

Filed 9/18/18 In re E.E. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B284824  
(Los Angeles County  
Super. Ct. No. DK21247)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

H.E.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los  
Angeles County, Lisa R. Jaskol, Judge. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal,  
for Defendant and Appellant H.E.

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

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The father of a minor girl appeals from a juvenile court's jurisdictional determination grounded on a finding that the child was at substantial risk of sexual abuse because the father had sexually abused her half sibling. The father contends no substantial evidence supported the finding. We affirm.

### **BACKGROUND**

The family in this case consists of H.E., age 40 (father), M.M. (mother), their seven-year-old daughter I.E., and 13-year-old E.S., mother's daughter from a prior relationship. Mother and father are not married. Although E.S. is not father's biological child, mother reported that she called him "dad," and he reported that she "was like a daughter" to him, and he treated her as if she were his daughter.

In 2015, father walked in on E.S. lying naked in bed and masturbating while watching pornography. He later texted her, offering to touch her in the way she had been touching herself. E.S. informed mother, who confronted father and evicted him from the home.

Father remained a regular presence in the family, often taking I.E. to school and her Tae Kwon Do classes. In late 2016, E.S., who had a history of cutting herself, called father and told him she had overdosed on mother's psychotropic medication. Father took her to the hospital. During the intake assessment, E.S. disclosed that on several occasions over several months, father had come into her bedroom while she was sleeping and touched her under her garments. E.S. later reported to a social

worker and then police that over a period of one-to-two months in 2015, father would come to her room at night and rub her thigh or vagina, over her clothes, while she pretended to sleep. She had also told a friend that father had inappropriately texted and sexually abused her.

Father denied the touching but admitted sending E.S. sexually explicit text messages.

In 2017, the Department of Children and Family Services (DCFS or the department) filed a Welfare and Institutions Code section 300 petition alleging father had sexually abused E.S., which put I.E. at risk.<sup>1</sup>

In preparation for the jurisdiction hearing, E.S. again reported that for one or two months, father would go into her room in the middle of the night and touch her thighs and vagina over her clothes or over the covers. She said, “ ‘Sometimes he would come into my room and touch me when he got home late from work or sometimes when he stayed up late he would come in and touch me.’ ” E.S. reported that when father began texting her he asked if she was home alone and said he would buy her whatever she wanted if she would let him touch her the way he wanted.

In an interview with police E.S. said, “I don’t feel, like, uncomfortable or anything. Obviously, I keep it in mind, and I

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<sup>1</sup> As ultimately sustained, the petition stated: “On prior occasions, [father] sexually abused [I.E.’s sibling by] fondl[ing] [her] vagina and thighs. The father sent text messages to the child’s sibling requesting to fondle the sibling. Such sexual abuse of the child’s sibling by [father] endangers the child’s physical health and safety and places the child at risk of serious physical harm, damage, danger and sexual abuse.”

am careful around him. And, obviously, I have to watch my clothing. Like, when he is not around I like wearing shorts, but when he is, I wear, like PJ pants or things like that. And, um, like, we have normal conversations. Like, I can talk to him, and it's not as uncomfortable as I thought it would be." She also stated father had apologized more than once, "mostly for betraying my trust because like I mentioned, he was a father figure to me. And he said he was sorry that he made me think like that and that he just, like, you know, let me down. And he said that he was sorry that he touched me and that he—regrets ever doing it." E.S. told the police, "I don't want my sister to lose her dad."

At the jurisdiction hearing, E.S. stood by her prior statements but stated she was not afraid of father and had forgiven him, and did not believe he was a danger to her or I.E.

The juvenile court found father sexually abused E.S. by fondling her vagina and thighs, which put I.E. at substantial risk of serious harm. It declared I.E. to be a dependent of the court, ordered her placed with mother, and terminated jurisdiction with a family law order giving the parents joint legal custody, mother to have primary physical custody and father to have supervised visits and participate in individual counseling.

Father appealed.

## **DISCUSSION**

Father contends there was no substantial evidence of a current risk of serious physical harm to I.E.

A child comes within the jurisdiction of the juvenile court if a sibling has been abused or neglected and there is a substantial risk that the child will be abused or neglected. (Welf. & Inst. Code, § 300, subd. (j).) The juvenile court must "consider the circumstances surrounding the abuse or neglect of the sibling, the

age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.” (*Ibid.*)

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) “We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order and affirm the order even if other evidence supports a contrary finding.” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

Here, E.S. consistently reported that father sent her text messages inviting her into a sexual relationship, and over one-to-two months fondled her thighs and vagina while she pretended to sleep, and while mother and I.E. were home and sleeping in another room. This evidence supported the juvenile court’s finding that father had sexually abused E.S.

The same evidence supported the juvenile court’s finding that father posed a substantial risk to I.E. “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 Department of Children and Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 968; *In re I.J.* (2013) 56 Cal.4th 766, 780 [“when a father severely sexually abuses his own child, the court may assume jurisdiction over, and take steps to protect, the child’s siblings”]; *In re Andy G.* (2010) 183 Cal.App.4th 1405 [two-year-old boy at risk because father sexually abused the boy’s 12-year-old and 14-year-old half

sisters]; *In re P.A.* (2006) 144 Cal.App.4th 1339 [sexual abuse of daughter could be found to pose risk of sexual abuse to younger brothers]; *In re Karen R.* (2001) 95 Cal.App.4th 84, 91 [rape of 13-year-old daughter reasonably could be found “to be so sexually aberrant” that both male and female children siblings of the victim are at substantial risk of sexual abuse]; *In re Rubisela E.* (2000) 85 Cal.App.4th 177 [sexual abuse of 13-year-old daughter supports finding of risk to nine-year-old daughter]; *In re Joshua J.* (1995) 39 Cal.App.4th 984 [father who sexually abused a six-month-old boy poses risk of sexual abuse to newborn son]; *In re Dorothy I.* (1984) 162 Cal.App.3d 1154 [jurisdiction based on abuse of half sister 15 years earlier]; *In re Ana C.* (2012) 204 Cal.App.4th 1317, 1332 [risk of sexual abuse to a son where father had sexually abused the 11-year-old daughter of a cohabitant]; *In re Ricky T.* (2013) 214 Cal.App.4th 515 [grandfather’s sexual abuse of stepgranddaughters posed substantial risk to a grandson].) The “violation of trust shown by sexually abusing one child while the other children were living in the same home and could easily have learned of or even interrupted the abuse” supports a finding of substantial risk of abuse as to all children in the house. (*In re I.J.*, *supra*, at p. 778.)

Father argues that sexual abuse of 13-year-old E.S., to whom he is not related, does not indicate his seven-year-old daughter was at risk of similar abuse, as the two are differently situated in both relationship and age. We disagree.

Father’s disregard for the vulnerability of a 13-year-old girl in his household, and for the trust she had placed in him and the lasting damage his abuse could cause her, reflects a serious detachment from important societal and biological mores concerning the roles of elders and protectors. If his selfish and

reckless urges could so easily overcome the constraints of his position as elder and protector, it is reasonable to apprehend that they would also overcome other biological constraints, such as those between a father and daughter. In any event, father admitted he saw E.S. as his daughter, which puts her and I.E. in a similar standing with respect to their relationship to him. That the girls were six years apart in age, with one being prepubescent, certainly militates toward a finding that abuse of the elder would not necessarily mean the younger was also at risk. But again, abuse of a 13-year-old by a 40-year-old reflects such disregard for recognized mores that abuse of an even younger person would not be exponentially more shocking.

Father argues that to prove the requisite risk to I.E. from the sexual touching of E.S., DCFS needed to show there was at least a 51 percent probability that father would sexually abuse I.E. That is not the law. Subdivision (j) of Welfare and Institutions Code section 300 requires only a showing of substantial risk of serious harm, not a probability of future abuse.

We conclude substantial evidence supported the juvenile court's finding that father's abuse of E.S. put I.E. at substantial risk of serious harm.

**DISPOSITION**

The juvenile court's order is affirmed.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

BENDIX, J.

CURREY, J.\*

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