

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re ABIGAIL F., a Person Coming
Under the Juvenile Court Law.

B267549

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK10034)

Plaintiff and Respondent,

v.

ZACHARY F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Steff Padilla, Commissioner. Affirmed.

Catherine C. Czar, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, David Michael Miller, Deputy County
Counsel, for Plaintiff and Respondent.

Zachary F. (father) appeals the juvenile court's jurisdictional findings and disposition order declaring his daughter, Abigail F., a juvenile court dependent under Welfare and Institutions Code¹ section 300, subdivisions (b) and (d), and removing the child from his custody. On appeal, father does not dispute that four-year-old Abigail reported that he sexually abused her on at least one occasion. He urges, however, that Abigail's uncorroborated, out-of-court statements were not reliable because of Abigail's young age and the possibility that her statements had been influenced by the interviews to which she was subjected, among other things. Because we conclude that substantial evidence supported the juvenile court's findings, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Detention and Petition

Abigail (born in June 2010) is the daughter of father and G.F. (mother). Mother and father are married, but have been separated for several years. Prior to these proceedings, they shared legal and physical custody of Abigail.

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on November 10, 2014, when mother reported that Abigail, then four years old, had disclosed sexual abuse by father. Mother said that on November 8, Abigail said, "Let's get naked like married people putting pee to pee how daddy does to me." Abigail said father had done that several times. Mother called a child abuse hotline

¹ All subsequent statutory references are to the Welfare and Institutions Code.

and the Palmdale Sheriff's Department, which instructed her to call DCFS.

Father denied molesting Abigail, but said she once saw pornography on his computer when he forgot to turn it off. He said he had password-protected his computer since that incident.

Abigail was interviewed by children's social worker (CSW) Daniel Okeke and by a deputy sheriff. Abigail told the CSW that "while in the father's room, the dad put his own 'pee-pee' to her own 'pee-pee.'" Abigail initially said this happened several times, but later said it happened only once. She subsequently said father "touched her with his hand in the private area and was rubbing on the top at the same time as he was kneeling down." She also said she had seen some pictures on father's computer, but she could not remember what they looked like. She said she felt safe with father and loved him very much.

Abigail told the deputy sheriff that she "was three years old when her daddy . . . 'rubbed his pee on her pee.'" According to the sheriff's report, "[Abigail] told me she was laying down on the carpet in [father's] bedroom when the incident took place. She told me 'daddy didn't have a shirt. He had his jammies on his feet.' When I asked [Abigail] what [father] said to her, she responded, 'daddy told me don't look.' [Abigail] said 'daddy was on his knees and rubbed his pee on my pee.' [Abigail] told me 'I saw daddy's pee.' I asked [Abigail] if [father] touched her any other time, she said, 'no, just one time.' I asked [Abigail] if she was afraid of [father], she said, 'no, I love my daddy.'"

DCFS filed a juvenile dependency petition on November 19, 2014, pursuant to section 300, subdivisions (b) and (d). As subsequently amended, it alleged that father sexually abused

Abigail by rubbing his penis against her vagina and allowing her to view pornography on his computer.

On November 13, 2014, the juvenile court ordered Abigail detained from father and released to mother. On November 19, 2014, the juvenile court found a prima facie case for detaining Abigail pursuant to section 300, subdivisions (b) and (d). The court ordered a forensic interview of Abigail and granted father twice-weekly monitored visits.

II.

Jurisdiction and Disposition

A. Forensic Interview

Abigail was interviewed December 19, 2014, at the Northridge Hospital Medical Center/CATS (Center for Assault Treatment Services). A recording of the interview was provided to the juvenile court and is part of our appellate record.² At the beginning of the interview, the interviewer told Abigail that she heard that “someone may have done something to you that wasn’t right.” Abigail said, “It’s my daddy. My daddy got his pee pee on my pee pee. And it was gross. I don’t like that stuff.” When asked why it was gross, Abigail said, “Because there was [unintelligible] and it was pee pee. There was a little bit more pee pee but he didn’t know that . . . but I did because I felt it.” Abigail said her daddy put his pee pee on her pee pee one time, and “I told him to stop and he didn’t stop.” Before this happened, “I was laying down and I wasn’t touching his pee pee.” Abigail said she heard “wiggling because he was wiggling his pee pee on

² The court has reviewed the recorded interview of Abigail. A transcript of the recorded interview apparently was provided to the juvenile court and was designated as part of the appellate record, but has not been provided to us.

my pee pee, like this [motioning with her hand].” This happened “on the floor” at Grandma Debbie’s house while Abigail’s head was “next to the door.”

Abigail said her daddy’s hands were “[o]n his pee pee. And he feeled his pee pee and then he stopped wiggling it. And then I got up and then he said ‘stay there.’ And then he got me down and then he started again. He was wiggling again but not his hands, like this [thrusting crotch and moving head].” Abigail said her daddy’s pee pee is “[r]ight here [pointing to crotch], just like mine.” Abigail said her daddy “just keep his shirt on. But he took off his underwear and his pants. Then he started wiggling and touching it and then he stopped and then he started again.”

The interviewer asked where Abigail’s clothes were, and she said, “He took off my pants and my underwear but not my shirt. . . . I had on jammies but he took off my jammie Tinkerbelle and my underwear and then he rubbed it underneath and then he didn’t take off my Tinkerbelle shirt.” After taking off her clothes, “he rubbed [his pee pee] on me.” When asked where on her body her daddy put his pee pee, she pointed to her crotch. She said nothing came out of his pee pee, but “[h]e had to wipe it a lot.” She said he had to wipe it “[s]o his pee pee won’t be on mine.”

When asked what her daddy’s pee pee felt like, she said, “It feels like salt pepper, like it’s spicy.” Later in the interview, she said the pee pee was the color of “[s]kin, like him.” She said his pee pee “looked like a boy’s but my dad’s a man. . . . It’s long, really long, there’s one hole.” When asked how she felt about what she was describing, she said, “Uncomfortable. . . . It means I don’t like that . . . cuz that’s what people don’t do.” She said she

never saw anything like that anywhere else: “No, my dad just did it.” She said this happened “one time.”

B. Reports

DCFS filed a jurisdiction/disposition report on January 6, 2015. It described an interview with father, in which father said he sometimes masturbated in his bedroom while watching adult pornography. Father said that on one occasion, Abigail had walked into the bedroom while he was watching pornography and masturbating. He was kneeling and sitting on his heels and had his pants and shirt off. Father said he did not think Abigail saw him masturbating, and he immediately yelled at her to get out of his room. At the time, he thought Abigail was busy with his parents in another part of the house. He said he no longer masturbated when Abigail was visiting.

Father said he had tried to get Abigail to refer to her vagina as her “pee,” but said she continued to call both her genital and anal areas her “butt.” He believed Abigail’s use of the word “pee” was evidence of possible coaching, and that mother might be using the abuse allegation to obtain full custody of Abigail in order to be able to move out of the state with her boyfriend.

Mother reported that Abigail told the maternal grandmother that, “I told Ms. Kathy [Abigail’s child care provider] about how my daddy rubbed his pee pee on my pee pee.” According to mother, the maternal grandmother told Abigail that her body is her own and that no one should touch her body. Abigail told her grandmother that she was happy her mother was teaching her to wipe herself. Maternal grandmother asked if Ms. Kathy told Abigail it was wrong, and Abigail said yes. The CSW followed up with Ms. Kathy, who said Abigail had never

disclosed anything suggesting sexual abuse. Ms. Kathy described Abigail as “a storyteller and a one upper,” and said she trusted father with her own 15-year-old daughter.

C. Testimony

Mother testified that she and father were still legally married, but had separated when Abigail was two years old. On a Saturday in November 2014, as mother and Abigail were getting ready to take a shower, Abigail told her that “daddy touched his pee pee on her pee pee.” Mother turned off the shower, asked Abigail to tell her again, and then recorded Abigail’s statement; Abigail said the same thing again. After the shower, while they were getting dressed, mother said to Abigail, “Hey, babe, can you tell me again what you said before you got in?” Mother does not believe she brought the subject up with Abigail again. Mother said she did not ask Abigail specific questions, but “just asked her to repeat what she said. And then I asked her who it was. I never said, ‘Was it your dad?’ You know, I just asked her who it was. And then I believe I asked her how many times.”

That night, mother and her boyfriend, Mike, called Mike’s Air Force sergeant. The sergeant advised them to make a report to the sheriff’s department. Mother called the sheriff’s department that evening.

The following day, Sunday, mother asked father to meet her in the park, and she showed him the video of Abigail describing the abuse. Father “didn’t say he didn’t do it, but didn’t say he did either.” To mother’s surprise, father’s demeanor was very calm. Mother said she had expected father to get defensive, because “that’s how he’s [always] been.” Father said Abigail had seen pornography on his computer and he had taken showers

with her before. A few minutes later, as mother drove away from the park, father pulled his car up to hers and said that about a year earlier, Abigail had had a yeast infection, and he had helped her wipe herself and “maybe that’s where she got it from.”

When mother got home, she called the RAINN³ hotline, but was told that they were closed for the weekend and to call back on Monday. On Monday, mother took Abigail to daycare and then drove to the sheriff’s station, where she was told to contact DCFS through the child abuse hotline. Mother subsequently went to a police station to make a report, and then contacted DCFS. Later that night, DCFS detained Abigail from father and returned her to mother.

Mother said Abigail used to refer to her genitalia as “butt,” but mother had been trying to “get her to call it a ‘pee pee.’” At the time of Abigail’s disclosure, Abigail “would use that term on and off.” Mother had never before heard Abigail refer to a penis, but she assumed Abigail would call it a “pee pee.”

Mother said she never discussed the sexual abuse allegations in front of Abigail or within her hearing. Mother was aware that Abigail had discussed the disclosure once with the maternal grandmother; she did not believe Abigail ever discussed it with maternal grandfather or with mother’s boyfriend. Mother did not inform Abigail’s day care provider of the allegation. However, in February, the day care provider told mother that at the end of nap time, Abigail pretended to be asleep; when the day care provider asked why, Abigail said, “I’m pretending daddy . . . didn’t do it.”

³ RAINN is the Rape, Abuse, and Incest National Network. (<<https://www.rainn.org/about-rainn>> (as of January 30, 2017).)

Mother said she had never known father to be inappropriate with Abigail or to have harmed any other child. When mother spoke initially with the dependency investigator, she said she would be surprised if father had engaged in this kind of conduct, but she changed her mind after reading the report of Abigail's forensic interview. Mother said she had no plans to move out of state, and would not move with her boyfriend if he were transferred because "my daughter's family is here."

Mother said that prior to Abigail's disclosure, she and Abigail had showered together regularly; since then, Abigail took baths by herself. Mother had never known Abigail to have yeast infections, although she had had vaginal rashes. Mother believed she would have known if Abigail had a yeast infection. Mother said Abigail sometimes made up stories; for that reason, mother did not initially know whether to believe her disclosure was true.

Father testified that when mother told him about Abigail's allegations, he was "floored." He thinks mother coached Abigail, possibly to try to get full custody of Abigail so she could move away with her boyfriend. He described one occasion on which Abigail walked into his bedroom while he was watching pornography and masturbating. He thought Abigail may have seen something, but he did not believe she saw his private parts. He yelled at Abigail to get out of the room and told her that she should not enter a room with a closed door without knocking. Father believed Abigail may have seen pornography on his computer on a second occasion several years earlier. Father went to check on Abigail when he heard the door to his bedroom open, and he saw her looking at his computer, which had pornography on it. Abigail did not ask about what she saw, and father did not speak to her about it other than to tell her that she needed to be

respectful of other people's things. Other than the time Abigail walked in on father while he was masturbating, father does not believe she ever saw his penis.

Father testified that he never touched Abigail inappropriately or for the purpose of sexual gratification. He said that when mother first told him in the park of Abigail's allegation, he was dumbfounded. Mother asked if it was true, and father said "obviously no." When father picked Abigail up from daycare the following day, she was excited to come to his house for a week. That night, a CSW and two sheriffs came to his house at about 1:00 a.m. The DCFS worker and a sheriff spoke to Abigail privately. Father told the sheriff about Abigail seeing pornography on his computer and walking in on him masturbating, both of which had occurred about a year and a half to two years earlier. Since then, father had put a lock on his bedroom door and did not masturbate while Abigail was staying with him.

Father said Abigail had yeast infections while she was in diapers and trainers, which she wore until shortly before her fourth birthday. Mother took Abigail to the doctor in regard to the yeast infections. For a period of time, Abigail had one or two yeast infections per month.

At the time of the disclosure, Abigail usually called both her vagina and her posterior her "butt;" she occasionally called her vagina her "hoo hoo." Father did not recall Abigail ever referring to her vagina as her "pee pee." When she had to urinate, she said she had to "pee." She often needed help wiping herself after using the bathroom. She also needed help washing herself in the bath. Father occasionally bathed with Abigail, but he wore board shorts when he did so.

Father said he had never watched child pornography and had no desire to do so. He was currently in a relationship with a 25-year-old woman. He had never been in a relationship with an underage person, and he had never acted inappropriately with a child.

Dr. Bradley McAuliff testified as an expert witness for father. Dr. McAuliff is a psychology professor at California State University, Northridge, and has expertise in the areas of children's memory, suggestibility, and forensic interviewing. He has testified in both dependency and criminal sexual abuse cases, always on behalf of the alleged abusers. He testified that preschool-aged children are more susceptible to suggestive or leading questions than are older children and adults, and are susceptible to suggestive questions from authority figures, such as teachers or judges.

Dr. McAuliff said question repetition is problematic because it increases the child's potential exposure to misleading or incorrect information. Further, young children are likely to think that a question is being repeated because they have not given the correct answer, and therefore may change their answers in response. In this case, Abigail's statements were fairly consistent. However, Abigail gave different descriptions to the CSW and the forensic interviewer of the manner in which father touched her, and she gave inconsistent answers about the frequency with which the abuse allegedly occurred.

Dr. McAuliff said that children's memories can become contaminated when they overhear conversations with adults. Further, the weaker or more faded the memory is, the more susceptible it is to suggestion. Therefore, the more time has passed, the more opportunity there is for a child to encode

information derived from questions or from overheard conversations and to later misretrieve these things as experienced events.

Dr. McAuliff said he had several concerns about the veracity of Abigail's testimony in this case. First, Abigail said the abuse occurred when she was three years old, when she was in the most suggestible age range. Her mother described her as imaginative, and her caregiver called her a storyteller. Second, Abigail was describing events she said happened at least a year before, and so her memory might have faded. Third, adults asking questions can contaminate a child's memory, and in this case, Abigail was questioned three times by her mother on the day of the disclosure, then by a social worker, then by a police officer, and then by the CATS interviewer.

Dr. McAuliff said the CATS interview generally was done very well, but he had concerns about some of the initial questions, which suggested that mother thought something had happened. He also had concerns about Abigail's memory of the alleged abuse being contaminated by other memories, such as of her father helping Abigail clean herself when she had a yeast infection, and by exposure to pornography. Finally, Dr. McAuliffe had concerns that Abigail was inconsistent in her description of the "central event" ("what actually occurred in terms of pee-pee on pee-pee or hand on pee-pee") and the number of incidents.

In summary, Dr. McAuliffe testified as follows: "The bottom line is I'm concerned about the . . . potential for cross-contamination because the most disturbing part of . . . Abigail's statements was the level of detail that she provided. I think what's important to understand is that there's an alternative source of that information in terms of the bathing, the exposure

to pornography, and seeing [father] masturbate. That doesn't involve sexual abuse. It might involve bad decisions, bad parenting decisions, but not sexual abuse."

Paternal grandmother Deborah F. testified that father and Abigail had a very loving relationship, and that Abigail loved being with father. Grandmother had never seen Abigail act frightened of father or appear to withdraw from him, and she never saw father touch or look at Abigail in what she perceived to be a sexual way. Prior to the sexual abuse allegations, mother and father were cordial with one another. Since the allegations, they no longer spoke to one another. Grandmother had "no idea" whether mother would be capable of "putting this into [Abigail's] head." Abigail had never discussed the abuse allegations with grandmother.

D. Order Sustaining Petition

On July 10, 2015, the court sustained the allegations of the petition. The court explained its findings as follows:

"I've heard all the testimony and reviewed the video and heard the argument. This is not an easy case. It is not beyond a reasonable doubt. So I—the court goes back to the initial disclosure. This child, it is a game. Mommy, let's play. She didn't know [it] was wrong. I have nothing to indicate [that]. Certainly, this court can address the credibility of the mother and of the father. . . . I'm looking for exactly what the child [said] to the mother. This is not a family law case. This is not a case where sex abuse is being used as a way to take the child away from a father or a mother. This is a child's words. Not the mother's words, not the grandmother's words. Not the interviewer's words. [¶] I don't know what the mother or any parent is supposed to do when they're getting a child ready for a

bath and the child says are we going to play [nakie nakie] like daddy does. She thought about it. Mother thought about it. Recorded it later. I'm not going to get into it whether that was legal or not. [¶] The child didn't know what she was doing with dad was wrong. It wasn't until all of us around her told her it was.

"I don't want to believe this father did it. I don't. But I do. By a preponderance of the evidence. I don't find that the testimony about the pornography—how could a child be imprinted with walking in and seeing pornography once and seeing [her] father masturbate? That's not what she was emulating on the video. She was emulating contact between father and her. . . . The description of how she sat down. I don't know if it happened when she was three. But I do know it happened. And I don't want to believe this father did it. But I do.

"The court at this time finds (b)(1) and (d)(1) sustained as true based on the old adage of the picture is worth a thousand words. This video is very compelling."

On September 3, 2015, the court entered a disposition case plan that, among other things, required father to attend parenting classes and individual counseling to address case issues. Father timely appealed.

DISCUSSION

Father contends: (1) the evidence was insufficient to sustain a finding that he sexually abused Abigail because her uncorroborated statements were not demonstrably reliable, and (2) the dispositional order was erroneous because Abigail was not in substantial danger of sexual abuse. We consider these issues below.

I. Jurisdiction

Father contends the evidence was insufficient to support the juvenile court's jurisdictional findings because the only evidence of sexual abuse—Abigail's out-of-court statements—were uncorroborated and unreliable. For the reasons that follow, father's claim is without merit.

A. Legal Standards

Section 355 provides that for purposes of a jurisdictional hearing, “[a]ny legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence.” (§ 355, subd. (a).) Specifically, “a social study . . . and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d).” (§ 355, subd. (b).)

Section 355, subdivision (c)(1) provides an exception to the general rule that hearsay in a social study is admissible and competent to support a finding of jurisdiction. As relevant here, it states:

“If a party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner [DCFS] establishes one or more of the following exceptions: [¶]

“(B) The hearsay declarant is a minor under 12 years of age who is the subject of the jurisdictional hearing. However, the

hearsay statement of a minor under 12 years of age shall not be admissible if the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. . . .

“(D) The hearsay declarant is available for cross-examination. For purposes of this section, the court may deem a witness available for cross-examination if it determines that the witness is on telephone standby and can be present in court within a reasonable time of a request to examine the witness.” (§ 355, subd. (c)(1); see also *In re Lucero L.* (2000) 22 Cal.4th 1227, 1240-1242 (*Lucero*).)

In *Lucero* our Supreme Court considered whether admitting a child’s hearsay statements pursuant to section 355 satisfies parents’ due process rights under the United States and California Constitutions. In that case, three-year-old Lucero told a social worker that her father touched her “cola” (vaginal area) and “made owies”; when asked how her father touched her, the child put her index finger between the legs of a stick figure the social worker had drawn and moved her finger upward. (*Lucero, supra*, 22 Cal.4th at p. 1232.) The child was difficult to understand, however, because of her young age and limited verbal skills, and it was difficult to establish if she knew the difference between telling the truth and telling a lie. (*Id.* at pp. 1233-1234.) As a result, all counsel stipulated that Lucero was legally incompetent to testify. (*Id.* at p. 1234.) The juvenile court subsequently held that the child’s hearsay statements quoted in the social study were admissible under section 355, and it sustained the jurisdictional allegations pursuant to section 360, subdivision (d). (*Lucero, supra*, at pp. 1235-1236.) The Court of Appeal affirmed, and the Supreme Court granted review.

The Supreme Court held that a child's hearsay statements contained in a social study are admissible under section 355 even if the child is incompetent to testify. (*Lucero, supra*, 22 Cal.4th at pp. 1242-1243.) The court noted, however, that although such statements are admissible, there may be due process problems in relying too heavily on such statements without the opportunity for cross-examination. (*Id.* at p. 1244.) The court therefore fashioned the following rule: "[S]ection 355 notwithstanding, the out-of-court statements of a child who is subject to a jurisdictional hearing *and who is disqualified as a witness because of the lack of capacity to distinguish between truth and falsehood at the time of testifying* may not be relied on exclusively unless the court finds that 'the time, content and circumstances of the statement provide sufficient indicia of reliability.'" (*Id.* at pp. 1247-1248, italics added.)

In the case before it, the Supreme Court concluded that substantial evidence supported the juvenile court's finding that Lucero's hearsay statements possessed sufficient indicia of reliability to support the jurisdictional findings. It explained: "Although her statements were not identical in every detail, Lucero consistently informed questioners that she had been molested by [her father]: first in the initial interview with [the social worker], shortly thereafter to her foster mother, and a few months later in an interview with a police officer. The social study also reports [Lucero's older sister] as stating that Lucero had told her that [Lucero's father] had showered with her and engaged in what appeared to be inappropriate, sexualized behavior. She also stated that Lucero complained of 'owies' when she went to the bathroom. Moreover, shortly before the hearing, Lucero's foster mother, after observing her rubbing her genital

area, asked her, ‘Who showed you that?’ Lucero replied, ‘Daddy did it.’ Lucero’s language, while not precocious, was age appropriate and her statements had the mark of being made in her own words, without evidence of prompting. She herself appeared to bear no ill will towards [her father] and had little motivation to make such repeated statements. Given this consistency over a considerable period of time reported by multiple sources, we cannot conclude the trial court abused its discretion in finding the statements reliable. Given this reliability, we conclude Lucero’s statements constituted substantial evidence on which to find her a dependent child of the juvenile court under section 300, subdivision (d).” (*Lucero, supra*, 22 Cal.4th at p. 1250.)

B. Substantial Evidence Supported the Juvenile Court’s Findings That Father Sexually Abused Abigail

Father urges that the evidence before the juvenile court was insufficient to sustain a finding that he sexually abused Abigail because her uncorroborated hearsay statements were not sufficiently reliable. Father’s claim is without merit.

Because Abigail is “a minor under 12 years of age who is the subject of the jurisdictional hearing,” pursuant to section 355, subdivision (c)(1), her out-of-court statements were admissible and sufficient to support a jurisdictional finding unless father established that such statements were “the product of fraud, deceit, or undue influence.” Father does not argue on appeal that there was any evidence of fraud, deceit, or undue influence, and our review of the appellate record has revealed none.

Father contends, however, that under *Lucero*, because Abigail was not called as a witness at the jurisdictional hearing, the juvenile court could rely on her out-of-court statements “only

if . . . the child’s truthfulness was ‘so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility.’” We do not agree.⁴ As the Attorney General correctly notes, the test articulated in *Lucero* applies only “in the case of a *truth incompetent* minor”—i.e., a child who “is deemed to be incompetent as a witness because of an inability at the time of testimony to understand the obligation to tell the truth and/or to distinguish between truth and falsehood.” (*Lucero, supra*, 22 Cal.4th at pp. 1231, 1249, italics added.) In the present case, the court never made a finding that Abigail was unable to distinguish truth from falsehood or was otherwise unavailable for cross-examination. Indeed, as the Attorney General notes, father included Abigail on his witness list and the court indicated that she could testify; only subsequently did father decide not to call Abigail as a witness. Accordingly, *Lucero*’s holding does not apply to the present case.

Of course, even if *Lucero* does not govern, we nonetheless must consider whether there was substantial evidence to support the juvenile court’s jurisdictional findings, and specifically its conclusion that Abigail’s testimony was reliable. Our Supreme Court has said that factors relevant to evaluating the inherent reliability of a young child’s disclosure of sexual abuse include “(1) spontaneity and consistent repetition; (2) the mental state of

⁴ Moreover, as the Attorney General correctly notes, because father did not object to Abigail’s hearsay statements in the trial court, the objection is forfeited on appeal. (§ 355, subd. (c)(1); see also *In re S.B.* (2004) 32 Cal.4th 1287, 1293 [dependency matters are not exempt from the rule that “a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court.”].)

the declarant; (3) use of terminology unexpected of a child of a similar age; and (4) lack of motive to fabricate.” (*Lucero, supra*, 22 Cal.4th at p. 1239.) In the present case, Abigail’s first disclosure to mother was spontaneous—“Let’s get naked like married people putting pee to pee how daddy does to me”—in response to mother’s request that Abigail get ready to take a shower. Thereafter, Abigail’s descriptions of the sexual abuse to law enforcement, the CSW, and the forensic interviewer were consistent: She said that while in father’s bedroom, father removed his pants and underwear and her own pajama bottoms and underwear, and then “rubbed” (or “put”) his “pee pee on her pee.” Abigail’s language in describing the abuse was age-appropriate, and she included details that a young child would typically not know about—that father “started wiggling and touching it [his ‘pee pee’]” and “had to wipe it a lot” so “his pee pee won’t be on mine.” Finally, Abigail had no motive to fabricate sexual abuse; by all accounts, she loved her father and enjoyed spending time with him. Accordingly, the trial court’s conclusion that Abigail’s statements were reliable is supported by substantial evidence.

Father contends that Abigail’s statements were unreliable for a number of reasons, including that the abuse occurred when Abigail was only three or four, prior to the formation of her “cognitive memory.” But father’s contention proves too much: If father were correct, a young child’s reporting of sexual abuse could *never* support juvenile court jurisdiction because a young child will necessarily have all of the cognitive limitations Dr. McAuliff identified in Abigail. This is not the law.

Father also suggests that suggestive questioning by persons “unskilled in child interview techniques” may have “compromised” Abigail’s narrative during the forensic interview. Abigail was questioned by three people prior to the forensic interview: a deputy sheriff, the CSW, and mother. There is no evidence that either the deputy sheriff or the CSW were unskilled in child interview techniques; and while mother indisputably was untrained, there is no evidence her questions were suggestive in any way. To the contrary, mother testified that after Abigail’s initial disclosure, she did not ask Abigail specific questions, but “just asked her to repeat what she said. And then I asked her who it was. I never said, ‘Was it your dad?’ You know, I just asked her who it was. And then I believe I asked her how many times.”

Father suggests finally that Abigail’s memory may have been contaminated by other experiences, such as seeing pornography on his computer, walking in on father while he was masturbating, and receiving father’s help cleaning her genital area. The juvenile court heard testimony on this issue and rejected it. It is not our function to reweigh the evidence or make inferences or deductions from the evidence; those are questions for the juvenile court. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.)

II. Substantial Evidence Supported the Dispositional Order

Father contends substantial evidence did not support the juvenile court's order removing Abigail from his custody. His contention is without merit.

Section 361, subdivision (c), provides that a child shall not be removed from her parent's physical custody unless the court finds by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor" from the parent's physical custody. We review the juvenile court's dispositional order for substantial evidence. (E.g., *In re D.C.* (2015) 243 Cal.App.4th 41, 55; *In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.)

The evidence in the present case supports the juvenile court's removal order. As we have discussed, there was evidence that father had sexually abused Abigail on at least one occasion. At the time of the disposition hearing, father had not participated in any services to prevent future abuse. Thus, in light of Abigail's young age and the fact that sexual abuse of children typically occurs in private, the juvenile court did not err in concluding that Abigail could not be adequately protected without removing her from father's custody.

DISPOSITION

The jurisdictional findings and disposition order are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

ALDRICH, J.

GOSWAMI, J.*

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