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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re M.C., a Person Coming Under the Juvenile Court Law.	B240985 (Los Angeles County Super. Ct. No. CK 88779)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.C., Defendant and Appellant.	
In re D.C., a Person Coming Under the Juvenile Court Law.	(Los Angeles County Super. Ct. No. CK 89859)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.C., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

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

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D.C., Jr. (D.C.Jr.), born in June 2010, is the son of D.C. (father) and B.C., his mother. B.C. ended her relationship with father when she was five months pregnant, as she learned father was living with another woman with whom he already had a family.

M.C., born in March 2010, is the daughter of father and T.L. (mother). Father and mother had a son, born in February 2011, who also was named D.C., Jr. (junior).[1] On September 5, 2011, junior, at age six months, died from cardiac arrest due to an undetermined cause while under their custody and care.

The Los Angeles County Department of Children and Family Services (DCFS) filed a petition (Welf. & Inst. Code, § 300)[2] on behalf of M.C., then age 17 months, and a separate petition as to her half brother D.C.Jr., then age 16 months. At the conclusion of a joint contested disposition hearing, the juvenile court declared M.C. a dependent of the court and ruled mother, but not father, should be offered reunification services. Following another hearing, the court issued a separate family law exit order awarding B.C. sole legal and physical custody of D.C.Jr., allowing father monitored visits, and terminating its jurisdiction over D.C.Jr.

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[1] In the interest of clarity, father's son D.C., Jr. , born in February 2011, is referred to as junior.

[2] All further section references are to the Welfare and Institutions Code.

Father appeals from these orders.[3] He contends the jurisdictional findings in each order are based on insufficient evidence, because neither M.C. nor D.C.Jr. was at risk of suffering serious physical harm by father and had rebutted the presumption of evidence (§ 355.1). Father further contends the juvenile court erred in removing M.C., as there was insufficient evidence she could not be protected through a lesser alternative, and in denying father reunification services. He also contends the court abused its discretion in making an exit order which gave total custody of D.C.Jr. to B.C. and only monitored visitation to father.

We affirm both orders. The uncontroverted evidence establishes that neither father nor mother ever took junior to be examined by a physician. Moreover, both parents knew or should have known junior needed medical attention. Junior had a life threatening seizure condition involving episodes of his inability to breathe, an unexplained arm fracture, injury to his left tibia, and multiple body and facial bruising that were indicative of abuse.

BACKGROUND

1. Circumstances Concerning Death of Infant Junior

a. Junior's Death

In early September 2011, father, mother, their children M.C. and junior, and T.B., maternal grandmother, were homeless. Mae S., father's former foster mother, allowed them to stay in her home while she was out of town.

On September 5, 2011, mother reported to DCFS that after waking that morning, she asked grandmother to watch junior while mother took a shower. Grandmother placed junior in a car seat next to her while she watched television. After father, who slept elsewhere, awoke, he went to check on junior, discovered he was not breathing, and gave him "CPR,"[4] but the infant did not respond. Mother called 911. She and father then exited the house

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[3] This court has consolidated both appeals for consideration and disposition. Mother did not file an appeal.

[4] "CPR" is an acronym for cardiopulmonary resuscitation.

because she was distraught and panicked. After arrival of an ambulance, junior was pronounced dead.

Mother further reported junior had no medical issues, although he ate very little and would vomit weekly. The night before his death, junior ate baby food and drank water with broth. He did not have any formula for two days before he died.

Grandmother reported that she had performed CPR on junior. She confirmed junior did not eat much the night before he died and added that on about six to 10 prior occasions, he ceased to breathe and had to be patted on the back in order for him to resume breathing. Father had related to grandmother that his family had a history of "SIDS."[5] Grandmother did not notice any bruising on junior and did not know how he got the bruises and marks the police found on his body.

b. Police Investigation

At the contested hearing, Sergeant Richard Biddle of the Los Angeles Sheriff's Department testified only M.C. and grandmother were at home with junior when the paramedics arrived. Father, who was outside, told Biddle he left the home because he had an outstanding warrant. Mother, who was on a different street knocking on someone's door, explained to Biddle she had to call the foster mother and other relatives about what happened and added she feared grandmother would be mad and blame her for junior's death.

Grandmother told Biddle father was the last person with junior while he was alive. She related that while she was doing laundry earlier that morning, junior began to cry but stopped when father attended him. Father put junior in the car seat, which had a foul odor from urine, feces, and spoiled food, and took him to the family room. When asked about junior's bruises, grandmother attributed one to M.C. playing too roughly. She denied seeing other bruises until after junior's death.

Mother told Biddle that junior would return with bruises and injuries after grandmother had babysat him. Mother blamed grandmother for junior's death. She denied

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[5] "SIDS" is an acronym for sudden infant death syndrome.

hurting junior and related that although father was in charge of his discipline, he never injured him. Mother could not explain why she left M.C. alone with grandmother even though she believed grandmother killed junior.

At the morgue, Biddle observed junior's body. He noted bruises on his legs, arms, forehead, chin, and face, including one over an eye. There were marks on his legs, some old and some apparently recent, as well as healing scars. Junior appeared to be dirty. The coroner told Biddle junior's healing broken arm, head trauma, a broken leg, and marks and bruises on his face were physical evidence of abuse. After receiving the coroner's report, Biddle re-interviewed mother and father.

Mother acknowledged she was aware of the autopsy report. She told Biddle she believed grandmother killed junior out of frustration and grandmother threatened to kill herself after he died.

Father stated all of junior's injuries occurred after he died of SIDS. He suggested M.C. may have caused a bite mark on junior's arm and grandmother may have broken his arm taking him out of his car seat. Father related, alternatively, that he might have smothered junior inadvertently by wrapping him too tightly. He explained that about 11:00 p.m. the night before his death, junior began to cry. He swaddled junior in a blanket and placed him back into the car seat in the family room and put another blanket partially over his head to stop his crying. About 6:00 a.m., father found junior as he had left him the night before but he was not responsive.

When asked about junior's bruises, father attributed some of them to having been caused by junior falling out of bed at the prior residence, father wrapping him too tightly, and grandmother scratching him or junior scratching himself. He did not attribute any of junior's injuries or his death to mother.

Daphne D.[6] told police the family, meaning father, mother, grandmother, M.C., and junior, had resided in her home for about a year. She was convinced father killed junior. He had anger issues and made holes in the walls of her home. He often struck mother, and

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6 Daphne was also referred to as Daphney.

he would hit M.C. on her butt and across her back. Daphne D. told him to stop, because M.C. was only one year old. She begged mother to leave father but believed both mother and grandmother feared him. Mother and father could be heard fighting in their room, and then mother would exit with a black eye. Father once pushed grandmother, causing her to fall and break her leg in three places.

Father became frustrated when junior cried and would yell for him to stop. On one occasion, father handed junior, who was wrapped so tightly in a blanket that he could not move, to grandmother. After the latter unwrapped him, Daphne D. observed bruises on his wrists and ankles. When grandmother confronted father and mother, they blamed grandmother for causing the bruises.

Harmony D., age 14, and Ashley D., an adult, were the daughters of Daphne D. and lived with her during the time father, mother, grandmother, M.C., and junior lived at their home. Harmony D. and Ashley D. told police that when they walked by the bedroom of father and mother, they would hear both M.C. and junior screaming and crying. They noticed bruises on junior's arms and legs when father and mother exited with junior. They also observed father wrap junior tightly with many blankets and place a pillow over his face to stop his crying. In August 2011, Harmony observed father wrap junior, who was crying, tightly in a blanket; sit on his legs; and yell "[s]hut the hell up, shut the f--- up." She believed junior was seriously injured, because he screamed loudly for over an hour. When mother yelled at father, he told her "just shut up and sit down, you do not know what you are doing."

Harmony D. and Ashley D. noticed bruises all over junior and a burn mark. They also noticed bruises on M.C., whom father would spank for no apparent reason. Harmony denied grandmother ever mistreated M.C. or junior. She stated father and mother never fed M.C. or junior properly, and their room always was in an unkempt state with a foul odor.

c. Medical Findings Regarding Junior's Death

At the contested hearing, Dr. Lisa Scheinin, the deputy medical examiner who performed the autopsy on junior, opined the cause of death was undetermined because she could not rule out a seizure or abuse, specifically asphyxia due to suffocation, as the cause

of death. Junior's X rays revealed evidence of trauma, a healing arm fracture, and injury to the shin bone, which were consistent with abuse. Junior also had several scars and bruising on his face and on a leg. The doctor noted junior was thin for his age, and although he was not malnourished or dehydrated, junior's colon indicated he had been inadequately fed. Also, junior's dirty body indicated inadequate hygiene.

Although finding evidence of brain abnormality consistent with junior's history of seizures, Dr. Scheinin opined a seizure could not have caused an arm fracture. The doctor also opined the bruises were indicative of suffocation, although they did not cause junior's death.

To counter the evidence of Dr. Scheinin, father relied on the testimony of Dr. Marvin Pietruska and Dr. Thomas Grogan. Dr. Pietruska, who was allowed to testify as an expert in forensic pathology but not in autopsies, had reviewed junior's medical records but did not examine his body. He opined junior died from respiratory failure caused by a seizure. He acknowledged that if father and mother had taken junior to a doctor, his seizure condition could have been diagnosed. Dr. Pietruska did not disagree with Dr. Scheinin's findings about junior as a victim of abuse.

Based on his review of junior's medical records and various DCFS reports, Dr. Grogan, who testified as a pediatric orthopedics expert, opined that junior did not suffer the kind of fractures typically found in abuse cases, but he conceded the healing injury to junior's left tibia was a type of injury he had observed in abuse cases and might be caused by an adult sitting on the child's leg. He opined junior's fracture of his right humerus could have been caused by someone forcefully pulling him out of his car seat by grabbing his arm and pulling it quickly in a certain direction, but only if this were the precise manner in which the child had been removed from the car seat.

2. Section 300 Petitions As to M.C. and D.C.Jr.

DCFS filed separate petitions (§ 300) on behalf of M.C., then 17 months, and D.C.Jr., then 16 months.[7] The juvenile court detained M.C. in DCFS custody and ordered D.C.Jr., to remain in the custody of his mother, B.C.

a. DCFS Reporting Regarding Junior and Sibling M.C.

Father reported to DCFS that grandmother had caused junior's bruises and related that on occasions when grandmother was angry at mother, she took it out on the children, including hitting junior's head against the car seat. Grandmother was with junior during the 14 hours prior to his death.

He reported junior had stopped breathing on prior occasions. Although he and mother had scheduled him to see a doctor, they were robbed and had to move. Father explained they did not take junior to the emergency room because after junior was patted on the back, he would vomit and begin breathing again. Junior and M.C. were not accepted at the medical facilities in Apple Valley and Victorville.

Mother reported on one occasion when she planned to take junior to the emergency room, grandmother refused to drive them because she and mother had an argument. Mother also blamed grandmother for junior's death. Grandmother would become agitated when she did not have cigarettes and was upset because mother told her the family planned to get their own place without grandmother. On two occasions when junior was with grandmother, mother noticed a bruise on his face and scratches on his back, which injuries grandmother insisted were accidental. On another occasion, junior hit his head against the car seat when grandmother drove the family in a reckless manner. Mother reported to DCFS that junior had visible bruising on his face at the time he died. Mother further told DCFS that her sister had related to her that grandmother threatened to commit suicide the night of junior's death.

Grandmother reported to DCFS that she had not been with junior all the time and denied she had hurt him. She attributed some bruising to M.C. playing too roughly with

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[7] A first amended and then a second amended petition were subsequently filed.

junior. She denied noticing bruising on junior's face the morning he died and stated she did not believe father or mother would hurt him.

Daphne D., who had rented rooms in her home previously to the family, reported to DCFS that father, mother, and M.C. shared the same room and grandmother and junior shared another room. Grandmother had taken care of M.C. when she was an infant. Daphne D. believed grandmother was a good caretaker, and junior appeared happy while in her care, except when father and mother were around.

She believed father was not "really good with" junior and would hear father say, "Shut the f--- up, you're crying like a little p---y, you're being a little b----." (Underscoring omitted.) On one occasion, Daphne D. observed father take junior, who was wrapped in a blanket, to grandmother. After grandmother removed the blanket, Daphne D. saw bruises on junior's wrists and on his neck in the shape of a handprint. When she asked grandmother what had happened, grandmother replied she did not know and "this is the way [she] got him." On another occasion, Daphne D. noticed a mark on junior's left eyebrow that looked like a burn.

Daphne D. further reported that father had "anger" problems. During one domestic violence incident between father and mother, mother had a black eye and a mark on her back. Mother explained she and father were just playing and she hit her eye by accident. Daphne D. did not believe her because father would punch holes in the wall when he got mad at mother. Also, father caused a hole in the roof in an attempt to evade police. Father and mother drank alcohol and smoked marijuana.

In reporting on the Coroner's findings, DCFS noted junior was underweight. Junior presented with a healing fracture to his right humerus (upper arm), which dated back three to five weeks before death. The thickening of his left tibia (shin bone) was suggestive of healing trauma. These injuries were indicative of abuse and nonaccidental, nonnatural death. Junior had never been taken to a doctor during his short life. Death was not caused by SIDS. However, the coroner was not able to determine the cause of junior's death but found "nonaccidental mechanisms [could] not [be] excluded." DCFS believed even if father

and mother did not cause the injuries, they neglected junior by failing to take him to a doctor.

In light of these findings, DCFS re-interviewed father, mother, and grandmother. Mother denied noticing anything that would indicate junior had broken his arm or leg. She continued to blame grandmother for junior's other injuries. Junior would have bruises after being in grandmother's care. When asked why she and father would leave junior in grandmother's care, mother replied she did not understand what was taking place until after junior's death.

Father and mother both reported their belief that grandmother killed junior. They related junior would cry hysterically when he was with grandmother. As for junior's injuries, father and mother indicated they did not know junior had a fractured arm and injured leg. They did say M.C. sometimes played roughly with junior, and grandmother once removed him from his car seat too quickly and without unbuckling him, which made him cry. On another occasion, grandmother shook junior and patted his back too hard.

b. DCFS Reporting Regarding D.C.Jr.

B.C. reported D.C.Jr. had breathing problems as an infant. During his two-year relationship with B.C., father told B.C. that mother was his "god sister." After B.C. was five months pregnant with D.C.Jr., father told B.C. the truth, and B.C. ended her relationship with father. Father was appropriate with D.C.Jr., whom he only saw once. B.C. did not believe father would harm him.

DCFS recommended denying reunification services for father because junior died while in his custody, no doctor had seen junior during his short life, junior's cause of death was unknown, and junior had unexplained bruises. DCFS had no problems regarding B.C.'s care and custody of D.C.Jr.

3. Order Denying Father's Reunification Services

On March 13 and 14, 2012, a contested disposition hearing was held on both petitions. At the conclusion of the hearing, the juvenile court declared M.C. a dependent of the court and denied reunification services to father.

4. Exit Order Denying Father Custody of D.C.Jr.

At the March 16, 2012 hearing, father was not present but his attorney requested reunification services for father. The juvenile court found D.C.Jr. was appropriately placed in the custody of B.C., his mother, and that court jurisdiction was no longer necessary over D.C.Jr.

On April 12, 2012, the juvenile court issued a family law custody order awarding B.C. sole legal and physical custody of D.C.Jr. and allowing father monitored visits. The court terminated its jurisdiction over D.C.Jr.

DISCUSSION

1. Qualified Admission of Hearsay Evidence Not Prejudicial

Father contends the findings of the juvenile court are unsupported by the evidence because the court erred and abused its discretion in relying on hearsay statements in the submitted DCFS reports. We disagree.

At the contested hearing on the petition as to M.C., father made hearsay objections regarding various statements in the submitted DCFS reports. The juvenile court overruled the objections and ruled that although these statements would be admitted, the petition could not be sustained based on these statements alone.

Statements included in a DCFS report are hearsay. The juvenile court is entitled to rely on hearsay statements to the extent the statements are sufficiently corroborated. The requisite substantial evidence to support a finding exists when the evidence, including the hearsay statements, is examined as a whole and supports the finding. (See, e.g., *In re Christian P.* (2012) 207 Cal.App.4th 1266, 1279.)

Ordinarily, "'[t]he question [presented] is whether there was corroborating evidence in this record which could support the witnesses' hearsay statements sufficiently to sustain a jurisdictional finding. Corroborating evidence is "[e]vidence supplementary to that already given and tending to strengthen or confirm it. Additional evidence of a different character to the same point." [Citation.] In this context, corroborating evidence is that which supports a logical and reasonable inference that the act described in the hearsay statement occurred. [Citation.]' [Citation.]" (*In re Christian P., supra*, 207 Cal.App.4th at p. 1277.)

Father challenges the hearsay statements made by Daphne D. and her daughters, Harmony D. and Ashley D., which are set forth in a submitted DCFS report.[8] He does not contend the juvenile court relied solely on such statements and concedes the court expressly announced its intent otherwise. At the hearing, the juvenile court expressly stated that it "did not even pay any attention" to the statements of Daphne D., Harmony D., or Ashley D. Accordingly, any error and/or abuse in admitting these statements is inconsequential and nonprejudicial to father.

Additionally, the record contains substantial evidence corroborating the hearsay statements that junior had been abused and father was the abuser. The coroner's report indicated junior had sustained physical injuries consistent with abuse. Dr. Scheinin's testimony was consistent with that report. The police report, the contents of which Biddle confirmed during his testimony, reflected that after junior's death, father and mother acted suspiciously and made inconsistent statements. Such conduct raises an inference of consciousness of guilt. Moreover, father's expert did not disagree with Dr. Scheinin's findings of indicia of abuse, and he acknowledged junior's seizure condition would have been detected if he had been taken to a doctor.

2. Jurisdictional Findings Supported by Presumption and Substantial Evidence

a. Section 355.1 Presumption of Jurisdiction Applies

Section 355.1, provides that "[w]here the court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a minor is of a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omission of either parent, the guardian, or other person who has the care [and] custody of the minor, that finding shall be prima facie evidence that the minor is a person described by subdivision (a), (b), or (d) of Section 300" and that this presumption affects the burden of producing evidence. (§ 355.1, subds. (a) & (c).)

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[8] The subject statements are contained in the DCFS report entitled "Last Minute Information for the Court" dated February 9, 2012, and its attachment from the sheriff's department dated January 27, 2012.

In his challenge to the sufficiency of the evidence to support the juvenile court's jurisdictional findings as to M.C. and D.C.Jr., father contends (1) DCFS is not entitled to invoke the burden of producing evidence presumption of section 355.1, because DCFS did not give father sufficient notice of its intent to rely on such presumption; (2) DCFS failed to present prima facie expert evidence that junior had sustained one or more injuries or a detrimental condition indicative of neglect by father during his care of junior, and for this reason, the burden of producing evidence never shifted to father to demonstrate such injury or condition was not attributable to abuse; and (3) father presented evidence refuting that presumption. Father's contentions are unsuccessful.

b. Notice of Intent to Rely on Section 355.1 Presumption Adequate

Father contends DCFS forfeited its right to rely on the presumption because it failed to give father sufficient notice of its intent to raise the presumption. The record reflects father had adequate notice.

One appellate court concluded: "When [DCFS] intends to rely on the statute to shift the burden of production to the parents to show that neither they *nor other caretakers* cause the child's injuries, it must do so in a clear-cut manner. It should, of course, cite section 355.1, subdivision (a) in the petition along with the applicable subdivision of section 300." (*In re A.S.* (2011) 202 Cal.App.4th 237, 243.)

In re A.S. is factually distinguishable. That case involved the situation where DCFS asserted the presumption on appeal for the first time. The court held that although DCFS made a cursory reference to the presumption, it did not raise the presumption as an issue before the juvenile court nor did it argue the parents had the burden of production. (*In re A.S., supra,* 202 Cal.App.4th at pp. 242-243.) Additionally, the juvenile court did not make any underlying findings or rely on the presumption in rendering its decision. (*Id*. at p. 243, citing *In re Sheila B.* (1993) 19 Cal.App.4th 187, 200, fn 7 ["Since the juvenile court never made the finding required by this section, this presumption never came into play."].)

Here, DCFS did not cite to section 355.1 in the original section 300 petition. This omission, however, is not fatal. The court in *In re A.S.* simply admonished that DCFS

"should" cite section 355.1 in its petition but did not make such citation a prerequisite for notice of DCFS's intent to rely on the presumption to be adequate.

Moreover, as the juvenile court found, DCFS did timely invoke section 355.1 by wording charging allegations in the amended petitions substantially in the language of section 355.1. DCFS filed the petitions more than a month before the contested hearing, which commenced on March 13, 2012.[9] Father and mother therefore were adequately on notice of DCFS's intent to rely on section 355.1, although that statutory provision was not itself cited. Additionally, counsel for DCFS expressly raised section 355.1 at the contested hearing. Father, who did not request a continuance, therefore had adequate notice to address section 355.1.

c. Prima Facie Showing of Injuries Caused by Abuse or Neglect

Father contends the section 355.1 presumption did not arise because DCFS failed to present competent professional evidence that junior ordinarily could not have sustained his injuries absent abuse or neglect. We disagree.

Upon observing junior shortly following his death, the police noted extensive bruising on junior's face, including bruising on his forehead, chin, and over one eye, and marks on his legs resembling cigarette burns, some of which were old, healing, or peeled, and some apparently recent.

Dr. Scheinin examined junior's body. She found the body dirty to the extent it indicated inadequate attention to hygiene, and he was thin for his age. He had weighed in the 75th percentile at birth but only in the 20th percentile at death. The condition of his colon indicated inadequate feeding. She noted he presented with several scars and multiple facial bruising and leg bruising. Dr. Scheinin further noted that the X rays of junior

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[9] At the contested hearing, the juvenile court rejected the claim of mother, joined in by father, that DCFS did not timely raise the section 355.1 issue. The court found this issue was not "untimely since it was on the first amended" petition, which was filed on January 24, 2012. Mother conceded the amended petition filed on "January 25th [*sic*]" gave notice of DCFS's intended reliance. Father did not dispute mother's concession or the court's finding as to how DCFS first invoked its intent to rely on the section 355.1 presumption.

reflected evidence of physical trauma, specifically, a healing arm fracture and injury to a shin bone. She opined a seizure would not have caused an arm fracture; rather, such fracture was indicative of nonaccidental trauma. Although the facial bruises were not themselves fatal, they did indicate "some pressure to the facial area" had been applied. Based on such bruises, she could not rule out asphyxia (suffocation) as the cause of death.

d. Father Fails to Carry Burden of Refuting Prima Facie Case of Abuse or Neglect

Father contends the section 355.1 presumption was rebutted by his evidence that junior's injuries were not the product of abuse or neglect. The thrust of the testimony of father's experts, however, is that abuse could not be ruled out.

Dr. Pietruska expressed his concern about junior's facial bruises. He found appropriate Dr. Scheinin's finding that junior might have been the victim of abuse in light of the reports of scars on junior's body, a healing facture, and his thin appearance, and he believed her findings "should be taken into consideration." Dr. Pietruska acknowledged that junior's seizure condition could have been diagnosed if father and mother had taken him to a doctor. He admitted that junior's apneic episodes (temporary absence or cessation of breathing) could occur without a seizure.

Dr. Grogan testified that junior's arm facture and tibia injury were not ordinarily the type found in abuse cases but he could not rule out abuse as their cause. He admitted the injury to a child's left tibia has been found in abuse cases and that junior's leg injury could have been caused by father sitting on him.

e. Juvenile Court's Findings Supported by Substantial Evidence

Alternatively, father contends the juvenile court's jurisdictional findings are not supported by sufficient evidence. We find the evidence to be substantial.

(1) Jurisdictional Findings

"Section 300 . . . establishes several bases for dependency jurisdiction, any one of which is sufficient to establish jurisdiction." (*In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.) If "one basis for jurisdiction [is] supported by substantial evidence[, the] court does not need to consider [the] sufficiency of evidence to support [any] other basis." (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.)

The court's exercise of jurisdiction over M.C. and D.C.Jr. is grounded in its findings of abuse and neglect of junior by father and mother. The court made these jurisdictional findings under section 300, subdivisions (a), (b), and (j): Junior, the sibling of M.C. and D.C.Jr., was medically examined and found to have suffered severe physical harm consisting of a healing fracture of the right humerus, periosteal thickening of the left tibia, bruises to his face, and several scars on his legs. Junior had peeling skin on the folds of the neck. Father and mother gave inconsistent explanations of the manner in which junior sustained the injuries. On September 5, 2011, junior died while in the care and under supervision of father and mother. Such injuries would not ordinarily occur, except as a result of deliberate, unreasonable, and neglectful acts by father and mother who had care, custody and control of junior.

Moreover, on numerous occasions, junior stopped breathing and he vomited. On September 5, 2011, junior had peeling skin in the folds of the neck. Father and mother failed to obtain timely the necessary medical treatment for junior's condition. On that same day, junior died while in the care and supervision of father and mother.

(2) Substantial Evidence Supporting Jurisdictional Findings

The reviewing court upholds the juvenile court's findings if based on substantial evidence. (*In re James C.* (2002) 104 Cal.App.4th 470, 482.) In searching for substantial evidence, the court generally only looks to the evidence supporting the successful party and disregards any contrary showing. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) We conclude substantial evidence supports the juvenile court's findings that father abused and neglected junior.

Although SIDS was ruled out, the actual cause of junior's death, whether asphyxia (suffocation) or a seizure, was undetermined. Nonetheless, the undisputed evidence establishes junior had never been taken to a doctor during his short life. Dr. Pietruska, father's own expert, conceded that if father and mother had taken him to a doctor, junior's seizure condition could have been diagnosed. This expert also did not dispute Dr. Scheinin's findings regarding junior as an abuse victim. While in the custody and under the supervision of father and mother, junior, a nonambulatory infant, had sustained broken

bones and multiple bruises on his face and body. Junior also died while in their care and custody. Moreover, father, despite his knowledge of junior's respiratory distress history, not only neglected to take him to a doctor but also put him to sleep in a filthy, foul-smelling car seat after tightly swaddling him in blankets and partially covering his head with a blanket.

3. Removal from Parental Custody Not Error or Abuse

Father contends the juvenile court erred and abused its discretion in removing M.C. from parental custody. The record reveals the court acted well within its broad discretion and that its decision was not an abuse, i.e., "'"arbitrary, capricious, or patently absurd."'" (*In re Mark V.* (1986) 177 Cal.App.3d 754, 759.)

Junior, M.C.'s infant sibling, sustained multiple facial and body bruises as well as broken bones and died while in the custody and under the supervision of father and mother, both of whom gave conflicting versions of what had happened and acted suspiciously, namely, leaving the house after noting junior had stopped breathing. Also, father admitted wrapping junior too tightly and surmised he may have thereby killed him. Under the totality of these circumstances, the juvenile court acted well within its discretion in removing M.C. from parental custody.

4. Denial of Reunification Services with M.C. Not Abuse

Father contends the juvenile court erred in refusing to provide father reunification services with M.C. No error occurred.

Ordinarily, when the juvenile court removes a child from parental care, the court authorizes services to be provided to address the conditions that led to removal and to facilitate family reunification. An exception arises when "'it may be fruitless to provide reunification services under certain circumstances' [as] set forth in section 361.5, subdivision (b)." (*Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159, 163.)

One such exception, applicable here, exists when the parent caused the death of a child through abuse or neglect. (§ 361.5, subd. (b)(4).) The exact cause of junior's death, whether by asphyxia or seizure, was undetermined. Even if father did not cause junior to die from suffocation, father nevertheless was a "substantial contributing cause" if junior's death were due to a seizure. It is uncontroverted that father knew of junior's history of

failure to breathe yet failed to take him to a doctor, whom, according to father's own expert, could have diagnosed his seizure condition. (*In re Ethan C.* (2012) 54 Cal.4th 610, 618.)

Another applicable exception is one in which the child, here M.C., was declared a dependent based on the severe physical abuse of a sibling, namely junior, and the child would not benefit from an offer of reunification services to the parent. (§ 361.5, subd. (b)(6).) As discussed above, junior had suffered broken bones and sustained bruising and marks on his face and body. Father and mother, who had the care and custody of junior, did not explain how the infant's bones came to be broken. To the extent mother believed grandmother had caused the broken bones and other injuries, mother failed to explaine why she had continued to allow grandmother to remain with M.C. Neither mother nor father explained why they allowed junior to sleep in a foul and filthy car seat in the family room while they slept elsewhere, although they knew junior might need their assistance if he suddenly had an episode during the night.

The juvenile court is not authorized to order reunification services when any exception under section 361.5 exists "unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subds. (b)(4), (6) & (c).) Father made no such offer of proof at the hearing, and does not on appeal offer any compelling reason why reunification would be in M.C.'s best interests.

5. Exit Order As to D.C.Jr. Not Error

Father contends the juvenile court improperly awarded sole custody of D.C.Jr. to B.C, his mother, and monitored visitation for father. The court's exit order was not an abuse of discretion.

"Under section 362.4, the juvenile court may, when it terminates jurisdiction over a case, issue an order 'determining the custody of, or visitation with, the child.' The juvenile court's section 362.4 order may be enforced or modified by the family court. (§ 362.4; *In re Chantal S*. (1996) 13 Cal.4th 196, 208-209; *In re Kenneth S., Jr*. (2008) 169 Cal.App.4th 1353, 1358.) Custody and visitation orders issued under section 362.4 are sometimes referred to as 'family law' orders or 'exit' orders. [Citations.]" (*In re Ryan K.* (2012) 207 Cal.App.4th 591, 594, fn. 5.)

Initially, we point out father forfeited any claim of error regarding the subject exit order by failing to make specific objections before the juvenile court. Moreover, the exit order is supported by substantial evidence and is not the product of an abuse of discretion or error.

B.C. had been D.C.Jr.'s primary caretaker even before these dependency proceedings were initiated. Father only visited with D.C.Jr. once. DCFS did not have any concerns regarding B.C.'s custody and care of D.C.Jr. In contrast, father neglected and physically abused junior, a sibling of D.C.Jr. Additionally, junior died under suspicious circumstances while in the custody and under the care of father. The juvenile court therefore acted well within its discretion in awarding B.C. sole custody of D.C.Jr. and monitored visitation with father.

DISPOSITION

The orders appealed from are affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.