

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 FOUR

In re T.G., et al., Persons
Coming Under the Juvenile
Court Law.

B283737

(Los Angeles County
Super. Ct. No. DK19336)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

M.V.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Pete R. Navarro, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed in part, reversed and remanded in part with instructions.

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

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

INTRODUCTION

Marina V. (mother) appeals from a juvenile court finding of jurisdiction over her daughters, T.G. and K.C., and a disposition order that K.C.'s father (father) be K.C.'s primary caretaker. Mother repeatedly accused father of physically and sexually abusing K.C. and T.G., but no evidence of abuse was found. The juvenile court found that mother's repeated accusations without credible evidence, and the resulting medical examinations including x-rays, placed the children at risk of physical harm as defined by Welfare and Institutions Code section 300, subdivision (b).¹ Mother appealed. We find that substantial evidence supports the court's findings, and therefore affirm that order.

The parties agree that the juvenile court's stated findings at disposition are contradictory, because the court found that mother did not pose a substantial danger to K.C., but nonetheless ordered that K.C. remain in father's care, where she was placed upon detention. Because the court's findings and ruling do not comply with section 361, we reverse that portion of the court's order and remand to allow the court to either clarify the basis of that ruling or change the removal order.

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

FACTUAL AND PROCEDURAL BACKGROUND

A. Detention report

The following information is from the detention report dated November 9, 2016. Mother and father had a family law order stating that K.C. (born in 2013) was to reside with mother and have overnight visits with father every other weekend.

T.G. (born in 2007 to mother and a different father) and K.C. came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on May 30, 2016, when mother reported that she suspected that father abused K.C. during a visit. Mother said K.C. had scratches and bruises on her body when mother picked her up, and father had abused T.G. in the past. The allegation was made immediately after father's first unsupervised visit with K.C. pursuant to the family law court order.

On May 28, 2016, mother had called the San Bernardino Sheriff's Department to report that when she picked up K.C. from a visit with father, K.C. was wearing different clothing than she was earlier in the day, and she had marks on her body. The investigating deputy said the marks on K.C. "were very faint and undistinguishable. The child did not complain of pain and there was no bruising found. The marks were slight redness and consistent with a car seat belt." The deputy said that as he was talking to mother, K.C. was "spinning around and running into walls and doors. She was very energetic and playful." The deputy took photographs of K.C. The deputy also interviewed father, who said that he was engaged in a custody battle with mother, and she had also alleged that he abused T.G. Father said that he and K.C. spent the day at the beach with several other family members before he dropped K.C. off with mother. He changed K.C.'s clothing because she was wet, and he thought

the marks could have been caused by the long ride in the car seat. The Sheriff's Department report said, "The marks on the child were unable to be determined as abuse and no crime was found at this time." The report also stated, "Disposition: Case Unfounded."

The following day, May 29, 2016, mother took K.C. to Kaiser Medical Center in West Los Angeles. The medical records from the visit show that K.C. underwent a full medical examination, including x-rays to screen for fractures related to suspected child abuse. The x-rays ordered were "Skull, less than 4 views; Cervical spine, AP. & Lat; Lumbar spine, single view; Pelvis 1 or 2 views, Chest, 2 views; Foot Bil, 1 view; Tibia Fibula Bil, 1 view, Femur Bil, 1 view; Hand 1 view bil, Forearm bil, 1 view; Humerus bil." The x-rays showed no evidence of fractures. K.C. was photographed. There was "no sign of redness or injury noted to the pt's private area." A doctor's note states, "Multiple bruises to neck, back, abdomen[.] Possible physical abuse."

Two days later, on May 31, 2016, mother and K.C. returned to Kaiser for a well child visit. The medical record noted the visit two days earlier, and stated, "At this time, no evidence of abuse remains."

On June 2, 2016, mother arrived unannounced at the DCFS office with K.C. Mother reported that when she picked up K.C. from her recent visit with father, K.C. had a bite mark, pinch marks, scratches, and a bruise. Mother said that when she asked K.C. what happened, K.C. said in Spanish, "No clothes. No shoes." Mother also said that K.C. "placed her hands around her neck almost to show that someone was trying to choke her." Mother also said that after she and father broke up, T.G. reported that father had abused her. The children's social worker (CSW) talked to K.C., but was unable to get any meaningful

information due to K.C.'s age. The CSW asked to see the marks on K.C.'s body, and observed that the only visible marks were "three red marks on the side of her body. Mother stated that those marks appeared to be pinch marks."

The CSW interviewed T.G. the following day. T.G. said that in the past, father called her "the 'B-word' and the 'S-word.'" T.G. also told the CSW that father hit her on her private parts with a closed fist. She said that father once told her to take off her clothes, and she said no. Father then took off her clothing and hit her.

The CSW also interviewed maternal great-grandmother (grandmother), who reported that K.C. "placed her hands around her neck as though she was being choked [*sic*] during her visit." Grandmother believed father's girlfriend, Diana, choked K.C., because K.C. said a lady choked her. Grandmother also said that when she asked K.C. if someone took off her clothing and diaper, K.C. nodded yes. The CSW asked about K.C.'s ability to communicate, since she was only two years old. Grandmother said K.C. knows some words and can point to things.

The detention report stated that on July 4, 2016, mother took K.C. to Kaiser after another visit with father. K.C. was evaluated and diagnosed with diarrhea.

On July 7, 2016, mother again reported that K.C. had been abused by father, saying that when she picked K.C. up after a visit in April 2016, K.C. had dark circles under her eyes and was lethargic. Mother said K.C. told her that father hit her on the head. Mother was referred to Antelope Valley Medical Center so K.C. could be evaluated. The record does not make clear whether mother had K.C. medically evaluated.

On July 18, 2016, a DCFS referral was generated after mother reported that father physically and sexually abused K.C.,

and Diana physically abused K.C. Mother said she suspected that K.C. was a victim of sexual abuse because she exhibited “very odd behavior” including trying to breastfeed herself. When mother asked where K.C. had seen that, K.C. referred to Diana. K.C. also said, “Pega popusa,” which means hit vagina.² Mother suspected this meant that father was molesting K.C., because in the past, T.G. also said “pega popusa” when father had molested her.

On July 19, 2016, the CSW interviewed father by phone. Father said visitation with K.C. was going well, and the only challenges were the exchanges with mother, which often occurred at the sheriff’s station. He said mother does not encourage K.C. to go with father, and once when a sheriff’s deputy asked mother to leave so father could have his visit, mother said in front of K.C., “I’m not going to leave[,] he is a rapist.”

Father denied seeing K.C. lethargic with dark circles under her eyes, and he denied that he or anyone else hit her on the head. Father said mother has made shifting allegations of abuse in family court. Father also said he had never witnessed K.C. attempt to breastfeed herself, and said that Diana breastfeeds their baby in private. Father denied hitting K.C.’s private area, and said he never gets near K.C.’s private areas due to mother’s past allegations of abuse, so Diana changes K.C.’s diaper as needed. Father also denied any abuse of T.G., and said the allegation had already been investigated and dismissed.

On July 19, 2016, a DCFS referral was generated after mother reported abuse to the San Bernardino Sheriff’s station. Mother said K.C. reported that father spansks her on her vagina

² The record states that “popusa” or pupusa is a Central American slang term for vagina.

and Diana spanks her on the bottom of her feet. K.C. did not have any visible marks or bruises. The reporter stated that law enforcement had assessed father and his home, and had not found any concerns.

The CSW spoke with mother again on July 22, 2016. Mother said K.C. exhibited strange behavior by pulling up her shirt and trying to suck on her own nipples. The CSW asked if there was a baby in father's home and whether K.C. could have seen Diana breastfeeding. Mother said it was possible. Mother said that when she asked K.C., "Te pegan?" (Are they hitting you?), K.C. responded "pegan patas" (hitting feet). This led mother to believe that Diana was hitting K.C. on the feet. Mother also repeated her concerns about K.C. saying "pega popusa," and said that when she asked K.C. who was hitting her there, K.C. said "Bon." The record conflicts in that some parts say that "Bon" is K.C., and other parts say "Bon" is father. Mother said she takes pictures of K.C. in a diaper before she visits father to see if she returns with any marks or bruises. Mother agreed to take K.C. to a county clinic for a forensic exam, and mother agreed to participate in an assessment "due to concerns being raised regarding mother's mental state."

On July 23, 2016, while mother and father were supposed to be exchanging K.C. at a sheriff's station, mother did not want to give K.C. to father because of concerns about sexual abuse. Mother told deputies that father was being investigated for sexual abuse, so the deputies checked both parents' criminal records. Deputies found that mother had outstanding warrants and her driver's license had been suspended. Mother had driven K.C. to the sheriff's station for the exchange. Mother was arrested. Deputies were reluctant to send K.C. with father due to

an active restraining order, which may have included K.C.³ They called DCFS, and a CSW arrived and spoke with both parents. Mother asked that the children be sent home with grandmother. Father said he wanted his visit with K.C., but he had to leave to go to work.

On July 25, 2016, the CSW spoke with the sheriff's deputy who had investigated mother's initial report of abuse. The deputy said that mother appeared to be making allegations against father as a result of animosity in mother and father's relationship. The deputy said that mother sent him a video of K.C. saying Diana hit her and someone touched her private area. The deputy "stated that [K.C.] does appear to be coached in that video and stated that the police reports mother has submitted are never substantiated."

On August 19, 2016, mother called DCFS stating that she had more information pertaining to the abuse allegations against father. Two CSWs went to mother's home, and mother told them she did not say she had any new information, but she did have a video of K.C. saying she was touched by her father. The CSWs interviewed K.C. alone, and when asked if father touched her popusa, K.C. said yes. But when asked if T.G., mother, and grandmother touched her popusa, K.C. also said yes. The CSWs were unable to get K.C. to answer any other questions. When grandmother asked K.C. what father does to her, K.C. began to take off her overalls.

On September 20, 2016, DCFS received a call from a social worker at Kaiser stating that mother had taken K.C. to Kaiser on

³ This notation states that the restraining order against father includes K.C.; other portions of the record state that the restraining order is for mother only.

September 16, 2016, and reported that K.C. had been abused. Mother told Kaiser staff that father was cutting K.C.'s hair, hitting her vagina, and hitting her toes, and Diana was breastfeeding her. The Kaiser social worker said it seemed strange that mother took K.C. to Kaiser to report abuse rather than to seek medical care; she wondered whether "mother is trying to use [Kaiser] as leverage in a custody dispute." Mother got angry when asked about this. Medical records from this visit are not included in the record.

On September 21, 2016, mother took K.C. to the county clinic for a forensic examination. The examination notes stated that the findings were normal, and K.C.'s hymen was intact. There was "no evidence of physical or sexual abuse."

On September 28, 2016, father told a CSW that exchanges with mother for visits with K.C. were problematic. He said mother was not complying with the family law orders. The CSW also spoke to Diana, who said they take photos of K.C. in a diaper before she leaves their house to protect themselves against abuse allegations by mother. Diana said that she and father were very concerned about K.C.'s safety while with mother, because they felt mother could harm K.C. in order to blame father and stop visitation.

On October 5, 2016, mother called the CSW and said K.C. had disclosed to a sheriff's deputy that she was being sexually abused by father, but law enforcement was still not doing anything to protect K.C. Mother said she did not know what to do anymore, so she was thinking of going to the media.

On October 16, 2016,⁴ a DCFS referral was generated after mother called the DCFS hotline and reported that after picking up K.C. from a visit with father, K.C. was “acting like a ‘zombie’” because she was “non[-]emotional and lethargic.” Mother also said that K.C. reported that father hit her vagina, and K.C. “had a full body skeletal x-ray and a complete medical exam by the doctor,” which showed no signs of sexual abuse or trauma. The medical records from a visit on the same date note that K.C.’s urethra and clitoris were normal, and her hymen was intact. A skeletal survey was ordered, including x-rays of the skull, cervical spine, lumbar spine, pelvis, chest, foot, tibia/fibula, femur, hands, forearms, and humerus; it showed no fractures. The DCFS CSW spoke with the doctor who examined K.C.; he said that mother took K.C. “to the emergency room due to having one superficial scratch on her right arm and a light bruise on her chest and back. [K.C.] received a full body skeletal x-ray and a complete medical exam.”

A social worker at Kaiser Ontario told DCFS that mother said she brought K.C. to the hospital so the scratch on K.C.’s arm could be documented before it went away. Mother told the Kaiser social worker that K.C. said father hits her vagina and Diana hits her feet, and mother showed the social worker the video in which K.C. said these things. The Kaiser social worker “reported that it appeared that [K.C.] was being coached to respond the way she did.” The CSW asked why K.C. received a full body x-ray for minor scratches, and the Kaiser social worker said he did not know.

⁴ The detention report also references a referral dated October 18, 2016, which repeats the same information and same referral number.

On October 17, 2016, the DCFS CSW spoke with father by phone. Father said that during the latest exchange at a Wal-Mart on October 15, mother told him to stop cutting K.C.'s hair, shouted "Stop abusing her!" and began screaming for help. Mother also yelled, "Get away from me, and don't take my daughter!" Father said as he bent down over K.C., mother punched him in the chest. Law enforcement was called. A deputy arrived, father showed him the court orders, and the deputy said he would assist with the exchange. Mother told the deputy about her allegations against father, but the deputy noted that the allegations had been investigated and the court orders remained in place, so if mother refused to do the exchange she would be in violation of the court order. Mother then did the exchange.

Father said he noticed that a patch of K.C.'s hair was missing, and he had not had K.C.'s hair cut. Father also said he was also concerned that mother was taking K.C. for medical examinations after every visit. Father later sent the CSW an email stating that he was concerned about the exams: "I believe she's had 4 exams in the past 5 months. Exposure to x-rays can be detrimental to her health and should not be done without just cause." He also said it appeared that K.C.'s hair had been pulled out. Father was concerned that mother abused K.C. and attempted to blame him for it.

On October 19, 2016, a DCFS referral was generated after receipt of a report suggesting that the children were neglected in mother's care. The reporter told DCFS that T.G. looked and smelled like she had not bathed in a month, her clothes were dirty, her home did not have gas or hot water, and T.G. may have been molested by father.

On October 24, 2016, the CSW went to mother's house to investigate the allegations regarding T.G.'s cleanliness. Mother said the home does have gas and hot water, T.G. showers every other day, and her clothes were washed. T.G. appeared clean.

The CSW asked mother about recent exchanges with father. Mother said she prefers to do the exchanges at Wal-Mart because they have cameras there, and she can get more help from strangers than she can from the sheriff's deputies. Mother said that at the last exchange, she and father argued, father pushed her, and they both called law enforcement. Mother said that when K.C. returned from her last visit with father, she had a bruise on her back and a scratch on her arm, so mother took her to Kaiser. The CSW noted that K.C. did not currently have any visible marks or bruises. Mother also said that every time K.C. returns from a visit with father her eyes are puffy, and she acts zombie-like and lethargic.

On October 31, 2016, mother, grandmother, and K.C. went to the DCFS office unannounced. Mother said K.C. had a visit with father the previous weekend and arrived home with scratches on her body. Mother showed the CSW the alleged scratches and nail marks on K.C.'s neck and arm, but the CSW stated in her report that she did not see any marks. Mother said these marks had disappeared, but she could send photos. There was also a superficial mark on K.C.'s foot, but the CSW could not tell if it was from K.C.'s shoe or something else. When the CSW questioned K.C. alone, K.C. said that both mother and father hit her "en mi culo" (in my ass) and she tapped her vagina.

On November 1, 2016, T.G.'s father called DCFS saying that mother told him that T.G. had been detained. The CSW said T.G. had not been detained, but there had been a call with concerns about her hygiene. T.G.'s father said he only sees T.G.

once a month, and when he sees her she smells terrible and appears unkempt. T.G.'s father also said T.G. told him there was no hot water in the home, so they have to heat water in the microwave and wash clothes in a bucket. T.G.'s father also expressed concerns that T.G. has not had regular dental care and she really needs to see a dentist. He also said he would like to see T.G. more often, but he keeps his distance because mother had called law enforcement on him several times.

The detention report dated November 9, 2016, stated that the "risk to the safety and well-being of the children [is] high." DCFS said it has "concerns of possible underlying mental health issues" regarding mother. Although mother had agreed to be assessed, she never followed through. It appeared that mother might be coaching K.C. to make abuse allegations to interfere with father's visitation, and K.C. "has not made meaningful statements regarding possible abuse or neglect." K.C. was "constantly taken to the hospital, getting x-ray's [sic], and full physical exams due to mother alleging abuse." None of mother's allegations had been substantiated or proven true by medical professionals or law enforcement. DCFS asked that the children remain in mother's care, but that services be ordered for mother, including a psychological evaluation. DCFS also requested mental health evaluations for the children. An addendum report dated November 9, 2016 requested a medical evaluation of T.G. to determine hygiene and dental issues.

B. Section 300 petition

DCFS filed a section 300 petition on November 9, 2016. It alleged seven counts as follows. Counts a-1 and b-3 alleged that mother and father had a history of violent altercations that placed the children at risk of harm, and that mother and father failed to protect the children. Counts b-1 and j-1 alleged that

mother “created a detrimental and endangering situation for the children in that the mother has made multiple allegations of sexual abuse of the child [K.C.] against the child’s father,” and mother “subjected the child [K.C.] to numerous examinations, including invasive genital examinations. The mother subjected the child [K.C.] to multiple interviews with social workers and law enforcement officers.” Counts b-1 and j-1 alleged that the physical health and safety of both children was placed at risk as a result. Counts b-2, d-1, and j-2 alleged that father sexually abused T.G. by exposing himself to her and by striking her vagina, and that mother failed to protect both T.G. and K.C.

At the detention hearing on November 9, 2016, counsel for DCFS noted that “every time mother has taken the child [K.C.] to the hospital for any other marks that she may have observed, it’s come back as not child abuse.” Counsel for K.C. also noted that mother “has taken my client to the doctor, to the hospital every time” she came back from a visit with father, and “none of the allegations have ever been founded.” In addition, K.C.’s counsel noted that “on the last two times that the mother has shown up at the [DCFS] offices, [the CSW] did not see scratches and bruises that the mother indicates were there.” Mother requested that father have only monitored visitation because “there is a threat,” a “danger for injury to” K.C.

The court found a prima facie case for determining that T.G. and K.C. were persons described by section 300, subdivisions (a), (b), (d), and (j). The court ordered both children released to mother pending the next hearing, and ordered K.C.’s visitation to father to continue pursuant to the family law orders. The court ordered that no one be allowed to question the minors about allegations relating to the case. The court also ordered family

maintenance and other services for the family. The court set an adjudication hearing.

C. Detention/change in physical custody

A jurisdiction/disposition report dated December 12, 2016, said that the children were living with mother. Mother said that K.C. reports abuse when she returns from visits with father. She also said that T.G. reported being abused by father when she was eight years old, in 2015. T.G. said that father touched her private parts, punched her in the vagina, and “and made her eat the sugar that came out of his banana.” Mother continued, “She said, ‘Then he wrapped it in tape and put it right here.’” Mother interpreted “tape” as a condom; “right here” is not explained in the record. Mother took T.G. for an exam and “they said her hymen is higher up and it wasn’t broken but it doesn’t mean that she wasn’t touched improperly.”

T.G. said that father abused her physically and sexually. When the CSW asked T.G. questions about it, T.G. asked that mother be present. T.G. said that father put his banana in her crotch area, and “it really hurt.” She also said that father hit her on her back with a belt multiple times, hit her on the stomach with a shoe, and hit her head. T.G. was in individual therapy, and had been diagnosed with post traumatic stress disorder. The therapist noted that T.G. and mother had reported that T.G. was a victim of sexual abuse.

The jurisdiction/disposition report said that DCFS wanted the children to remain with mother, but “the risk to the safety and well-being of the children [is] high.” DCFS requested family maintenance services, visitation between K.C. and father, and continued visits between T.G. and her father, who was non-offending.

An addendum report dated December 12, 2016 included information about father and his living situation. Diana's three oldest children, ages 13, 12, and 10, reported that they feel safe at the home, and said they had never seen anyone hit or punish K.C. Father said mother had refused to allow K.C. to visit through the month of November, and father had to go to the sheriff's department for assistance with enforcing the visitation order.

Father said he had concerns about mother's mental health. Father said that mother drops off K.C. dirty and wearing clothing that does not fit her. Father told the CSW, "I am afraid for [K.C.'s] safety with [mother]. I am afraid she is going to seriously hurt her and then blame it on us." Father also said that mother "is imagining marks on [K.C.] and taking her for unnecessary medical treatment." Father said he would like to have physical custody of K.C., with supervised visits for mother.

Diana told the CSW that K.C. "has already had four x-rays this year and that cause[s] cancer. [K.C.] doesn't deserve all this. That's just sick making your kids think that your dad raped you." Diana also expressed concerns about mother's mental health, stating that mother is "paranoid and not in the same reality." She said mother "wants turmoil and drama and putting her kids through rape kits."

The CSW reviewed the family law court file from San Bernardino Superior Court. A minute order from February 2015 ordered psychological evaluations for both parents pursuant to Evidence Code section 730 (section 730), but mother had not completed one. The record included sheriff's reports documenting mother's complaints that father abused K.C. on July 16, 2016 and October 4, 2016. The file also included documents pertaining to a San Bernardino County Department of Children and Family

Services case that involved many of the same allegations mother made in this case; the petition was dismissed without prejudice. Medical records from August 10, 2015 noted that mother took T.G. to the emergency department, complaining that mother's ex-boyfriend (presumably, father) touched T.G. and inserted something into her. The medical report noted that no signs of trauma were seen on T.G.'s body "including genital or rectal region, hymen."

The addendum report noted that mother did not have heat in her house; mother explained that she has to keep the house cool because of the children's asthma. The CSW noted that when she visited mother's home on November 29, 2016, the temperature outside was in the low 40s, and it was the same temperature inside the home. Mother also admitted that the hot water heater does not work, but she warms water up in the microwave to bathe the children. Mother texted the CSW a picture of K.C. pouting, and said that it was proof that K.C. was becoming more introverted. Mother also said that K.C. urinated on the floor, and suggested that this supported allegations of abuse. The addendum report stated, "Mother's text is another example of her apparent misinterpretation of normal childhood scratches, bruises, moods and behaviors that she believes are proof that father is abusing" K.C. DCFS recommended that a section 730 evaluation be ordered "to assess mother's capacity to care for her children and determine if mother is influencing the child, [T.G.], to believe that she was sexually abused."

A last-minute information filed on December 12, 2016 stated that DCFS had "serious concerns regarding the safety of the children, [T.G. and K.C.], in the care of their mother." Mother refused to comply with court orders regarding visitation, and after father sought help from the sheriff's department,

“mother again made allegations of physical abuse against [father], despite a lack of evidence.” DCFS recommended that the children “reside with their respective fathers with monitored visits for mother” pending the outcome of a section 730 evaluation.

At the hearing on December 12, 2016, the court ordered that K.C. be detained from mother and released to father, with monitored visitation for mother. T.G. remained in the care of mother.

D. Jurisdiction

A January 11, 2017 addendum report stated that mother’s visits with K.C. were going well. Mother had not completed any parenting classes or a section 730 evaluation. DCFS recommended that K.C. remain living with father and mother be ordered to complete a section 730 evaluation.

At the adjudication hearing on January 11 and 12, 2017, DCFS CSW and investigator Judy Thomas testified that she was concerned about mother’s accusations of abuse of the children because “there doesn’t seem to be any basis for these allegations.” Thomas said, “In my work with this case, I have not found anything that would show that the father is abusing the child.” Thomas said that despite the multiple accusations of abuse, no corroborating evidence had ever been found. Thomas agreed that it is reasonable for a parent to take a child for an examination if the parent suspects abuse, but she was concerned that mother had taken K.C. for multiple examinations for “slight scratches, slight bruises,” because “it’s quite invasive to go to the doctor and have tests performed for something as minor as a scratch or a small bruise.” She also said that K.C. had “two full-body x-rays that occurred within a few months,” which was concerning due to

“the risk of radiation from x-rays.” Thomas said DCFS was concerned about mother’s mental health.

Thomas also testified that she was concerned about mother’s behavior during the exchanges with father, in that mother continued to make allegations and get law enforcement involved. Thomas referenced the exchange at Wal-Mart, during which mother accused father of abuse and got law enforcement involved. Thomas said that the exchanges “become[] a very traumatic and drawn-out process and [K.C.] observes her mother and father . . . in a conflictual [sic] situation that I believe is damaging to her.” Thomas said she was concerned that the exchanges could become more physical and present a risk of harm to K.C.

Thomas said she also looked into mother’s allegation in 2015 that father sexually abused T.G., and said that T.G.’s “statements varied so much from interview to interview that . . . I was concerned that she may be coached or in some way influenced to say these things and that they might not be true.” Thomas said she considered T.G.’s statements to her therapist, statements made in the emergency room when T.G. was examined, statements T.G. made to a CSW, and T.G.’s statements in Thomas’s interview of her. Thomas said that when she asked T.G. about the abuse allegations, T.G. said she wanted to go get mother. Thomas testified that this stood out in her mind, because she had never experienced that kind of request in her 20 years with DCFS.

Father testified that mother first made sexual abuse allegations against him after he filed a request that mother be compelled to comply with a February 2015 family court order awarding mother and father equal custody of K.C. Father said his first unsupervised visit with K.C. occurred on May 28, 2016.

He said the family court previously ordered supervised visitation due to mother's accusations, and after a six-month trial in family court, father was awarded unmonitored visits. On May 28, father took K.C. to the beach with a group of people, making efforts to not be alone with K.C. to protect himself against future accusations. Father guessed that mother had accused him of sexual abuse about 15 times in Los Angeles and San Bernardino counties.

Father said that on the day of the contentious exchange at Wal-Mart, he, Diana, and their one-year-old child arrived before mother. When mother and K.C. arrived, mother asked father to stop cutting K.C.'s hair. Father said he never cut K.C.'s hair. Father said, "[W]hen I kept denying that I ever did anything to [K.C.], [mother] said that I'm going to abuse her and you're abusing her and making a big scene, and that's when other people started gathering around, like [Diana] and Wal-Mart employees." Father said that when the exchanges got contentious, K.C. would get very quiet and "[s]he would really not want to . . . interact . . . until she kind of spent a little bit more time and felt safe." Father said that some exchanges have taken as long as four hours. At some exchanges, mother called father a molester and a rapist in front of K.C.

Father said that the family law court ordered section 730 evaluations "for everybody in the proceedings – her [mother], myself, and my fiancée [Diana]." Father completed his section 730 evaluation in August 2016, but mother had not completed hers by the time of a hearing on October 21, 2016. Following father's first overnight visit with K.C. pursuant to the family law orders, mother accused father of abusing K.C. in an ex parte proceeding later in October 2016. The family court dismissed mother's request. Mother denied father all visits with K.C. in

November, and father had to get the sheriff's department involved to get visits in December 2016.

Mother did not testify. In closing argument, father's counsel asked that father be dismissed from the petition. Mother's counsel argued that the petition should be dismissed with respect to the counts involving mother. She said there was insufficient evidence of harm to the children. As to count b-1 relating to the abuse allegations causing a risk of physical harm, counsel for mother argued that K.C. had only three visits to Kaiser, and one county medical examination that was completed at the request of DCFS. The "only plausible risk" of harm was the x-rays to K.C., and those were done because medical professionals found them to be warranted under the circumstances. She also said there was no evidence that K.C. was confused or upset during the medical examinations. Mother's counsel noted that DCFS did not allege a count under section 300, subdivision (c) relating to any emotional harm to the children.

K.C.'s counsel asked that count b-1 be sustained, and she asked the court to include language in the count that mother's conduct during the exchanges was detrimental to K.C.'s physical and emotional well-being. T.G.'s counsel also asked that count b-1 be sustained, and that count j-1 also be sustained. T.G.'s counsel said, "The type of examinations and things that the mother is currently doing with [K.C.], I think the mother did those in the past with respect to alleging that [T.G.] had been abused by [father]." T.G.'s counsel noted that T.G. was in therapy to address sexual abuse, but the evidence did not support a finding that abuse had occurred, and therefore T.G. "is at risk, the same kind of risk that [K.C.] is."

The court took the matter under submission and continued the hearing. At the next hearing on February 17, 2017, the court dismissed counts a-1 and b-3 without prejudice, dismissed counts d-1 and b-2 with prejudice, and stated that it was dismissing counts j-1 and j-2, but did not mention a prejudice holding. The court sustained count b-1. When mother's counsel asked the court for a statement of the factual basis regarding count b-1, the court said, "Well, the court's factual basis for sustaining b-1 related to the multiple occasions in which the mother had taken the child for exams, examinations and . . . intrusive examinations for suspected child abuse, the multiple times she had made reports to law enforcement and, quite frankly, without any basis." When counsel asked the court to articulate the basis for a finding of harm, the court said, "The multiple exposures of this child to the authorities and to medical personnel presents a risk, endangers the child and places that child at serious risk of physical harm by – unnecessary harm by having invasive medical procedures, and that is the court's concern." The court confirmed that it was concerned about both emotional and physical harm. The court set a hearing for a contested disposition.

E. Disposition

A service log filed on March 17, 2017 stated that T.G. was doing well living in mother's home and K.C. was doing well living at father's home. Father and Diana reported that during one video call when K.C. was not very talkative because she had just woken from a nap, mother started asking K.C., "Who is hitting you?" Both mother and father were attending or had completed parenting classes. On March 20, 2017, the court granted mother unmonitored overnight visits with K.C.

In an ex parte application filed on April 26, 2017, DCFS requested that the court change mother's visitation with K.C. to

monitored visitation, and order a section 730 evaluation. Father informed the CSW that on March 26, 2017, mother gave K.C. a home haircut that was short and uneven. Father asked mother not to change K.C.'s appearance. When the CSW asked mother about it, mother said that K.C.'s appearance was not up to father. On April 10, 2017, mother returned K.C. to father with her hair cut again, so that her hair was very short and it appeared that her hair had been cut with clippers on the sides. The ex parte application stated, "The Department has ongoing concerns in regards to this family, in particular mother's behavior. . . . In spite of the Department's current involvement, the ongoing bickering between the parents is continuing and mother appears to be the one inciting the conflicts." The application continued, "DCFS believes that the mother purposefully cut the minor's hair a second time in response to father's request that she not alter the minor's appearance any further. Mother appears to be lashing out at the father by using the child as the mechanism to create discord. Mother does not see a problem with her behavior and does not recognize how her actions subject [K.C.] to further investigative questioning, emotional turmoil[,] and adds to the conflicts with the father."

At a hearing on April 26, 2017, the court denied the application for monitored visitation for mother, but ordered mother not to cut K.C.'s hair.

An addendum report dated May 12, 2017, stated that on May 8, 2017, K.C. "disclosed physical abuse by the mother during a home visit. [K.C.] made the following statement: Mommy pushed me and pulled my hair and I told mommy no, no, no don't do that. Mommy yells about a banana, mommy hit me on my leg with a dollie and here on my knee and on my foot. Mommy needs

a time out.” The issue was referred to the child protection hotline.

At the May 12, 2017 disposition hearing, DCFS requested that the hearing be continued so that the physical abuse report against mother could be resolved. The court denied the request for a continuance, and proceeded with disposition on the section 300 issues that had already been adjudicated.

Counsel for mother requested that the court order K.C. to reside with mother with visitation to father, as custody had been before the DCFS case began. Counsel argued, “I don’t think there’s ever an issue [*sic*] with respect to safety for [K.C.], but the true conflict was the co-parenting and allowing the visits.” She also said, “The issues that are coming before the court seem petty, but don’t seem like they are a threat to the child.”

Father’s counsel said that “the sustained allegation is anything but petty.” Counsel said that mother had psychological issues, she had subjected K.C. to multiple invasive examinations, and “has at every opportunity attempted to obstruct, limit or injure the father’s relationship with his daughter.” Father’s counsel asserted that there was no evidence suggesting that mother had addressed the issues underlying the sustained allegation. Father asked that he be given sole legal and physical custody of K.C., with monitored visitation for mother.

K.C.’s counsel requested that K.C. remain in father’s home with monitored visitation for mother. K.C.’s counsel also asked that the case remain open while the abuse referral regarding mother was pending.

DCFS also requested that K.C. remain in father’s home with monitored visitation for mother. It pointed to text messages between father and mother regarding K.C.’s hair that suggested that mother had not made progress in managing her relationship

with father. Counsel for DCFS asserted that unmonitored visitation would put K.C. at risk. Counsel also noted that mother still had not completed a section 730 evaluation, and asked that an evaluation be completed before the court issued a home-of-parent order for mother.

T.G.'s father asked that he continue visitation with T.G. T.G.'s counsel asked that mother be ordered to complete a section 730 evaluation, noting that the veracity of T.G.'s previous allegation of sexual abuse against father "has been questioned in a few different places."

Mother's counsel said mother was trying to get a section 730 evaluation completed but she "has been stymied by the social worker." Mother's counsel also noted that mother had not alleged any abuse in recent months, thus showing that mother was improving in that regard.

The court ordered T.G. to remain in mother's home with visitation to her father. The court found that mother's conduct "[s]eems to have been abated somewhat." The court nevertheless ordered that father "remain the primary caretaker" for K.C., with unmonitored visitation for mother. The court also ordered mother and father to undergo section 730 evaluations.

Mother timely appealed from the jurisdiction and disposition findings.

DISCUSSION

A. Jurisdiction

Mother asserts on appeal that the trial court erred in sustaining the petition under section 300, subdivision (b) because DCFS "did not link Mother's conduct to any actual harm or risk of harm." We typically review jurisdiction findings for substantial evidence. "In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and

disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].”””” (In re I.J. (2013) 56 Cal.4th 766, 773.)

Section 300, subdivision (b)(1) states that jurisdiction is warranted when a “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness.” Mother admits that “as a result of Mother’s claims, [T.G.] in 2015, and [K.C.] thereafter, were subjected to several examinations by medical personnel, and numerous interviews by police investigators and social workers.” Mother also agrees that “[t]here is . . . no dispute that the outcome of each investigation was a finding of minimal or, most often, no evidence of physical injury or harm.” Mother argues that nevertheless, jurisdiction was unwarranted because under section 300, subdivision (b)(1), “DCFS was obligated to identify specific incidents of ‘serious physical harm or illness’ that [K.C.] was at ‘substantial risk’ of encountering.” Although the court cited the multiple invasive examinations T.G. and K.C. were subjected to as a result of mother’s baseless claims, mother contends that there was no evidence that these examinations were harmful. She asserts,

“Perceptions of risk, as opposed to actual risk, do not suffice as substantial evidence.” In mother’s reply, she states, “As a matter of common knowledge, most everyone believes that exposure to x-rays has potential negative consequences for the human body. . . . But that type of information does not qualify as evidence in a court of law.”

Mother cites no authority suggesting that additional evidence was required for the court to make a finding of risk of harm, and we have found none. “[N]othing in the statutes suggests a legislative intent to *require* a court to consult scientific authority or empirical evidence before it makes the ‘substantial risk’ determination. . . . Rather, after considering the nature and severity of the abuse and the other specified factors, the juvenile court is supposed to use its best judgment to determine whether or not the particular substantial risk exists.” (*In re I.J.*, *supra*, 56 Cal.4th at pp. 778-779 [discussing substantial risk to siblings under section 300, subdivision (j) in the context of sexual abuse.])

Here, as a result of mother’s baseless allegations of abuse, K.C. was exposed to numerous x-rays during multiple full-body skeletal examinations. Repeated, unwarranted x-ray exposure is concerning, but the court’s decision was supported by more than the evidence of x-rays. The record shows that on at least 11 different occasions, mother reported that K.C. had been abused to various medical personnel, DCFS, and law enforcement—May 29, July 4, July 7, July 18, July 19, July 23, August 19, September 21, October 5, October 16, and October 31, 2016. Mother also reported that T.G. had been abused in 2015. Mother’s allegations led to K.C. and T.G. being physically examined, including examinations of their genitals to determine whether their hymens were intact. T.G. and K.C. were questioned by sheriff’s deputies, social workers, and medical personnel, and T.G. was in

therapy for sexual abuse. Mother persisted in alleging that father was abusing K.C. based on minor or invisible marks, even though her allegations were consistently deemed unfounded.

In addition, father and Diana reported that they were worried about a risk to K.C. Because mother was so focused on blaming father for abusing K.C., they thought mother might hurt K.C. and blame father for it. Father suspected that mother had cut or pulled out K.C.'s hair and attempted to blame father. Both parents reported that an exchange at Wal-Mart in October 2016 devolved into a physical disagreement, although the parties disagreed about which parent was the aggressor. Both mother and father reported that they would take pictures of K.C. before exchanges to protect themselves against false allegations of abuse. DCFS expressed concerns about mother's mental stability with respect to her allegations of abuse. After the court hearing on November 9, 2016, mother stopped allowing K.C. to visit father at all, and father had to get law enforcement to intervene. As a result, the court ordered K.C. to be detained in December 2016, and placed K.C. in father's physical custody.

Thus, the court relied on far more than simply the dangers of unwarranted x-ray exposure to determine that the children were at risk of harm. Mother argues that while her conduct "caused family trauma, it presented no obvious threat to [K.C.'s] physical safety." However, the juvenile court "need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child." (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) Mother's escalating allegations of abuse by father without supporting evidence, mother's willingness to expose K.C. to unnecessary medical examinations and law enforcement questioning in repeated attempts to generate evidence of abuse, mother's failure to complete a section

730 evaluation despite court orders, and DCFS's ongoing concerns about mother's mental health, were sufficient to support the court's jurisdictional finding under section 300, subdivision (b)(1).

B. Disposition

At the disposition hearing, the court stated, "The court cannot find substantial detriment to the extent it would require removal of either of these children from the mother." The court ordered that the existing custody plan would remain in place, so father would "remain the primary caretaker" of K.C., and mother would have unmonitored visitation on alternate weekends and one day per week.

Mother asserts that because the court found that returning K.C. to mother's care would not be detrimental to K.C., "the court was obligated . . . to return [K.C.] to her Mother's physical custody." She cites section 361, subdivision (c)(1), which states, "A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [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 minor's parent's or guardian's physical custody."

The court had broad discretion to fashion a custody order that would serve K.C.'s best interests. "The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.)

In addition, “under section 304, the juvenile court has exclusive jurisdiction over custody and guardianship issues regarding a minor who is the subject of dependency proceedings.” (*In re J.D.* (2013) 219 Cal.App.4th 1379, 1388; see also section 304 [“While the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court.”]; Cal. Rules of Court, rule 5.620(a).)

Despite this broad discretion, however, the court’s findings do not comply with section 361, section (c)(1), because it did not find a substantial danger to K.C. if returned to mother’s care, yet ordered that custody remain with father. As DCFS points out in its respondent’s brief, the court’s statements in making its disposition ruling were “ultimately . . . contradictory.” DCFS asks that we remand the case to allow the court to clarify the basis for its reasoning. We agree that clarification is necessary, and therefore reverse the order regarding disposition to the extent it grants physical custody to father with visitation for mother, and remand with instructions that the court clarify the basis for its order and, if necessary, amend the ruling to comply with section 361.

DISPOSITION

The court’s jurisdiction order is affirmed. The removal ruling in the disposition order is reversed, and remanded with instructions that the court clarify the basis for its removal ruling and enter a new order that complies with section 361.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.