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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re LILLIANA L., a Person Coming
Under the Juvenile Court Law.

B244080
(Los Angeles County
Super. Ct. No. CK92600)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ALFREDO L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

D. Zeke Zeidler, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

Alfredo L. appeals from the dependency court's jurisdictional and dispositional orders. He contends that the dependency court exhibited bias, prejudged his case, and prevented him from presenting an adequate case. He further contends that the jurisdictional and dispositional orders are not supported by substantial evidence.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

DCFS Intervention and Investigation

Lilliana L. is the subject of this appeal. At the time this dependency proceeding was initiated, she lived in a household consisting of: herself; her father, Alfredo L. (Father); her mother, Patricia L. (Mother); her adult sister, Nicole L. (Nicole); Nicole's fiancé, Alfred H. (Alfred); Alfred's three-year-old daughter, Melody H. (Melody); Alfred and Nicole's infant daughter, Anna H. (Anna); Lilliana's adult brother, Freddy L.; and a family friend and his son.

Many of the relevant facts in this appeal involve three-year-old Melody. Custody of Melody was shared by Alfred and Melody's mother, Lorena A. (Lorena).

Lorena has a history of drug abuse and child welfare issues. In 2004, her older daughter was exposed to drug use and domestic violence. She was eventually placed with Lorena's parents, who continue to care for her as legal guardians. In 2006, Lorena gave birth to a stillborn baby and tested positive for methamphetamine. Melody's father, Alfred, has a criminal history involving drug abuse.

Beginning in May 2011, the Department of Children and Family Services (DCFS) received a number of referrals that Melody was being abused. A May 2011 referral alleged that Lorena had physically abused Melody. Alfred noticed a small bruise to Melody's cheek after Lorena dropped her off for a visit. The incident was investigated, and, based on Lorena's explanation that Melody tripped while playing, it was closed as unfounded. In September 2011, DCFS received a referral that Nicole had abused Melody after Melody was dropped off at Lorena's house and bruising was observed on her face. The incident was investigated and again closed as unfounded. A subsequent referral was received in early October 2011, when Lorena complained that Melody had sustained

bruising while in the care of Alfred. The matter was also closed as unfounded. About a week later, DCFS received a referral that Melody had sustained bruising while in the care of Lorena. This referral, too, was closed as unfounded.

In December 2011, Lorena called the sheriff's department after Melody was dropped off at her home and Lorena noticed bruising on the inside of Melody's thighs and in her vaginal area. A maternal aunt reported that Melody told her that she was treated badly when staying with Alfred and that Nicole hit her. Melody's maternal grandmother stated that Melody often was returned from Alfred with scratches and bruises. When asked by the investigating deputy how she received the bruises, Melody became shy and withdrawn, saying she did not know.

Nicole was interviewed and stated that previously Alfred had sole custody of Melody while Lorena was in prison. After Lorena's release, the two shared custody, and Melody's behavior changed for the worse. Nicole said that when Melody stayed with Alfred, Alfred was in charge of disciplining Melody and she was in charge of bathing her. She added that the last time she saw Melody she had no bruises, but that she was often returned from Lorena dirty and bruised. Alfred was also interviewed and had much the same to say as Nicole. He further stated that, when Melody stayed with him, he and Nicole were the only ones who watched her. Melody had her own bed and slept in the same room as Lilliana. He said that he had never touched Melody in any sexual sort of manner.

Melody was medically examined on December 6, 2011. The report indicated that she had bruising in her inner thigh and pelvic region, as well as on her labia majora. Bruising and scratch marks were also observed on her lips, naval area, thighs, and lower back. Bruising was observed on her hymen that appeared consistent with penetration of her vagina. On December 9, 2011, dependency proceedings were initiated on Melody's behalf, alleging that she sustained injuries, including to the vagina, while in the care of Alfred, and that she was physically abused by Nicole.

In January 2012, a DCFS social worker interviewed Melody at Lorena's home. Melody told the social worker that Nicole is mean and hit her "here," pointing at her

inside thigh, vagina, and arm. She further said that “daddy” hit her and pointed to the same areas. Both Nicole and Alfred denied ever making inappropriate physical or sexual contact with Melody. They did not know how Melody suffered injury. Father was also interviewed and also denied knowing how Melody was hurt. He said that he was rarely home, as he was always golfing or seeing friends when he was not at work.

Later in January 2012, Melody was interviewed again. She said that both Nicole and “daddy” hit her. The dependency investigator asked, “Does your daddy or Nicole hit or touch you anywhere else?” Melody responded that her “daddy” did. When asked where, she responded, “on my colita,” and pointed to her vagina. Melody showed the investigator how daddy rubbed her vaginal area with his hands. She said she had her clothes off, and it occurred in the bedroom she shared with Lilliana. When asked whether anything else was done to her “colita,” she said that daddy put “the pokey stick” in it. When asked what the pokey stick was she spread her arms to show how long it was, and grabbed her hair to show its color. She said it hurt, and after she told her daddy “no,” he stopped using the pokey stick.

Detective Marlene Vega of the Los Angeles County Sheriff’s Department Special Victims Bureau was assigned to investigate the matter. During one visit with Melody, Melody told her that daddy was nice to her, but Nicole hit her with a pokey stick.

On January 30, 2012, Detective Vega received a phone call from Lorena. Lorena told her that Melody recently indicated that she wished to see “daddy,” which confused Lorena because Melody previously said daddy hurt her. Lorena again asked Melody if daddy hurt her, and she responded, “No.” Melody would not immediately say who had hurt her, but after a while said, “Nicole’s daddy.” Melody told Lorena that Father covered her eyes, told her not to cry or say anything, and hurt her “colita.”

The next day, Detective Vega received a phone call from Melody’s therapist, who said that Melody sometimes referred to Father as “daddy.” Melody told the therapist that Father covered her eyes and hurt her “colita.” A counseling session was set up for Detective Vega to attend. Detective Vega asked Melody who hurt her, but, instead of answering, Melody turned to Lorena as if asking for approval. Lorena indicated her

approval. Melody still did not answer, but when asked where she was hurt she pointed to her vagina. Detective Vega then showed her pictures of all males that lived in the house and asked if any of them hurt her “colita.” Melody put her finger on Father’s picture and said, “Him.”

In February 2012, DCFS initiated dependency proceedings on behalf of Anna, Alfred and Nicole’s newborn baby, as a result of the abuse sustained by Anna’s half sister Melody.

Nicole was interviewed and denied having any concerns about Father’s being in the presence of Anna or Nicole’s younger sister, Lilliana. She said that Melody was never left in Father’s care. Nicole reported that Lorena had threatened her, posted court documents on the Internet, and identified her home as a place where molesters lived. She believed that Lorena had coached Melody to accuse Father of molesting her.

Father categorically denied sexually abusing Melody or anyone else. He said that he had never been left alone with Melody. He also speculated that Melody was coached by Lorena to identify him as a molester, saying that Lorena had a long-standing dislike for Nicole and the family due to Nicole’s relationship with Alfred. According to Father, Melody occasionally referred to him as “dad,” but never “daddy,” as that was her name for Alfred. Father further stated that Lorena had brought Melody to his place of business and verbally accosted him, and demanded that his supervisor fire him.

Mother stated that she did not know how Melody was injured. She said that her husband worked long hours and was rarely home, and was never left alone with Melody. Mother added that on numerous occasions when Melody was returned by Lorena she had bruises.

Lilliana was also interviewed. She said that she had never been abused by anyone. A forensic examination of Lilliana yielded negative results for physical or sexual abuse.

On February 28, 2012, Alfred wrote a letter to Detective Vega and the DCFS social worker stating that Father was an honorable man, had nothing to do with the abuse against Melody, and had never been left alone with Melody. Alfred wrote that Lorena

was jealous and was trying to hurt Nicole's family, and had coached Melody on what to say.

On February 29, 2012, Melody was interviewed again. She referred to Alfred as "daddy" and said Nicole's father's name was "just dad." Melody then said that "Nicole's dad" put a pokey stick in her "colita" and it went "up, up, up" and almost made her "throw up."

On March 19, 2012, DCFS filed a Welfare and Institutions Code section 300¹ petition on behalf of Lilliana, alleging Father sexually abused Melody, which placed Lilliana at risk. The petition was subsequently amended to allege that Mother knew or should have known of the abuse by Father, that both Mother and Father knew or should have known of the abuse by Alfred and Nicole against Melody, and that they unreasonably failed to protect Lilliana. Mother moved out of the family home with Lilliana. Lilliana was detained from Father and released to Mother. Both parents were cooperative and amenable to DCFS services, and Father enrolled in sexual abuse counseling.

In April 2012, Alfred wrote another letter to Detective Vega. The letter stated that he had caused the bruises to Melody's buttocks, vagina, and inner thigh area by hitting her with a shoe. He said that he had never said anything before because he was afraid he would be kicked out of the house, but because Father had recently been arrested, he felt like he had to tell the truth. Detective Vega talked to Alfred about the letter. He said he had been attending church and realized he had to do the right thing. He denied ever sexually abusing Melody, however, and added, "That's on him," referring to Father.

Gordon St. Mary, a psychologist, met with Lilliana in June 2012 to assess suitability of counseling and reunification. Lilliana told Dr. St. Mary that she loved both of her parents and wished to resume living with Father because she missed him. She said that Father had never been mean to her and was "always nice," and that they talked a lot.

¹ Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

Dr. St. Mary found Lilliana well-adjusted and determined that she did not face a high safety risk from Father. He did not recommend any further counseling sessions for Lilliana, and he recommended that the family be able to reunify.

Father and Mother continued to be cooperative with DCFS. As of June 2012, Father had completed 19 group counseling sessions and 11 individual sessions. Father remained fully employed as a building inspector and continued to serve as president of his union. The criminal case against him was dropped.

By August 2012, Father completed 26 sessions of a child sexual abuse awareness program, 16 parenting classes, and 11 individual counseling sessions. An evaluation performed by Dr. St. Mary did not reveal any risk behaviors or sexual abnormalities. Dr. St. Mary concluded that Father did not fit the profile of a sexual offender.

Adjudication

The jurisdictional hearing was held on August 20, 21, 22, and 27, 2012. Over objection, the dependency court admitted all DCFS reports into evidence.

DCFS's Evidence

DCFS first called Alfred, who invoked his rights under the Fifth Amendment and declined to answer any questions.

Father then testified that Alfred gave him a copy of the April 2012 letter in which Alfred stated that he himself had caused the injuries to Melody in December 2011. Father denied asking Alfred to claim responsibility.

Dawn Masick, a marriage and family therapist intern who conducted an intake session with Melody in January 2012 and 18 follow-up sessions, testified next. During their first session, Melody told Masick that “daddy” had hurt her “colita.” At subsequent sessions, Masick learned that Melody referred to both Alfred and Father as “daddy,” and Melody told her that Father was the one who hurt her “colita.” Melody told Masick that it was not her “biological father” who hurt her, but was Father. Masick was “kind of stunned” when Melody, a three-year-old, used the word “biological.” When describing the incident, Melody said that the pokey stick went up so far that she wanted to vomit, and then Father covered her eyes and told her not to cry because she was a big girl.

According to Masick, Melody enjoyed visiting with Alfred at the DCFS offices but did not like going to the house, because she did not want to see Nicole or Father. Nicole hit her, pulled her hair, and scratched her face, and Melody was scared of Father. Masick testified that she found Melody's statements credible because the statements were consistent throughout the sessions and were made in a very matter-of-fact manner. Masick did not believe that the statements had been coached, even though Lorena was present at every session with Melody and Lorena was also a patient of Masick's.

DCFS then called Dr. Carol Berkowitz, a pediatrician certified in child abuse pediatrics. Dr. Berkowitz testified that Melody's bruising was very deep in some areas, that it extended internally, and that there were two distinct internal bruises in the vaginal area. The injuries consisted of a petechiae—small, pinpoint bruising where blood has left the blood vessel due to breakage—and a notch in the hymen. According to Dr. Berkowitz, the internal bruises could not have been caused by an external force because the bruise was limited to Melody's hymen and intravaginal area, and there was no corresponding external bruise. The injuries were consistent with a penetrating force to the genital area, as opposed to an external blow. The notch perhaps could have been caused by a shoe if Melody's legs were totally separated and the hymen was hit directly, but the shoe would have had to penetrate inside to cause the bruising within the vaginal wall. The injury was likely caused by an object, such as a pencil or pen, that penetrated slightly, because the injuries appeared at the front edges of the vagina. Alternatively, the injuries could have been caused by an object larger than a pencil or pen, if the object just barely pushed inside the vagina, but did not go far. Dr. Berkowitz testified that sexual abuse was highly suspected, but there was no definitive evidence such as massive tears to the vaginal area, the presence of sperm, or the presence of a foreign object.

Deborah Davies, a social worker who conducted a forensic interview of Melody, testified next. During the forensic interview, when asked where she was hurt with the pokey stick, Melody repeatedly pointed to her vagina. She also ran her hand up and down her torso to indicate what happened with the pokey stick. Davies testified that children between the ages of three to five are generally more suggestible than others, but

that she attempted to avoid asking Melody suggestive questions. Davies acknowledged that if the term “biological father” was used by a three-year-old, she would be concerned about the origin of the statement. Davies did not recall that Melody used the name “daddy” except when she was referring to her own father, Alfred.

Christopher Leschke, a dependency investigator, testified that he interviewed Melody on January 20, 2012. He felt that Melody was unable to qualify as a witness because her ability to grasp certain concepts was poor, which was typical of a child her age. Melody told him that she did not like living with her father because Nicole and her father were mean to her and they hit her. Leschke asked if Melody had ever been touched “in a bad way” and she responded she was touched by “daddy” on her “colita,” indicating her vagina. Leschke was aware of Melody’s calling her father Alfred “daddy” but believed that she called Father “dad” or “Nicole’s dad.” Father told Leschke that Lorena did not have a good relationship with his family. Lilliana always spoke positively about Father.

Section 350 Motion

Father moved to dismiss the petition pursuant to section 350. DCFS and the children’s attorneys opposed.² The dependency court prefaced its ruling by stating: “Any amending that I do to conform to proof I’m reserving the right to reinstate any of the original language after hearing [Father’s] case-in-chief because [Father’s] expert witnesses could end up proving the original allegations.” The court dismissed one count and struck portions of six remaining counts that were not proven by DCFS.

Father’s Evidence

The dependency court admitted into evidence various documents introduced by Father. The court did not admit the letter from Dr. St. Mary stating that Father lacked a propensity to commit sexual abuse, and rather sustained objections of hearsay, lack of

² The court was adjudicating the petitions of three children: Lilliana, Melody, and Anna.

foundation, relevance, and authenticity. The court also excluded the February 28, 2012 letter from Alfred due to lack of authentication.

Father's counsel called Detective Vega to testify first. Detective Vega testified that she met with Melody many times. At first, Melody told her that "daddy" and Nicole hit her with the pokey stick. Prior to the time she was told by the doctor that Melody was sexually abused, Detective Vega had no reason to believe that Melody had been. When speaking with Melody and the therapist, Melody pointed at her vagina when asked where she was hit with the pokey stick. On January 30, 2012, Detective Vega got phone calls from Lorena and the therapist telling her that Melody identified Father as the "daddy" who hurt her with the pokey stick. Alfred told Detective Vega that Melody referred to Father as "dad," not "daddy." But in Detective Vega's presence, Melody pointed to a picture of Father when asked who hurt her vagina. Alfred told her that he caused Melody's bruises, but when asked about the sexual abuse, he said "That's on him," referring to Father. It was possible, though, that Alfred did not mean that Father sexually abused Melody, just that he should be investigated. Detective Vega had Father arrested because she believed he caused the injuries to Melody. She did not believe that Melody had been coached by Lorena.

Mother testified next. She had been married to Father for 22 years and had never known him to abuse or mistreat a child or (until this case) be accused of doing so. Father worked Monday through Friday from 8:00 a.m. to 5:00 p.m. He usually golfed on weekends. Father was very loving and supportive of Lilliana. Melody knew Father as "dad" because that is what he was called by Nicole and Lilliana. Melody called Alfred "daddy" and never called Father that name. She was never left alone with Father. Melody never appeared afraid of Father. Mother believed that Father did not physically or sexually abuse Melody. Mother had seen Melody with injuries on two occasions, both times just after she was dropped off at the house by Lorena.

Dr. Marvin Pietruszka, a physician and board-certified pathologist, was then called to testify. Dr. Pietruszka had never had courses or training in recognizing child sexual abuse and had testified on the subject fewer than 10 times. He reviewed all materials that

were relied on by Dr. Berkowitz and did not conduct any interviews. He viewed a total of approximately 165 photographs of Melody. Dr. Pietruszka observed an area in her hymen that could be characterized as a notch, but determined it was not indicative of sexual abuse because a nonabused child could have a notch. He also observed significant bruising to the lower abdomen, which could have caused small petechial hemorrhages to occur in the vagina. He determined that the lack of attenuation of Melody's hymen and the lack of a tear of the hymen led to the conclusion that there was no penetration of Melody's vagina. With virtual 100 percent certainty, Dr. Pietruszka believed that the petechial hemorrhaging was a result of physical trauma to the pubic area above the vagina. According to Dr. Pietruszka, the petechial hemorrhages were not an indication of sexual abuse.

Nicole testified that Alfred and Melody lived with her at her parents' house for two and a half years. Melody referred to Father as "dad" and never called him "daddy." She only called Alfred "daddy." Nicole had never been touched inappropriately by Father, and neither her younger sister nor any of her childhood friends had ever expressed any fear of Father. During the period of days leading up to the discovery of sexual abuse to Melody, Father was not around Melody. Alfred eventually confessed to Nicole that he had caused Melody's injuries when he hit her. Nicole denied ever hurting Melody. She had only seen Alfred spank Melody on a couple of occasions.

Luz Celaya, Father's therapist, who holds various certifications, including treatment of sex offenders, testified next. Celaya had worked with Father in both group and individual settings. The court admitted into evidence two progress letters written by Celaya in June 2012.

Closing Arguments and Ruling

The dependency court then heard closing arguments. DCFS argued that the section 300 petition should be sustained as previously amended. The children's attorneys joined with DCFS. Father's argument was presented in writing.

The dependency court found that, while Dr. Pietruszka's explanation of how Melody's injuries could have occurred was rational, Dr. Berkowitz's explanation was

more credible because it corresponded with Melody's statement that the pokey stick was inserted into her vagina. The confusion surrounding Melody's use of the words "dad" and "daddy" could be expected, given that a person who heard those words would normally assume Melody was referring to her actual father. Melody's use of the word "biological father" did not necessarily indicate coaching; rather, it was a term she likely picked up listening to the many conversations had about these matters. Based on the evidence, Melody had the ability to distinguish between a lie and the truth. Melody made clear statements about her injuries, and the medical findings were consistent with those statements. The court also noted that Father's family did not treat Melody as a stepdaughter or step-granddaughter. Instead, Melody was thought of only as Alfred's responsibility. The dependency court found the section 300 petition true as previously amended.

Disposition

The contested disposition hearing was held on September 5, 2012. The court admitted the same testimony and documents as it did for adjudication and, additionally, admitted various documents that had previously been excluded on the basis of lack of authentication. The court declined to admit a letter from Dr. St Mary for lack of foundation.

Luz Celaya was called to testify by Father. Father had 24 sessions with Celaya. Celaya testified that, based on her observations of Father during their sessions, including his body language, facial expressions, and tone of voice, she did not find any behavior indicating the risk of harmful conduct toward others. Sexual abusers of children generally demonstrate signs of enjoyment when discussing details of abuse, and tend to lack a sense of self; Father did not demonstrate behavior typical of abusers and had a very strong sense of self. Some abusers do appear "put together" but reveal themselves to be narcissistic; Father did not exhibit this issue either. Father participated openly in the sessions and appeared truthful. He never accepted the allegations made against him. Celaya believed that Father was not likely to have committed the sexual abuse that the court found to be true. Celaya decided to refer Father to St. Mary for a risk assessment.

An assessment can result in findings adverse to a patient's interest, but Father was willing to participate nonetheless. Based on her belief that Father did not sexually abuse Melody and observation of him during six months of therapy, Celaya believed that Father could safely be reunified with Lilliana.

The dependency court then heard argument. Father's counsel argued that DCFS had not presented clear and convincing evidence to support removal of Lilliana from Father. Mother's attorney likewise argued that Father should be allowed to live in the family home with Lilliana. Lilliana's counsel argued that she should be allowed to stay with Mother, but was not in favor of her being returned to Father. DCFS also argued that Father should not be able to reside with Lilliana.

The dependency court concluded that there was clear and convincing evidence of a substantial danger to Lilliana's physical and/or mental health. Care, custody, and control were ordered taken from Father, and Lilliana was placed with Mother. Reunification services were ordered for Father, and he was allowed visitation with Lilliana.

Father timely appealed.

DISCUSSION

Father makes several arguments on appeal. First, he contends that the dependency court prejudicially erred by demonstrating bias in favor of DCFS and preventing him from presenting an adequate case. Next, he argues that there was not substantial evidence to support the jurisdictional finding that Father abused Melody, and that, even if there was, there was inadequate evidence to find that Lilliana was at risk. Finally, Father argues that there was not substantial evidence to support removal of Lilliana from Father.

I. Jurisdiction

A. Father has not shown that the dependency court acted with bias or violated procedural rules.

Section 355, subdivision (a) states, in pertinent part: "At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any 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. Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300.” Section 356 provides, in part: “After hearing the evidence, the court shall make a finding, noted in the minutes of the court, whether or not the minor is a person described by Section 300 and the specific subdivisions of Section 300 under which the petition is sustained.” If a minor is not found to be a person described by section 300, the petition is to be dismissed. (§ 356.)

Father contends that the dependency court made jurisdictional findings against him before he had the opportunity to present evidence, thereby violating his due process rights. While “parents in dependency proceedings ‘are not entitled to full confrontation and cross-examination,’” they do have “a due process right to a meaningful hearing with the opportunity to present evidence.” (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146.) It has also been held that “a trial court should not restrict or prevent testimony on formalistic grounds. On the contrary, the court should avail itself of all evidence which might bear on the child’s best interest.” (*Guadalupe A. v. Superior Court* (1991) 234 Cal.App.3d 100, 106.)

Father bases his argument on several of the dependency court’s statements following the close of DCFS’s case-in-chief, where, among other things, it notified the parties that it reserved the right to reinstate any language that it had struck on Father’s section 350 motion. According to Father, these statements were proof that the trial court had already found jurisdiction prior to Father’s presentation of evidence.

Father has read too much into the dependency court’s statements. Although, taken out of context, the statements could support Father’s assertion, the record shows that the court and the parties understood that jurisdictional findings were not made until after presentation of all evidence. After the close of DCFS’s case, Father made a motion pursuant to section 350, and certain allegations were dismissed. After the close of Father’s case, the court did not reinstate any allegations. Instead, it heard oral argument and considered Father’s written argument before making its jurisdictional findings. It explicitly noted the reasons for its findings and its decision that Lilliana was a person

described by section 300. The procedure employed by the dependency court was proper and does not warrant reversal.

Father next argues that the dependency court's bias was evidenced by its hindrance of Dr. Pietruszka's testimony. According to Father, the court repeatedly sustained objections based on lack of foundation because the court unreasonably believed that Dr. Pietruszka could not testify credibly about Melody's injuries. Again, we find this contention is not supported by the record. Initially, the court did sustain a number of objections to questions regarding the nature of the sexual abuse, finding that Dr. Pietruszka's ability to testify on such issues had not been established. The trial court's skepticism was warranted. Unlike Dr. Berkowitz, Dr. Pietruszka was not certified in child abuse pediatrics. He had no training in recognizing child sexual abuse. Once Dr. Pietruszka's expertise on pathology-related matters (such as manifestation of bruising and others injuries) was established, however, he was allowed to testify at length about his opinions on the origins of Melody's injuries. Father suffered no prejudice from the court's evidentiary rulings, which were proper.

Father also argues that certain exhibits, such as a letter from Dr. St. Mary stating that Father did not appear to be at risk for sexually offending behavior, were improperly excluded. We find no error here either. The letter from Dr. St. Mary was excluded, in part, because of lack of authentication. Dr. St. Mary was not called to testify; nor did the court prevent Father from calling Dr. St. Mary to authenticate the letter. Had the doctor been called to testify, the letter likely would have been admitted into evidence. The court's rulings on other documents were similarly appropriate.

Father further contends that the dependency court prejudged the case and thereby overlooked the many inconsistencies in Melody's statements. The court found that Melody could distinguish a lie from the truth and that her statements had been largely consistent. We find that the trial court had a sufficient basis to believe that Melody's statements were credible and that Father's accusations of unfairness are lacking. Masick, Melody's therapist, testified that, despite Melody's use of the term "daddy," Melody clarified that the person who sexually abused her was Father; Melody never named

Alfred as the perpetrator. According to Masick, Melody's statements were consistent and did not appear coached. Detective Vega testified that Melody pointed to a picture of Father when asked who hurt her vagina, and Vega believed that Father sexually abused her.

The record does not show that the dependency court failed to recognize the careful weighing of the evidence necessary to make its jurisdictional findings. The dependency court recognized that there was confusion given Melody's use of the term "daddy" instead of "dad." But it found that the confusion likely resulted from the initial assumption that both terms referred to Melody's own father, Alfred. The court further acknowledged that Melody was young and that there was initially confusion about the identity of the perpetrator. Nevertheless, the court found that jurisdiction was proper based on the evidence presented.

B. Substantial evidence supports the jurisdictional order.

Father argues that there is no substantial evidence that Melody was sexually abused and, even if there were such evidence, substantial evidence does not support the finding that any abuse was perpetrated by Father. He further argues that, no matter what happened with Melody, there is not substantial evidence to support the finding that Lilliana was at risk of being physically or sexually abused by Father.

"The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child who is the subject of a petition comes under the juvenile court's jurisdiction." (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859.) We review a challenge to the sufficiency of the evidence supporting jurisdictional findings by determining whether substantial evidence, uncontradicted or not, supports the findings. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) "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." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

We find that substantial evidence supports the finding that Melody was sexually abused. The dependency court heard testimony from Dr. Pietruszka, who believed that Melody had not been sexually abused because of the lack of attenuation or tearing of her hymen. As the trial court noted, Dr. Pietruszka offered a rational explanation of how Melody's injuries could have occurred. But the trial court found Dr. Berkowitz's testimony more convincing. Dr. Berkowitz testified that penetration³ to Melody's vagina occurred because Melody had injuries to her hymen and intravaginal area, and there was no corresponding external bruising. In making its decision, the court relied on the fact that Dr. Berkowitz's opinion corresponded with Melody's repeated statements that a pokey stick was inserted into her vagina. It was within the trial court's purview to make these determinations of credibility and fact.

We further find that substantial evidence supports the conclusion that Father sexually abused Melody. Again, there was conflicting evidence as to whether Father was the perpetrator or not. By all accounts, Father had no known history of sexual abuse and, according to his therapist, Father did not behave in a manner characteristic of those who sexually abuse children. Father steadfastly denied the allegations, and his family was adamant that Father never touched Melody (or any other child) inappropriately. In a letter, Alfred claimed that he inflicted Melody's injuries by hitting her with a shoe. Moreover, this was not evidence that the dependency court could take lightly. As stated in *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, "Few crimes carry as much (or as much deserved) social opprobrium as child molestation. . . . Further, it is undeniable that false accusations of child molestation do happen." (*Id.* at pp. 1752-1753.) "The

³ One basis upon which the dependency court found jurisdiction was section 300, subdivision (d), which requires evidence that "[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household" Penal Code section 11165.1's definition of sexual assault includes "penetration," which is "penetration, however slight, of the genital or anal opening of any person" (Pen. Code, § 289, subd. (k)(1).)

hearing on a contested petition alleging child sexual abuse is thus . . . extraordinarily important. It is not the sort of thing to be rushed, or taken routinely. Allegations of child molestation are *serious*; they merit more than a rubber stamp.” (*Id.* at p. 1754.)

Nevertheless, we cannot say that that the trial court erred by finding that Father sexually abused Melody. Both Melody’s therapist, Masick, and Detective Vega testified that Melody clearly and consistently identified Father as the person who sexually abused her. When describing the incident to Masick, Melody said that when the pokey stick went inside her she wanted to vomit, and that Father covered her eyes and told her not to cry because she was a big girl. Masick further testified that she found Melody’s statements credible and stated they were made in a very matter-of-fact manner. Further, Dr. Berkowitz testified that it was highly unlikely that Melody’s internal vaginal bruising could have been caused by being hit with a shoe. The trial court’s finding that Father sexually abused Melody, therefore, was supported by substantial evidence.

We also conclude that the trial court did not err by finding that Father’s abuse of Melody placed Lilliana at risk. Section 300 jurisdiction is warranted when a child is at risk of abuse, not only when the child has actually been abused. (See § 300, subds. (a), (b), (d).) “Cases overwhelmingly hold that sexual abuse of one child may constitute substantial evidence of a risk to another child in the household—even to a sibling of a different sex or age or to a half sibling.” (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 968, fn. omitted (*In re K.R.*)). Here, although Melody and Lilliana were not related, the sexual abuse occurred while Melody was living in the same household—indeed, sharing a bedroom—with Lilliana. “[A]berrant sexual behavior directed at one child in the household places other children in the household at risk, and this is especially so when both children are females.” (*Id.* at p. 970.)

II. Disposition

Under section 361, subdivision (c)(1), a child may not be removed from a custodial parent unless the dependency 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 minor's parent's . . . physical custody.” We review the lower court's dispositional findings for substantial evidence. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161; *In re Lana S.* (2012) 207 Cal.App.4th 94, 105.) On appeal from an order subject to a clear and convincing evidence standard ““the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.” [Citation.]’ [Citation.] ‘We have no power to judge the effect or value of the evidence, to weigh the evidence [or] to consider the credibility of witnesses’” (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581, fn. omitted.)

We find that substantial evidence supports the trial court's order removing Lilliana from Father's custody. Having made the decision that jurisdiction was warranted, disposition was relatively straightforward. Sexual abuse of a three-year-old girl is a sufficient basis to find that an 11-year-old girl faces substantial danger if living in the same household as the abuser. (See *In re K.R.*, *supra*, 215 Cal.App.4th at p. 968; *In re Mariah T.* (2008) 159 Cal.App.4th 428, 441.) We therefore do not reverse the dependency court's order.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.