t report feeling in fear of J[.]”

Counsel for the boys agreed that the boys “absolutely have said that they don’t have any concern with J[.]” and told the court, “frankly, [they] don’t want this case open.” However, she determined she was obligated under section 317, subdivision (e)⁵ to conclude that the boys were still at risk in the home, “because there’s been no acceptance of anything that has ever been a problem in the first place.” She argued “the underlying issue” was Roberta’s “unwillingness to believe T[.] and her obvious coaching of the children based on today’s last minute, where one of the children says, J[.] is still living with us, despite numerous court orders and reminders that he is not to be in the home. And the other child says—kind of looks at him and says, you weren’t supposed to say that, or at least gives him the look. The children say, that’s a secret we’re not supposed to tell.” Counsel pointed out that Roberta still had not enrolled in any services and asserted that she had failed to take “responsibility for what did happen in her home” by not requiring J. to move out.

Counsel for DCFS joined these arguments. He added, “the issue wasn’t whether the boys are saying they feel safe or not. The issue is whether they are at risk because of the conduct of J[.]” and Roberta’s failure to take action to protect them and T. beyond slapping J. He further disputed Roberta’s counsel’s

⁵ Section 317, subdivision (e)(2) provides in pertinent part that counsel representing a child in dependency proceedings “shall advise the court of the child’s wishes” if the child is at least four years old but “shall not advocate for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child.”

assertion that the boys were differently situated from T., pointing out that they, too, were J.'s siblings, and "there's no reason to believe that the boys would be ruled out from being victims of this inappropriate conduct either."

The court agreed with DCFS's and the boys' counsel. It concluded, "[t]he boys are still at risk," based on Roberta's "refusal to participate in any programs, refusal to take responsibility, make any changes to ensure the safety of these boys, and based on the fact that J[.] is still in the home despite the numerous times that [Roberta] has been informed he's not to be there." The court found the allegations in the petition true by a preponderance of the evidence and sustained the petition in its entirety. However, the court declined to remove the children from Roberta's home, finding instead that their emotional and physical well-being would not be in danger if a case plan requiring J. to move out and Roberta to complete sexual abuse awareness counseling were implemented. The court ordered such a case plan.

Roberta timely appealed.⁶

DISCUSSION

Section 300 permits the juvenile court to assert jurisdiction

⁶ While this appeal was pending, on August 24, 2017, the court held a six-month status review hearing pursuant to section 364. We hereby grant Roberta's unopposed request to take judicial notice of the minute order documenting that hearing. At that hearing, the court found that the conditions justifying its initial assumption of jurisdiction no longer existed and were not likely to recur if supervision were withdrawn. The court accordingly terminated its jurisdiction over the family. We agree with Roberta that the termination of jurisdiction does not moot this appeal. (See *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.)

over a child who falls within the provisions of one or more of its subdivisions. DCFS bears the burden of proving by a preponderance of the evidence that the child falls under a subdivision of section 300. (*In re I.J.* (2013) 56 Cal.4th 766, 772 (*I.J.*); § 355, subd. (a).) Here, it alleged the boys came within subdivision (b) (“The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left”) and subdivision (d) (“The child has been sexually abused or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.”). Roberta contends DCFS failed to meet its burden, because it did not present evidence that Roberta failed to protect T. when she knew or should have known of the abuse or that J.’s abuse of T. presented any risk of similar harm to the boys. She asserts “[t]here can be no failure to protect from an identified danger if that danger is not proven to exist.” We disagree.

We review the juvenile court’s jurisdictional findings and dispositional order for substantial evidence. (*I.J.*, *supra*, 56 Cal.4th at p. 773.) That is, we consider whether substantial evidence, contradicted or uncontradicted, supports them. (*Ibid.*) In making this assessment, we draw all reasonable inferences

from the evidence in support of the findings and order. We do not reweigh the evidence, reconsider issues of fact or credibility, or exercise independent judgment; rather, we determine whether there are sufficient facts to support the juvenile court's findings and order. (*Ibid.*) We reverse only if the record fails to disclose substantial evidence from which a reasonable trier of fact could conclude the order is appropriate. (*Ibid.*) Where, as here, the 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 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 Alexis E.* (2009) 171 Cal.App.4th 438, 451.) We focus on subdivision (d) here.

In *I.J.*, the Supreme Court observed that "section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction," but requires only a "substantial risk" of abuse. (*I.J.*, *supra*, 56 Cal.4th at p. 773.) It further concluded that the risk of sexual abuse to a child whose opposite gender sibling had been sexually abused was not "nonexistent or so insubstantial that the juvenile court may not take steps to protect the [child] from that risk." (*Id.* at p. 779.) It therefore held that "a father's prolonged and egregious sexual abuse of his own child may provide substantial evidence to support a finding that all his children are juvenile court dependents." (*Id.* at p. 770.) The Court clarified that the court is not "compelled, as a matter of law, to assume jurisdiction over all

the children whenever one child is sexually abused.” (*Id.* at p. 780.) It is instead “supposed to use its best judgment to determine whether or not the particular substantial risk exists.” (*Id.* at p. 779.)

Here, the court concluded that An., Ai., and N. faced a substantial risk of sexual abuse by their older brother J. In doing so, it specifically cited J.’s continued presence in the home, in violation of court order; Roberta’s continued denial of any abuse; and her refusal to participate in a sexual abuse awareness program. Substantial evidence in the record supported these findings. T. consistently recounted her allegations of abuse. Roberta did not dispute that the sole responsive actions she took upon hearing the allegations were slapping J. once across the face and telling him to stay away from T.; she did not report the allegations to anyone, remove J. from the home, or make any efforts to separate J. from T. or the other children. The court reasonably could have concluded this limited response constituted a failure to protect T. once she, in Roberta’s words, “raised the specter of sexual abuse.”

Roberta points to T.’s failure to tell her the abuse resumed and T.’s “repeated instigation of close contact with him” as evidence that she adequately protected T. and, by extension, the boys. We are not persuaded. Roberta, the parent or guardian of all of the children, was responsible for their welfare. Instead of acknowledging the possible validity of T.’s allegations and taking preventive steps to mitigate the potential for abuse in the future, she allowed J. to leave the room and “confront” T. immediately after she slapped him. She also allowed him to continue to transport T. unsupervised in his vehicle and share sleeping quarters with his three younger brothers. Even after the court

explicitly ordered Roberta to ensure J. moved out of the house and had no contact with the boys, neighbors reported seeing him there “quite frequently,” N. told the social worker J. was staying at the home, and bags of his clothing remained in the boys’ room. It was reasonable for the court to find that Roberta’s refusal to acknowledge the abuse, take steps to familiarize herself with the signs of such abuse, or obey the court’s orders barring J. from the home constituted a failure to protect the boys from the risk of being victimized.

Roberta also maintains there was no evidence that J. sexually abused the boys or had any proclivity to do so. Such evidence is not necessary for the boys to be placed at risk by J.’s abuse of T. and Roberta’s response thereto. As the Court observed in *I.J.*, it is “impossible to say what any particular sexual predator . . . is likely to do in the future in any particular instance.” (*I.J.*, *supra*, 56 Cal.4th at p. 779.) J. demonstrated a willingness to sexually abuse his biological sister on several separate occasions over the period of several months, even after Roberta became angry and slapped him; it was reasonable for the court to infer there was a substantial risk he would take similar actions against his younger brothers, who shared a bedroom with him and, at least in the case of N., had a close relationship with him. Rather than taking steps to protect the boys from this possibility, Roberta disbelieved T.’s allegations, declined to participate in sexual abuse awareness classes to learn what signs to watch for, and coached the boys to lie about J.’s presence. These actions heightened the potential risk the boys faced from J.

Roberta attempts to distinguish *I.J.* on the ground that it involved sexual abuse the Court characterized as “aberrant in the extreme.” (*I.J.*, *supra*, 56 Cal.4th at p. 778.) While J.’s abuse

of T. was indeed less egregious than that perpetrated by the father in *I.J.*, J.'s escalating acts of fondling his sister T.'s thigh, breasts, and vagina; kissing her on the mouth; and forcing her to orally copulate him nonetheless constitute aberrant sexual behavior. The severity of the abuse perpetrated on a sibling is not the only factor the court considers when determining whether a sibling is at risk. The juvenile court evaluates "the totality of the circumstances surrounding the sibling abuse" when assessing the risk to the children. (*Ibid.*) The court properly considered factors relevant here, namely Roberta's limited response to the abuse and J.'s continued access to the children.

Roberta also argues *I.J.* is distinguishable because it considered allegations under section 300, subdivision (j) rather than subdivisions (b) or (d). We are not persuaded. Subdivision (j) allows the court to take jurisdiction over a child whose "sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions." (§ 300, subd. (j).) The pertinent language—"there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions"—tracks the pertinent language of subdivision (b) ("there is a substantial risk that the child will suffer, serious physical harm or illness . . .") and (d) ("there is a substantial risk that the child will be sexually abused . . . by . . . a member of his or her household"). There accordingly is no basis to conclude that the holding of *I.J.* is limited to cases in which DCFS alleges jurisdiction under subdivision (j). The "differing line of cases" on which Roberta urges us to rely instead was expressly disapproved in *I.J.* and therefore is not compelling here. (See *I.J.*, *supra*, 56 Cal.4th at pp. 780-781.)

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.