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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.B., a Person Coming
Under the Juvenile Court Law.

B278216

(Los Angeles County
Super. Ct. No. DK17359)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Julie Fox Blackshaw, Judge. Affirmed.

Robert Francis McLaughlin, under appointment by the
Court of Appeal, for Defendant and Appellant.

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

INTRODUCTION

Jerald B. (father) appeals from jurisdictional findings and dispositional orders made pursuant to Welfare and Institutions Code¹ section 300 removing his then-three-year-old son, D., from his custody. D. displayed highly sexualized behavior and, at times, attributed some of it to father. Father contends there was insufficient evidence his conduct posed a risk of physical harm to D. or caused D.'s behavior; he also argues that D.'s removal from his custody was unnecessary. We disagree and affirm.

FACTS AND PROCEDURAL BACKGROUND

A. *Initial Detention and Section 300 Petition*

Father and L.W. (mother) have two children: daughter J. (born 2008) and son D. (born 2012).² Father and mother are separated and share physical custody of the children under an informal agreement.

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) based on an April 21, 2016 report from D.'s preschool. The reporting teacher stated that D. was holding two sticks and said, "These are sticks . . . look . . . put it in my booty." The teacher asked D., "What? Who does that?" D responded, "[m]y daddy." At the time, D. was bending down and pointing to his buttocks. The teacher added

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

² Neither J. nor mother are parties to this appeal.

that within the last month, D. “wanted to touch girls inappropriately and take their underwear off.” Approximately one month earlier, D. took a female student “off to the side and took off her pants and wanted to touch her private part.” The teacher stated that D. “seems to ‘manipulate’ the smaller girls by telling them, ‘Look a spider’ and takes them to a hidden spot in the playground and tries to put his hands on the children’s private parts.” If an adult intervenes, D. “tells them to go away.” D. had to be monitored “constantly” at school and would attempt similar conduct “about 2-3 times a day.” In addition, on April 21, 2016, D. arrived at school with “hicky [*sic*] looking marks on his neck.” The teacher stated that mother had previously been informed about D.’s behavior and attempts to touch other students, that mother “seemed surprised and stated that she would talk to the child but that he did not do that behavior at home.”

When a DCFS social worker (CSW) arrived at the family home on April 23, 2016 to investigate the report, father answered the door and said the children were out with mother. He “appeared shocked” when informed of the allegations and said he had never been informed of D.’s sexual behavior at school. He stated he was only told that D. was “hyperactive and liked to run around.” When asked about the hickey marks, father admitted giving D. “the one on the cheek one time but not on the neck. I am very affectionate with him and give him kisses and bites. He also bruises easily but I did not give him the hickies on the neck.”

Father was interviewed at home again by a CSW on April 25, 2016. He stated he had custody of the children about 30 percent of the time and he and mother “work together as a team

to co-parent the children.” Father denied ever sticking anything in D.’s anus and commented “my heart hurts that my child will say that.” He admitted giving D. a hickey accidentally. The CSW reported that father became defensive upon further questioning, stating “I didn’t know it was wrong to be affectionate with your children but I will be sure not to leave him [*sic*] any marks.”

Mother arrived with the children at father’s home. The CSW interviewed mother, who stated she was concerned with D.’s statements and had noticed he had been scratching his buttocks frequently. She stated she took D. to the doctor earlier that day and “they did not find anything alarming,” and prescribed a cream. Mother stated she had observed D. “smack his sister on the butt.” She also told the CSW that she had previously told father not to leave hickeys on the children “as people are going to take it the wrong way.” She described father as very affectionate and that he “kisses and bites on their cheeks as that is how he shows his love.” Mother adamantly denied abuse by father, stating he “would never abuse my children! He is the perfect father.” Mother disclosed that she was sexually abused as a child and stated that experience made her “hyper-vigilant about sexual abuse.”

Mother gave permission for the CSW to interview the children privately, but father refused. The CSW spoke to J. with father present. She reported that D. “touches her butt at night.” She stated it happened multiple times on different days and that she told mother she did not want to sleep next to D. She stated that she, D., and mother all slept in the same bed. She denied any other sexual abuse. According to the CSW, during the interview J. “was observed to appear fearful of disclosing information and kept looking at her father.”

The CSW also spoke to D. with father and mother present. D. appeared physically healthy and “hyperactive.” D. stated he got the mark on his cheek when he hit himself on the ground. When asked about his comments about sticks, D. stated “stick on your booty.” He identified his booty by pointing to his buttocks. At various times, D. stated the sticks were green or purple. The CSW asked him “who is the one that stick on your booty?” D. mentioned the names Colin and Margarita.³ D. then became restless and the CSW ended the interview. As the CSW was leaving, D. wanted to hug him; when the CSW instructed D. to give him a high-five instead, D. “attempted to force himself on the worker to receive a hug. After being re-directed, the child stated now you have to kiss me.”

DCFS instructed mother and father to take D. to a DCFS clinic for a forensic interview and examination. Mother and father then called the CSW later that day, asking why the further examination was necessary if D. had already seen his own doctor. Father stated, “I can guarantee you that nothing has happened to my child.” Ultimately, the parents agreed to take D. to the examination.

The forensic interview and examination was conducted on April 27, 2016. Mother reiterated her belief that father “was incapable of doing something like that.” She stated that the hickey on D.’s cheek was red because father “would suck on [D.’s] cheek to show affection.” She “repeatedly denied any abnormalities in the relationship” between father and D., and

³ Mother identified Margarita as her friend and Colin as Margarita’s son, but stated she had never observed any odd or suspicious behavior by them.

stated that father was good to D. During his interview, D. was restless and would not answer any questions.

The nurse who conducted D.'s forensic examination reported no tears in his anus. However, she heard D. state, "I like to make my booty flap," as he was putting on his gown. Mother told the nurse she had observed D. having "behaviors of interest in genital area and anus since she could remember." The nurse reported that while on the exam table, D. "was sticking his fingers in his anus and that his anus appears to be dilated right away." In addition, D. repeatedly put the same fingers in his mouth, stating, "yummy," and "mmm, I like this." The nurse expressed concern with D.'s conduct, stating, "that behavior is learned." The nurse asked D. several times if anyone had touched him. D. mentioned Jesus O., who he said was a friend at school.

On May 2, 2016, a CSW attempted to conduct a follow-up interview with J. at school. J. appeared nervous, and initially agreed to be interviewed, but then asked to call her parents. Mother answered the phone and refused to allow a further interview without mother or father present.

In a later phone call with a CSW, mother "minimized" D.'s behavior as "normal," stating, "he's a boy, they do nasty stuff." She stated she believed it was "normal" for D. to insert his finger into his anus and that he was "a hyper kid."

DCFS met with D. again on May 6, 2016, describing the child as "hyperactive and at times aggressive." When asked about his booty, D. stated, "my booty my booty, I playing, I going to the bathroom and not good not good my peepee." The CSW asked about "why it's no good," and D. responded, "It hurted the

sticks in my butt.” The CSW asked D. to talk about it further, but D. became distracted and wanted to play.

On May 11, 2016, DCFS filed a petition under section 300, subdivisions (b)(1), (d), and (j).⁴ The petition named both J. and D. The petition alleged jurisdiction over D. under section 300, subdivision (b)(1). In count b-1, the petition alleged that on prior occasions, father “inappropriately instructed [D.] to place sticks into [his] anus and buttocks. On numerous other occasions, the father inappropriately touched the child by sucking on the child’s cheeks and neck, causing the child to sustain red marks. Such inappropriate instruction and touching by the father resulted in overly-sexualized behavior” by D., including D. “repeatedly inserting” his finger into his anus, fondling J.’s buttocks, and engaging in “sexualized behavior with other children at daycare.” DCFS alleged that father’s “inappropriate instruction and touching” placed D. at risk of “serious physical and emotional harm, damage and danger.” In count b-3, the petition alleged that mother and father were unable to protect D. from exposure to “sexual activity,” resulting in his sexualized behavior and placing him at risk of serious physical and emotional harm.⁵

⁴ These subsections provide for dependency jurisdiction over a child based on, in relevant part, a risk of “serious physical harm or illness” suffered by the child as a result of a parent’s “failure or inability . . . to adequately supervise or protect the child” (subdivision (b)(1)); sexual abuse of the child or a substantial risk of such abuse (subdivision (d)); or abuse or neglect of the child’s sibling (subdivision (j)).

⁵ Ultimately, the court dismissed J. entirely and, as to D., dismissed the allegations under section 300, subdivisions (d) and (j).

The children were detained and placed in separate foster homes. In the detention report, DCFS detailed the interviews conducted in April and May, concluding that D. “is currently displaying highly sexualized behaviors.” DCFS concluded these behaviors “appear to not be normative or age-appropriate,” and were “a result of, and hint to sexual abuse.” CFS also reported J.’s foster mother heard J. say that “my dad he touches me in my arms,” and observed J. demonstrate “with her hands that her father caresses her arms, legs and thighs, almost touching the child’s vagina.” The foster mother asked J. how she felt about her father touching her and J. responded, “I don’t know.” When asked if she ever asked father to stop, J. stated, “I can’t do that because he gets really mad.” The foster mother asked if father had ever touched J.’s private parts and J. “said no and just shut down.” D.’s daycare teacher also reported that D.’s sexualized behaviors were heightened following the weekend and decreased throughout the week.

At the detention hearing, the court found a prima facie case for detaining the children pursuant to section 300. The court ordered continued detention of both children in foster care, with monitored visitation for both parents.

B. Adjudication

DCFS filed the jurisdiction/disposition report on July 14, 2016. As detailed therein, DCFS interviewed J. privately at her foster placement on May 26, 2016. J. stated that she enjoyed spending time with her dad and that he would bite and kiss her and D. on the cheek. J. stated this “leaves a red mark, but then it goes away.” She reported that D. “sometimes” touched her on her butt. J. denied that anyone else touched her private parts and denied seeing anyone do anything bad to D.

DCFS interviewed D. at his foster home on June 1, 2016. He stated that no one had touched him on his private parts. Mother was also interviewed, and denied any knowledge of sexual abuse between father and D. She stated that father left a red mark by kissing D. on one occasion, and the mark lasted for about a day. She stated J. had told her on one occasion that D. touched her butt, and mother had disciplined D. by taking away his gaming system and having him “stand in the corner.” Mother stated she had never witnessed D. fondling himself and denied that the school had informed her of D.’s statement regarding sticks in his butt.

Father adamantly denied touching his children inappropriately. He said “on only one occasion he sucked on D[.]’s cheek and that was to give him a kiss.” He denied observing D. engage in any sexual behaviors. Father stated he “just wants to get [to] the bottom of this,” and is willing to fully cooperate with the investigation.

D.’s foster mother reported that her five-year-old daughter said D. tried to touch her on the butt. She also observed D. trying to put the antenna of a play phone in his anus by sitting on it. She asked him what he was doing and he said he was playing. She asked D. who taught him that and he stated, “my sister.” Her son also reported that D. told him to “pull his pants down.” The foster mother also noted D. tried to watch her younger daughter use the bathroom, and that she had to keep a constant eye on him to ensure he was not doing anything inappropriate. D.’s foster mother subsequently requested his removal from her home due to his behavior.

D.’s teacher stated that D. made two references to “sticks” at school. The first time, she thought D. was referring to his

bowel movement. The second time, D. was looking at a book and saw a stick. The teacher asked if he wanted to glue the stick to something, but he said “it goes here and pointed to his butt. Staff asked him if the doctor put it here, thinking he may have been to the doctor recently and they may have used a thermometer on him, but D[.] said my daddy.” The teacher also confirmed that there was a child named Jesus O. at the school, but he was “not close” with D.

DCFS also reported interviews with other witnesses. One of father’s neighbors, who frequently babysat the children, claimed she had no concerns with either child. She stated that father was “a very good dad.” Several paternal relatives also reported they had no concerns with either parent or the children.

Father and mother both enrolled in a weekly Sexual Awareness Program on September 20, 2016. In a last minute information, DCFS reported that father had completed 10 weeks of parenting classes and was waiting to hear back to start individual counseling.

D. was placed with his maternal great-aunt on August 18, 2016. A month later, several of D.’s mental health providers reported noticing an improvement in D.’s behavior since his placement with his aunt. D.’s therapist stated D. was doing very well living with his aunt and he had seen a “dramatic improvement” in D. He had not observed any new incidents from D. and the aunt had not reported any. DCFS also noted that father and J. were regularly visiting D. with no issues.

DCFS also submitted a transcript of the forensic interview with D. D. would not remain seated despite repeated requests by the interviewer and gave mostly incoherent answers.

At the adjudication hearing on September 21, 2016, mother pled no contest to count b-3. As to father, he argued that there was no evidence that D.'s behaviors were "due to parental misconduct." Father's counsel noted the statements from family members and acquaintances who indicated no concerns with father's parenting. His counsel also argued that D.'s inconsistent and incoherent statements undercut his credibility. Counsel for DCFS and for D. urged the court to find jurisdiction over D. The court noted, "Clearly something is going on that is troubling with D[.] He is exhibiting overly sexualized behaviors that are troubling, making statements that are troubling." The court acknowledged D.'s young age and that "he makes some kind of random statements, not completely reliable." However, the court found some of D.'s statements reliable and corroborated by his behavior.

The court concluded that "I don't believe there was sexual abuse perpetrated in this case." Additionally, the court found that J. was not at risk. The court observed J. did not exhibit trauma or any behaviors signaling abuse, but noted that J. had stated she did not like father touching her arms and legs. The court told father to "stop doing that. She doesn't like it. But I do not think that that behavior alone is sufficient to sustain" a finding of sexual abuse under section 300, subdivision (d). Accordingly, the court dismissed the counts under section 300, subdivisions (d) and (j) and dismissed J. from the petition entirely.

As to D., the court sustained the amended allegations of the petition under section 300, subdivision (b), counts b-1 and b-3. The court found that "there is enough" that father "has done and said to his son that puts the child at risk of physical and

emotional harm.” The court believed father was “the one that told [D.] to stick the stick. I’m not finding that you placed a stick in his anus, but he learned it somewhere. His first statement was that he learned it from you. I am going to find – given the corroboration of all of his sexualized behavior, I am going to find that statement to be true.” In addition, the court noted the evidence father “sucked [D.’s] cheeks and neck way beyond the point of appropriate affection by a father, and I think that together caused this child to exhibit these sexualized behaviors which are quite significant for a child of his age.”

Turning to disposition, counsel for both parents noted their cooperation with the investigation and their positive visitation with D, and urged the court to release D. to them. D.’s counsel acknowledged mother’s progress, but noted D.’s behavior had finally stabilized once he was placed with his maternal great aunt. The court found by clear and convincing evidence that there was no reasonable means to protect D. from harm without removal from his parents. The court concluded, “I am not going to permit [D.] to go home right now. He is stable. That’s a good thing. He is stable because he is out of his home. I’m really hopeful that we have nipped whatever this behavior was before it becomes a long-term problem for him. I am not yet ready to return him home.” The court told father that “I’m really happy that you have done some programs and addressed the issue but... in this courtroom, you are not at all taking responsibility for your role in why your family was brought to this court. . . . Until you are willing to admit it and address it and change your behavior, I will not be able to find that D[.] is safe in your care. I have no assurance that you’re not going to start all over again because I don’t think you think you did anything wrong. . . . I do need to

have you take more responsibility in order to make sure that you stop the inappropriate touching. You stop the sexualized conversations with D[.]” The court ordered monitored visits for father and unmonitored visits for mother, with discretion to DCFS to liberalize.

Father filed a timely notice of appeal.

DISCUSSION

A. *Justiciability*

Father acknowledges that we are not required to reach the merits of his jurisdictional challenge, as the dependency court will maintain jurisdiction over D. based on the unchallenged findings regarding mother. “[A] jurisdictional finding good against one parent is good against both” because dependency jurisdiction attaches to the child, not the parents. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) However, he urges us to exercise our discretion to review the sustained allegations in counts b-1 and b-3.

We generally will reach the merits of a challenge to a jurisdictional finding where the finding “(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [Citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*); see also *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1064-1065.) Here, the jurisdictional findings related to father’s conduct served as the basis for the dispositional order removing D. from his custody, which he also challenges on appeal. Moreover, the “court’s jurisdictional

findings as to Father, if erroneous, could have severe and unfair consequences to Father in future family law or dependency proceedings. [Citation.]” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.) We accordingly exercise our discretion in favor of considering father’s claims on the merits.⁶

B. *Jurisdiction*

Father contends substantial evidence did not support the dependency court’s conclusion that D. was at risk of physical harm from father’s conduct. We disagree.

“In reviewing the jurisdictional findings and disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.’ [Citations.]” (*In re R.T.* (2017) 3 Cal.5th 622, 633.) If a dependency petition enumerates multiple statutory bases on which a child is alleged to fall within the court’s jurisdiction, we may affirm a finding that jurisdiction exists if any one of those statutory bases is supported by substantial evidence; in such a case, we need not

⁶ While this appeal was pending, on March 22, 2017, the dependency court held a six-month status review hearing and returned D. to his parents’ custody under DCFS supervision, noting the agreement of all parties and counsel to that arrangement. We granted DCFS’s request to take judicial notice of the minute order of that hearing. DCFS also moved to dismiss father’s appeal as to the dispositional order, arguing that challenge was mooted by D.’s return to his custody. We denied DCFS’s motion.

consider whether other alleged jurisdictional grounds also enjoy substantial evidentiary support. (*Drake M.*, *supra*, 211 Cal.App.4th at pp.762-763; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127.)

Section 300, subdivision (b) permits the assertion of jurisdiction where “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.” Where the child has not suffered actual harm, the evidence must establish ““that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm. . . .” [Citation.]” (*In re A.G.* (2013) 220 Cal.App.4th 675, 683.)

“Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, overruled on a different ground in *In re R.T.*, *supra*, 3 Cal.5th 622), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child currently needs the court’s protection. (*Ibid.*) A parent’s “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.’ (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216 [(*Christopher R.*)]”) (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383–1384.)

Here, substantial evidence supports the allegations in count b-1 that father’s inappropriate conduct with D. created a

substantial risk of serious physical harm to the child. Both father and mother acknowledged that father had given D. a hickey by biting and sucking on his cheek on at least one occasion and that father was “very affectionate” and would kiss D. on the face and neck, sometimes leaving a red mark lasting up to a day. In addition, while the court did not make a finding of sexual abuse, it did find that father instructed D. to “stick the sticks” in his anus. Father contends this finding was supported only by “speculation” rather than evidence. To the contrary, the dependency court outlined in detail much of the supporting evidence upon which its finding was based. This included D.’s original, spontaneous statement claiming that father was the person who told him to put sticks in his “booty,” which the court found to be more credible than D.’s subsequent statements naming other individuals. The court also noted its finding was corroborated by D.’s highly sexualized behavior, together with the statement by the nurse who conducted D.’s forensic examination that such behavior in a young child was likely learned.

Father attempts to discredit this evidence by pointing to his own statements that he never told D. to put anything inside his anus and that father was unaware of D.’s behavior until DCFS intervened. He also suggests D.’s statement was unreliable and notes that several other witnesses (his neighbor and paternal family members) all denied any inappropriate conduct and stated he was a good father. But issues of fact and credibility are the province of the dependency court, and we neither reweigh the evidence nor exercise our independent judgment. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) It was entirely reasonable under the circumstances for the trial court to accept the initial statement made by D. as credible and disbelieve his

later statements. (See *In re Daniel G.* (2004) 120 Cal.App.4th 824, 830 [“As part of its task, the trier of fact may believe and accept as true only part of a witness’s testimony and disregard the rest.”].)

Father further argues that while D.’s “sexualized behavior may have posed a threat to the health and safety of *other people* . . . there was no substantial evidence to establish the child’s misconduct exposed *him* to a concrete risk of serious physical harm or illness.” At most, he contends, “the only potential harm the child may have experienced was emotional in nature,” and attempts to equate this case with *In re Jesus M.* (2015) 235 Cal.App.4th 104 (*Jesus M.*). We are not persuaded. In *Jesus M.*, DCFS alleged jurisdiction under section 300, subdivision (b) based on past acts of domestic violence by the father against the mother. The trial court “expressly found that ‘this is not a case of domestic violence . . . [t]his is a case where there has been domestic violence in the past,’ resulting in the issuance of a permanent restraining order. The court found that as a result of Father’s violations of the restraining order, ‘these children . . . have been injured emotionally, not physically, but emotionally.’” (*Id.* at 110.) The trial court nevertheless sustained the allegations. (*Ibid.*) We reversed, reiterating that a finding of emotional harm was insufficient to assert jurisdiction under section 300, subdivision (b); rather, ““there must be evidence indicating that the child is exposed to a *substantial* risk of *serious physical* harm or illness.” [Citations.]” (*Id.* at pp. 111-112.) Thus, in *Jesus M.*, there was no evidence of *any* risk of physical harm to the child to support jurisdiction under section 300, subdivision (b).

Here, by contrast, the court found that father had instructed D. to insert “sticks” in his anus and further, that father’s inappropriate conduct resulted in D.’s sexualized behavior, including D.’s attempts to insert other items such as toys into his anus. Further, D. made at least one reference to the “sticks in my butt” hurting. As such, it was not unreasonable for the court to conclude that father’s encouragement to a three-year-old child to insert pointed objects into his anus created a substantial risk that the child would suffer serious physical harm.

In addition, father contends any risk of physical harm had resolved by the time of the jurisdictional hearing and thus that the court erred in finding a current risk of harm to D. He notes that D.’s behavior had improved by the time of the hearing and that as soon as father learned of D.’s behavior, “he expressed appropriate concern” and committed to fully cooperating with DCFS to resolve the problem. Father’s selective recitation of evidence supporting his point does not meet his burden on appeal. Rather, we conclude that substantial evidence supports the dependency court’s conclusion that D. was facing a continued risk of harm. In particular, the court noted that D.’s behavior only improved after he was removed from his parents. And the court expressly rejected father’s claim that he was unaware of D.’s issues when it found that father had instructed D. to “stick the sticks.” Moreover, while father expressed a willingness to “get to the bottom” of D.’s behavior and was participating in counseling, he continued to insist that his behavior was appropriate, he refused to allow his children to be interviewed by DCFS outside his presence, and he insisted that D. was fine. As the trial court indicated, without changes in father’s attitude and

behavior, there remained a substantial risk of harm to D. at the time of the hearing. Father's citation to cases finding otherwise under different circumstances are inapposite. (See *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1135 [isolated incident by mother was unlikely to reoccur and did not support jurisdiction]; *In re V.M.* (2010) 191 Cal.App.4th 245, 253 [finding no jurisdiction where "there is no evidence that father did or failed to do *anything* to or for V.M." and where the court "struck all allegations that father placed V.M. at risk of serious physical harm"].)⁷

C. Disposition

Father also challenges the sufficiency of the evidence supporting the dependency court's dispositional order removing D. from his custody.

Pursuant to section 361, subdivision (c), "[a] removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if

⁷ Father also cites *In re Precious D.* (2010) 189 Cal.App.4th 1251, 1253-1254 for the proposition that "jurisdiction based on the parent's 'inability . . . to adequately supervise or protect the child' requires that the parent be unfit or neglectful in causing serious physical harm to the child or a risk of such harm." While this appeal was pending, the Supreme Court disapproved of this portion of *Precious D.* in *In re R.T.*, *supra*, 3 Cal.5th at p. 629, holding that jurisdiction under this portion of section 300, subdivision (b)(1) "does not require parental culpability." In any event, the dependency court's findings in this case regarding father's inappropriate conduct would be sufficient to support jurisdiction under either standard.

he or she remains with the parent. [Citation.] “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” [Citation.] The court may consider a parent’s past conduct as well as present circumstances.’ [Citation.]” (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.) “Before the court issues a removal order, it must find the child’s welfare requires removal because of a substantial danger, or risk of danger, to the child’s physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. [Citations.] There must be clear and convincing evidence that removal is the only way to protect the child.’ [Citation.]” (*Ibid.*)

As with the jurisdictional finding, substantial evidence supports the dependency court’s determination that removal was necessary to protect D. Given the serious nature and extent of D.’s behavior, father’s inappropriate conduct, and his refusal to acknowledge his role in creating sexualized behaviors in his preschool-aged child, we find no error in the court’s determination that no reasonable means existed to protect D. short of removal from his parents’ custody.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.