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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B294919  
(Los Angeles County  
Super. Ct. Nos.  
18LJJP00332C,  
18LJJP00332D)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

O.T.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County. Nancy Ramirez, Judge. Affirmed.

Liana Serobian Law Inc. and Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

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In this juvenile dependency appeal, the juvenile court declared the four youngest children of appellant O.T. (mother) dependents of the court based on both mother's and the children's father's alleged conduct. The court ordered the children removed from their parents and ordered monitored visitation. On appeal, mother challenges the juvenile court's exercise of jurisdiction over the children based on her conduct, the court's refusal to allow the two youngest children to testify at the dispositional hearing, and the court's order removing the two youngest children from mother and ordering her visits with the children be monitored. As discussed below, we affirm.

## **BACKGROUND**

### **1. Events Preceding Dependency Petition**

The family consists of mother, father, and their six children—an adult daughter, an adult son, a 16-year-old son, a 13-year-old daughter, an 8-year-old daughter, and a 6-year-old son. Mother and father met in high school and, after two months of dating, mother was pregnant with their first child. Mother and father married in 2009. They had a tumultuous relationship interspersed with infidelity and instances of domestic violence perpetrated by father against mother, sometimes resulting in mother's hospitalization. During their relationship, mother was

the main source of income, working most recently as a paralegal, while father stayed home and cared for the children.

Mother and father separated in May 2017 and were in the process of divorce when these proceedings began. The minor children, adult son, and the adult son's girlfriend lived with mother. Mother believed her adult son, 16-year-old son, and 13-year-old daughter had become very disrespectful and were upset with her because of her separation from father. Mother said she was scared of her 16-year-old son because he was aggressive, had caused property damage, and in 2017 had hit the 13-year-old daughter in the face. Mother enrolled both the 16-year-old and the 13-year-old in therapy.

In August 2017, father was arrested for, among other things, hitting his 16-year-old son. Father also had been driving while under the influence with his 16-year-old son in the car. As a result of that incident, a criminal restraining order was issued, protecting mother and the children from father. Father was eventually convicted of two misdemeanors stemming from the August 2017 incident. He was sentenced to 180 days in jail and five years of probation.

By mid-April 2018, mother had asked her adult son and his girlfriend to move out of the home. One day while mother was waiting in her car in front of her home with her two younger daughters, her adult son came out of the house toward her. He was upset she had asked him to move out and he broke the rearview mirror on her car. Mother asked the 13-year-old daughter to take the eight-year-old daughter for a walk around the block, and mother called the police. The 16-year-old son also came outside and became very upset to see mother on the phone with the police. He took mother's phone from her and gave it to

the adult son, who left with the phone. When the police arrived, they called the adult son, who came home and returned the phone to mother. No one was arrested.

Later, mother had another confrontation with her 16-year-old son, who wanted to be emancipated. When mother told him he had to go to court on his own, he became verbally aggressive. Mother said she was scared of him. Because the 16-year-old had become aggressive, mother found a two-inch wrench in the kitchen and threw it against the wall. Mother denied throwing the wrench at her son or at anyone. The police again were called. By the time the officers arrived, the 16-year-old son had left to stay with relatives or friends.

Following the incident with the wrench, a referral was made to respondent Los Angeles County Department of Children and Family Services (Department). The referral stated mother purposely had thrown the wrench at her 16-year-old son but had missed him. The referral also stated mother then became hysterical and threatened to kill herself in front of the children. According to the referral, mother began swinging her arms and moving toward her 13-year-old daughter. The 16-year-old son intervened to protect the daughter. The two youngest children were asleep during the incident. The referral also reported the 13-year-old daughter did not feel safe living with mother and that mother previously had made suicide attempts.

The referral prompted a Department social worker to visit mother's home and interview family members. Mother told the social worker that, years before, she had been prescribed medication for a panic attack, which she took for approximately one year, but she denied having suicidal ideations or threatening to kill or harm herself. Mother thought her adult son and his

girlfriend may have made the allegations against her because she and her adult son had not been getting along following her separation from father. Mother also told the social worker she had experienced domestic violence in the past at the hands of father and there was a restraining order in place protecting her and the children from father. The restraining order prohibited father from having any contact with her or the children.

Mother also disclosed to the social worker that a few weeks earlier she had an altercation with her 13-year-old daughter. Mother had searched her daughter's room at home, which caused her daughter to become very upset. The 13-year-old daughter "began getting in [mother's] face" and "grabbed [mother] by the wrist." Mother said she was able to pull her wrist away from her daughter's grasp, but her daughter continued to talk back to her. In order to stop her daughter from coming toward her or grabbing her, mother slapped her 13-year-old daughter on her mouth with an open hand and hit her on the arm with a wooden spoon. Mother noted her 13-year-old daughter was taller than her and she denied leaving any marks on her daughter. Mother appeared remorseful about having hit her daughter.

After that episode and in violation of the restraining order in place at the time, mother stated she asked her adult son to take her 16-year-old son and 13-year-old daughter to stay with father for the night at the paternal grandparents' home where father was staying. Mother then called father's probation officer to tell him the children were with father. Eventually, and at mother's request, the 16-year-old son went to stay with a paternal uncle until the family was able to resolve their issues.

The Department social worker also spoke with the four minor children. The 16-year-old son told the social worker his

relationship with mother was strained, and he was very upset when mother called the police on the adult son. The 16-year-old son wanted to be emancipated. He explained the evening mother threw the wrench, it did not hit him, and she had never thrown anything at him before. The 16-year-old son said mother usually talked to him when he was in trouble. He also stated mother had threatened to kill herself when they were arguing the other night, but he did not believe she meant it. The son said he had been staying with his paternal uncle but spoke with mother on the phone and she told him she missed him and loved him. The 16-year-old son believed mother was trying “to set father up” when she sent the 16-year-old son and 13-year-old daughter to stay with father knowing that would violate the restraining order. The son said father left the house when he and his sister arrived so as not to violate the restraining order. Finally, the 16-year-old son also described the August 2017 incident when he went to Santa Barbara with father. While there, father “busted a door” open with a bat, punched the 16-year-old son twice in the chest, and drank four to five beers before driving with the son in the car.

The 13-year-old daughter told the social worker mother generally did not hit the children, except one time a few weeks earlier mother hit her with a wooden spoon, which left a mark. The 13-year-old daughter explained she had grabbed mother’s wrist during that altercation, but only because she did not want mother to hit her. The daughter had also seen mother hit the six-year-old son on the back once but that did not leave a mark. The 13-year-old daughter was upset with the arguing in the home and said she preferred to live with the adult daughter. The 13-year-old daughter reported both the adult son and the 16-year-old

son cussed at mother. She told the social worker father said mother took antidepressants. The 13-year-old daughter believed mother thought of suicide, although she could not explain why she thought that other than to state she read mother's journal once and felt mother "hinted" at suicide throughout her journal and on the evening mother threw a wrench, she had threatened to kill herself. The 13-year-old daughter also discussed her family issues with a counselor at her school.

The eight-year-old daughter told the social worker she had not seen mother hit any of the children, nor had she heard mother state she wanted to harm herself. The eight-year-old daughter said mother once took the 13-year-old daughter's phone away and the 13-year-old daughter yelled at mother for three weeks.

The six-year-old son told the social worker he was happy in the home and felt safe. He was not scared of mother and never heard her say she was going to hurt herself. The six-year-old son reported a lot of arguing in the home. He said sometimes when mother was upset with him, she would slap him on the arm or face with an open hand, but she never left a mark.

The social worker also interviewed father's probation officer. The probation officer explained father had been taken into custody on April 25, 2018, because father had violated the restraining order protecting the children. The officer also stated mother had informed him of father's contact with the children.

The social worker spoke with the police officers who had responded to the home. The officers believed the two older sons were "very upset" with mother because she and father had separated. One of the officers who had been to the home a few times believed the 16-year-old son had "a lot of resentment

towards mother,” “the children appear to feel that everything is mother’s fault,” and “the older children are uncooperative with mother and appear to hate her nor like to be disciplined by her.” The officers had assessed mother for suicidal ideations. She denied having any suicidal ideations, and the officers believed she appeared well. The officers did not have any child safety concerns.

The Department social worker spoke with a maternal great grandfather, the maternal grandparents, and the paternal grandfather. The maternal great grandfather stated he had witnessed the 16-year-old son being very disrespectful to mother a few weeks earlier in mother’s home. He did not know why the 16-year-old son was so mad at mother. The maternal grandparents also told the social worker they recently had witnessed the 16-year-old son at mother’s home being extremely disrespectful to mother as well as to them. The son swore at mother and the maternal grandparents, telling them they were not his grandparents. The maternal grandmother was scared he might hurt her. The maternal grandparents described father’s violent tendencies and their concern for mother. They said mother had always been hard working and the main source of income for the family.<sup>1</sup> They believed father was lazy and could not keep a job because he did not like to take orders. The maternal grandmother believed the paternal grandparents always took father’s side and helped hide him from law enforcement when he was in trouble. She also believed father was “poisoning [the 16-year-old son’s] mind about mother.”

The paternal grandfather told a somewhat different story. He described mother as not being at home and wanting to work

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<sup>1</sup> Mother had been a paralegal for 17 years.



in order to be away from the children. He told the social worker father was the main caregiver for the children while mother worked. He believed the children were very attached to father and loved him more than mother. The paternal grandfather said he and his wife helped raise the children. Although the paternal grandfather indicated he understood why mother “no longer wants to be with father,” he said mother often lied about father and she was the reason father currently was in jail. The paternal grandfather told the social worker mother had a history of leaving the children home alone while she went out “partying,” and in the past she had come home drunk at two or three o’clock in the morning. He also said mother would drive while intoxicated. The paternal grandfather indicated he had contacted law enforcement about mother’s tendency to leave the children home alone at night, but they were not concerned because the 13-year-old daughter was in the house. The paternal grandfather also described the events when mother sent the 16-year-old son and 13-year-old daughter to stay with the paternal grandparents despite knowing father lived there and could get in trouble for violating the restraining order. Paternal grandfather believed the children were “suffering because mother [would] rather go to work than care for the children.”

The social worker also interviewed the paternal uncle with whom the 16-year-old son was staying. The paternal uncle told the social worker mother had asked for his help because the 16-year-old son was rebelling. Mother asked if her son could stay with the uncle “until things settled down.” The paternal uncle was happy to help and felt the 16-year-old son was doing better away from the family. The uncle said the children were having a difficult time with their parents’ separation. He believed mother

was a good mother. He did not believe the children were being abused.

In mid-May 2018, the Department social worker spoke with mother, who had called to inquire about counseling services for the children. The social worker explained the possibility of opening a voluntary family maintenance case. Mother said she wanted help from the Department and would consider that option.

A few days later, the paternal grandfather brought four letters to the Department social worker. The letters were written by the paternal grandparents, the adult son, the adult son's girlfriend, and father's girlfriend. The letters asserted father's innocence in any wrongdoing and described what they believed to be mother's poor parenting and her manipulative attempts (some successful) to force father into violating the restraining order. When he delivered the letters to the social worker, the paternal grandfather again insisted mother had always been the provider while father "raised the children."

## **2. Initial Dependency Petition**

On May 30, 2018, the Department filed a 14-count petition under Welfare and Institutions Code section 300, subdivisions (a), (b) and (j)<sup>2</sup> (petition) on behalf of the four minor children. The petition alleged the minor children were at risk of serious harm because of mother and father's history of domestic violence, mother's failure to protect the minor children from father, mother's physical abuse of the 13-year-old daughter and six-year-old son, father's physical abuse of the 16-year-old son, father's incident of driving while under the influence of alcohol with the

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<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

16-year-old son in the car, and mother's mental and emotional problems, including anxiety and suicidal ideation. When the petition was filed, father was incarcerated for violating the restraining order.

The detention hearing was held the next day. At the hearing, the juvenile court detained the minor children from father and released them to mother. The court ordered monitored visitation for father if permitted under the restraining order and ordered the Department to make family preservation referrals for mother.

### **3. Modified Restraining Order and Family Court Settlement Agreement**

The following week, the restraining order against father was modified. As modified, the restraining order protected only mother from father. Mother and father also executed a settlement agreement in a separate family court proceeding. Among other things, the settlement agreement provided mother would have legal and physical custody of the three youngest children. Mother and father would have joint legal custody of their 16-year-old son, who would reside with father. It is not clear whether the family court approved and entered the settlement agreement.

### **4. August 2018 Reports**

In August 2018, the Department submitted a jurisdiction and disposition report as well as an addendum report to the court. At that time, the three youngest children were living with mother, while the 16-year-old son was living with the adult daughter in Santa Barbara. The jurisdiction and disposition report disclosed father was in compliance with his probation and participating in both parenting and domestic violence programs.

The reports also detailed statements made by family members and others familiar with the case, reiterating much of what had already been known and elaborating on some topics. For example, more detail was given about father's past domestic violence against mother and mother's alleged mental health issues.

Mother told a Department social worker she believed father needed "to step up as a parent. If my kids don't want to see him, they should not be forced." She wanted the juvenile court to revoke the visitation order in place for father. She said the children had told her father spoke poorly of mother and discussed case issues with them. In contrast, father told the social worker, "I haven't been the perfect husband but I am a bad ass father. I take care of them. Children Services has never been called on me. . . . I know I made mistakes last August. I did my time for that. I am being punished again. I wanna see my kids. The kids can tell you I'm a good dad, I'm not a bad parent."

The addendum report detailed the incident when mother hit the 13-year-old daughter on the face. The 13-year-old daughter told a Department social worker, "Ever since [mother] threw the wrench at me and my brother, I don't feel safe." The 13-year-old daughter did not want to live with mother but said, "I've made the decision to stay because of my other little siblings. They've been through a lot and I don't want to leave them. They already lost their two older brothers. I want to go with my dad. Growing up, he was the one that was taking care of us." The 13-year-old daughter also said she had seen mother hit the six-year-old son, stating, "[I]t looked like a punch to me. I did not like it." Similarly, the eight-year-old daughter told a Department social worker mother hit both her and the six-year-old son, explaining,

“She would hit both of us when she would get stressed. I told her to stop because I didn’t like that.”

A Department social worker also spoke with the adult daughter, who stated she feared “that one day, I’m gonna get a call that my mom did something to herself or the kids. I feel she needs a break from them. I don’t think she hates the kids. I think she loves them. She needs space from them. I want the kids to at least have partial living with my dad. I would rather have my dad in the picture over my mom.” The adult son told the social worker, “I want all of it to stop between them. I just want them to stop trying to put each other in jail. The only ones that are getting hurt are [the three youngest children]. They need to stop arguing all the time and stop mentioning each other.”

The jurisdiction and disposition report summarized the family situation as “chaotic.” The Department social worker indicated neither mother nor father accepted responsibility for their troubles. Instead, they each blamed the other. The social worker stated, “[I]t appears as if both parents despise each other due to their chaotic and unhealthy past relationship,” and unfortunately the children were caught in the middle.

## **5. Removal from Mother**

In an early October 2018 last minute information for the court, the Department reported father consistently had been participating in both a domestic violence program and a parenting program. Mother had not enrolled in any recommended services.

In addition, the Department reported mother and the 13-year-old daughter recently had an argument over the daughter’s poor school grades and being disrespectful. After the argument, mother sought the advice and assistance of Chekesha Bonam, a

Department social worker. Mother asked about her rights with respect to disciplining her daughter. In addition to discussing appropriate types of discipline with mother, Bonam scheduled a home visit and said she would discuss the situation with the 13-year-old daughter. Before Bonam visited the home, however, she received a message from father stating mother had told the 13-year-old daughter to leave the home.

A few days later on October 10, 2018, Bonam visited the home and spoke with the minor children privately. The 13-year-old daughter told Bonam that, during a recent argument with mother over grades, the daughter thought mother might hit her, although mother did not hit her. The 13-year-old daughter stated mother told her she had to leave the home and stay with father, but the daughter refused because she did not want to get father in trouble. The eight-year-old daughter also told Bonam that although mother did not hit her sister, the eight-year-old daughter thought mother would. According to the 13-year-old daughter, sometimes there was no food in the house for weeks at a time and they ate at fast food restaurants. The daughter also reported mother leaves the house in the early morning and does not tell the children and sometimes when they wake up in the middle of the night mother is not home. The eight-year-old daughter also revealed mother called “her and her siblings, stupid and dum[b] and uses profanity at them on a regular bas[is].” She said mother refuses to allow her to have contact with father. Finally, the six-year-old son told Bonam mother told him he could no longer visit father and threatened to have father “put in jail for 5 weeks.”

Based on her discussions with the three youngest children, Bonam believed mother was emotionally abusing and generally

neglecting the younger children. Thus, on October 17, 2018, and as a result of Bonam's investigation and assessment, the Department sought, and the juvenile court ordered the removal of the three youngest children from mother. The removal order was based on the Department's assessment that the children were in danger of physical abuse and were suffering severe emotional damage. On October 26, 2018, the children were removed from mother and placed in protective custody.

#### **6. Detention from Mother**

Soon after, on October 30, 2018, the Department filed a section 385 change of order petition (385 petition) seeking to detain the children from mother and to vacate the juvenile court's earlier "home of parent mother" order. In addition to detailing the most recent events between mother and the three youngest children, the 385 petition stated father, the 13-year-old daughter, and the eight-year-old daughter all indicated mother had been "dropping the children off at father's home and leaving them for the weekend. These visits were not authorized by the Department and father phoned or texted [the social worker] every time these specific visits took place. He stated that when [mother] did so he would leave the home and phone his [probation officer] to let him know. . . . Mother was informed that the children were not to stay overnight but father was allowed to spend time alone with the children. Both father and [the two youngest daughters] reported that visits remained the same in mother dropping them off with father on the weekends. [Father] stated he was fearful of the 'what if' because mother has previously taken the kids to his home and he [was found in violation of] the restraining order."

The Department concurrently filed a detention report in which the Department detailed its reasoning for seeking detention of the three youngest children from mother. In addition to the facts already stated above, the detention report included father's statement that on occasion he or his parents took food to mother's home when the children called to say there was no food in the house. The report also stated mother left the children home alone "without their knowledge and without any proper communication gadgets such as a phone or tablet in case of an emergency." The 16-year-old son told a Department social worker he was "tired of being the parent." He said he "missed a lot of school due to mom not being home to care for the younger children. He and [the 13-year-old daughter] were responsible for caring for the children while mother was not home." The 16-year-old son preferred to live with father or the adult daughter. Similarly, the 13-year-old daughter stated she preferred to live with father but would live with mother if the two youngest children remained with mother "because she would like to ensure that they are cared for." The two youngest children indicated mother did not like it when they spoke with either father or the adult daughter, and the six-year-old son stated, "[M]y mom calls me dumb all the time." He preferred to live with the adult daughter.

The Department believed mother's conduct "endangered the safety and emotional well-being of the children such that the children are at risk of suffering from neglect, physical abuse and emotional harm. Such conduct includes but is not limited to, neglect and at risk of emotional abuse as evidenced by the fact that the mother and father have [a] history of domestic violence, the report of name calling of the children. The mother has shown



lack of protective factors as she allowed for the children to have unlimited contact with the father despite being a restraining order in place protecting the children from the father.” The Department also expressed concerns with mother’s apparent tendencies toward hitting the children, in particular her 13-year-old daughter.

On November 7, 2018, the juvenile court ordered the eight-year-old daughter and six-year-old son detained from mother. Mother was granted monitored visits with the children.

#### **7. Amended Petition and Mother’s No Contest Plea**

The adjudication hearing was held on November 20, 2018. At the hearing, the Department submitted an amended section 300 petition (amended petition), which amended counts b-1 and b-4 as follows. Count b-1 was amended by removing the particulars of mother’s alleged April 2018 physical altercation with her 13-year-old daughter and adding more generally mother and the 13-year-old daughter “have a parent-child conflict.” In addition, the amended count b-1 included reference to mother’s alleged statement in front of the children that she considered suicide. As amended, count b-1 read: “The children[s] . . . mother . . . and the [13-year-old daughter] have a parent-child conflict. On or about 4/2/18, mother and [the 13-year-old daughter] argued about mother being in [the 13-year-old daughter]’s room which escalated into a physical interaction. Further, the [13-year-old daughter] does not want to reside in the home and care of the mother. FURTHERMORE, THE CHILDREN HAVE STATED THAT MOTHER HAS INAPPROPRIATELY VERBALLY EXPRESSED THE POSSIBILITY OF SUICIDE IN FRONT OF THE CHILDREN WHICH WORRIES THE CHILDREN. Such parent-child conflict

between [the 13-year-old daughter] and the mother creates a detrimental home environment and places the [13-year-old daughter] and the child's siblings at risk of harm."

Count b-4 was amended by removing details of father's past violence against mother and mother's alleged failure to protect the children. As amended, count b-4 read: "The children['s] . . . mother . . . and the children's father . . . have a history of physical altercations. On prior occasions, the father struck the mother. The father violated the restraining order in place protecting the children from the father in that the father continued to have contact with the children. Such physical altercations on the part of the father against the mother places the children at risk of harm."

At the hearing, mother submitted a signed waiver of rights and entered a no contest plea to the amended petition. The juvenile court found mother had knowingly, intelligently, and voluntarily waived her rights after consultation with her attorney. The court further found "[mother] understands the nature of the conduct alleged in the petition and the possible consequences of [her] plea" and "there is a factual and legal basis for [the plea]."

The juvenile court sustained counts b-1 and b-4 as amended and, at the Department's request, dismissed without prejudice the counts related to mother's alleged physical abuse of the 13-year-old daughter and the six-year-old son (counts a-1, a-2, b-2, j-1, and j-2), the count related to mother and father's history of domestic violence (count a-4), and the count related to mother's alleged mental and emotional problems (count b-5). The juvenile court sustained the remaining counts alleged against father (counts a-3, b-3, and j-3 regarding physical abuse, b-4 regarding

domestic violence against mother, b-6 and j-4 regarding driving while intoxicated with his son in the car).

## **8. Disposition**

The disposition hearing took place over the course of two days, beginning immediately following the adjudication on November 20, 2018 and concluding one month later on December 21, 2018. Although mother entered a no contest plea to the amended petition, she objected to the removal of her two youngest children from her custody and care. Thus, the juvenile court held a contested hearing as to disposition.

At the contested disposition hearing, Department social worker Bonam and mother both testified. Bonam stated she had been assigned to the case since it began in May 2018. During visits to mother's home, Bonam had observed food in the pantry and she never observed either the eight-year-old daughter or the six-year-old son to be malnourished or showing signs of physical abuse.

However, Bonam's concerns about the two youngest children's safety while in mother's care grew from mother's October 2018 verbal argument with her 13-year-old daughter as well as from things the children told Bonam. For example, the 16-year-old son and the 13-year-old daughter told Bonam they took care of the two youngest children when mother was not home. Bonam testified the 13-year-old daughter said "she only wanted to stay in the home because she needed to take care of her younger siblings. [¶] . . . She specified that her mother was not home a lot. She would go out and leave them home alone. And [the daughter] would have to care for the kids." Similarly, the 16-year-old son told Bonam he did not want to return to mother's home in part because "he was tired of taking care of the

younger kids, getting them up for school and caring for them because mother was absent.” According to the children, sometimes after being out at night mother did not take the eight-year-old daughter and the six-year-old son to school (although it is not clear how often that occurred, and Bonam did not follow up with the children’s school). Contrary to the children’s statements, however, mother told Bonam she always took her eight-year-old daughter and her 6-year-old son to school.

In addition, the eight-year-old daughter and six-year-old son told Bonam mother called them dumb and stupid, the eight-year-old daughter said she did not feel safe in the home, the 16-year-old son and the 13-year-old daughter did not want to return to mother’s home, and the 13-year-old daughter told Bonam mother only had food in the house when she knew Bonam would be visiting. Bonam testified she did not make unannounced visits to the home. Bonam was also concerned when she heard mother had taken a child’s cell phone away because Bonam did not know what the children would do if there were an emergency and they were home alone. Although Bonam testified the children had “no form of communication when mother was not in the home,” she did not know whether the home had a land line and she had not asked mother whether she left them home at night. Finally, Bonam testified mother was not always compliant with visitation orders. Sometimes mother allowed the children to spend the night with father despite Bonam having told mother the children were not to have overnight visits with father.

As a result of these issues, Bonam did not believe it would be safe for the two youngest children to remain with mother if neither the 16-year-old son nor the 13-year-old daughter were living at the home. Although Bonam testified she did not speak

with mother about many of the reasons leading to the children's removal from mother, Bonam stated the children's statements were consistent, and she had no reason to doubt them.

At the conclusion of the first day of the disposition hearing, counsel for mother made an offer of proof to support mother's request to call her eight-year-old daughter and six-year-old son to testify. Counsel stated, "I would like to question the minors regarding Ms. Bonam's statements and the claims made about the comments . . . that [mother] allegedly made with respect to them, with respect to the name-calling, whether or not they feel safe with the mother, and the leaving in the middle of the night and not being present at home, as well as I think she did already discuss the children said they didn't have food in the home." The juvenile court found the proffered testimony of the eight-year-old daughter and six-year-old son would be cumulative and, therefore, denied mother's request to have them testify.

On the final day of the disposition hearing, mother testified. She explained she sought out and was willing to engage in Department services. She testified she started attending therapy sessions in October 2018 (i.e., three months earlier) and, since then, she had attended three sessions. Mother provided a letter indicating she had begun individual therapy, which the Department verified, although the Department could verify only that mother had attended one therapy session since enrollment. Mother also testified she had enrolled in an on-line parenting course and provided a letter stating she had enrolled in the course. However, the Department stated it does not recommend or approve of on-line courses and, therefore, could not accept that program.

Mother testified she kept food in the home. Mother said her children did not like fast food, but sometimes they ate at restaurants like Olive Garden and Applebee's. Mother let the children decide where they wanted to eat. Mother denied leaving the children home alone in the middle of the night. However, mother testified she walked in the morning between 5:00 a.m. and 6:00 a.m. Mother said the children knew about her morning walks, she kept her cell phone with her on her walks, the children had access to both a cell phone and the house phone, and they knew her cell phone number. She said she took her 13-year-old daughter to school between 6:15 and 6:20 in the morning. Mother said she had not and would not leave the two youngest children home alone, but she had left them home alone with the 13-year-old daughter. Mother also stated if only her eight-year-old daughter and her six-year-old son were living with her, she would take her walks while the children were at school. Mother also denied calling her children dumb or stupid. However, she stated sometimes she used those words to describe something the children did. For example, mother testified she might use those words "when they did something, like, in their room and I just said, 'Oh, that's stupid.'"

Mother testified many of her children's statements were not true. According to mother, her children lied when they said there was no food in the house, she bought them fast food, she left them home alone, and she called them dumb and stupid. Mother also said she did not attempt to hit her 13-year-old daughter when they argued in October over her daughter's grades. Similarly, mother testified her 16-year-old son lied when he said he sometimes had to take care of the two youngest

children on his own, and her eight-year-old daughter lied when she said mother would not let her contact father.

At the conclusion of the hearing, the juvenile court ordered the children removed from both mother and father. In making its ruling, the court found mother's testimony not credible and the children's statements credible. In particular, the court believed the children's statements that mother called them "stupid" and "dumb," mother left them unsupervised in the home late at night, and mother had not adequately provided for their food and care. Additionally, the court was "concerned that the two youngest children will not be adequately provided for" because the 16-year-old son and the 13-year-old daughter were no longer living in mother's home yet had stated "they were always caring for the younger children."

The court ordered family reunification services for both parents, including monitored visitation for mother. Father was given unmonitored visitation.

## **9. Appeal and Postappeal Orders**

Mother appealed the juvenile court's December 21, 2018 "dispositional orders, including suitable placement order" as related to her eight-year-old daughter and her six-year-old son only.

After mother filed her appeal, the juvenile court sent this court copies of minute orders reflecting subsequent proceedings below. According to those minute orders, on March 20, 2019, the juvenile court ordered both the eight-year-old daughter and the six-year-old son released to father under Department supervision.

## DISCUSSION

On appeal, mother makes three main arguments. First, she argues the juvenile court erred both as a matter of law and of fact in sustaining the amended petition as to her. Second, mother argues the juvenile court erred when it denied her request to have her eight-year-old daughter and six-year-old son testify at the disposition hearing. Third, mother states the juvenile court erred when it removed her eight-year-old daughter and six-year-old son from her custody and care and, at the least, the court should have allowed mother to have unmonitored visits with all her children. We address each issue in turn.

### 1. Jurisdiction

As an initial matter, we must determine whether mother properly can challenge the juvenile court's jurisdictional findings related to her. The Department argues mother cannot challenge the juvenile court's jurisdictional findings because she entered a plea of no contest to the amended petition and did not raise any challenges to the sufficiency of the petition below. We agree with the Department.

The law is clear a parent "cannot challenge the sufficiency of the allegations in a dependency petition on appeal if he [or she] did not first raise the issue below. It is well settled that attacks on the legal sufficiency of a petition cannot be challenged for the first time on appeal." (*In re N.M.* (2011) 197 Cal.App.4th 159, 166.) Additionally, a "plea of 'no contest' to allegations under section 300 at a jurisdiction hearing admits all matters essential to the court's jurisdiction over the minor." (*In re Troy Z.* (1992) 3 Cal.4th 1170, 1181 (*Troy Z.*)) A "plea of no contest to a section 300 petition, bars the parent from bringing an appeal to challenge the sufficiency of the evidence supporting the



jurisdictional allegations.” (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 167.)

Here, it is undisputed mother not only failed to challenge the juvenile court’s jurisdictional findings as to her, but she also knowingly entered a plea of no contest to the amended petition. Thus, the inescapable conclusion is that mother may not now challenge the juvenile court’s jurisdictional findings as to her. “Accordingly, by [her] knowing and voluntary acquiescence to the allegations of the petition, [mother] waived [her] right to challenge on appeal the legal applicability of section 300[, subdivision (b)] to [her] conduct.” (*Troy Z.*, *supra*, 3 Cal.4th at p. 1181, fn. omitted.) In other words, mother may not contest that to which she deliberately entered a no contest plea. (*In re Andrew A.* (2010) 183 Cal.App.4th 1518, 1526.)

Nonetheless, mother claims she can raise her argument now because the juvenile court erred as a matter of law when it exercised jurisdiction based on count b-1. According to mother, count b-1 was legally insufficient on its face. Our Supreme Court has already rejected this line of reasoning. In *Troy Z.*, where the relevant subdivision was subdivision (e) of section 300, the court stated, “Lest there be any confusion, we expressly reject the parents’ assertion that the alleged legal inapplicability of section 300(e) to their conduct somehow renders their claims cognizable on appeal following their no contest pleas.” (*Troy Z.*, *supra*, 3 Cal.4th at p. 1181, fn. 11.) Similarly, here, we reject mother’s assertion that, despite her no contest plea below, she may raise on appeal the legal inapplicability of section 300, subdivision (b) to her alleged conduct.

Finally, mother correctly points out and the Department agrees mother is a nonoffending parent in the amended count

b-4. Although when addressing mother's alleged conduct, the juvenile court stated count b-4 was true as amended, the plain language of that count does not attribute any offending conduct to mother. Nonetheless, we need not dismiss that count because the juvenile court also found it true as to father, who has not appealed.

## **2. Minors' Testimony at Disposition**

Mother next argues the juvenile court abused its discretion and violated her right to due process when it denied her request to have her eight-year-old daughter and six-year-old son testify at the dispositional hearing.

### **a. Applicable Law and Standard of Review**

“‘In ruling on the admissibility of evidence, the trial court is vested with broad discretion.’” (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1135.) We will reverse an evidentiary ruling only upon a clear showing of abuse of discretion, i.e., when the juvenile court has exceeded the bounds of reason. (*Ibid.*)

“‘Due process is a flexible concept which depends upon the circumstances and a balancing of various factors. [Citation.] The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court.’” (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1081.) “‘In dependency proceedings, due process violations have been held subject to the harmless beyond a reasonable doubt standard of prejudice.’” (*Id.* at pp. 1080–1081.)

### **b. No Error**

As noted above, the juvenile court determined the testimony of the eight-year-old daughter and six-year-old son would be cumulative and, on that ground, denied mother's

request to have them testify. We find no abuse of discretion or due process violation.

Mother wanted her eight-year-old daughter and six-year-old son to testify regarding their statements about their sense of security (or lack thereof) in the home, as well as mother's name-calling, leaving in the middle of the night, and failure to keep sufficient food in the home. However, as explained above, the children's statements on those topics were detailed both in reports filed with, and in evidence before, the juvenile court as well as in Department social worker Bonam's testimony. Additionally, mother testified as to each topic, essentially stating the children's versions of events and circumstances were simply wrong. Finally, on appeal, mother relies on a number of cases addressing evidentiary procedures at section 366.26 termination of parental rights proceedings. Mother does not explain the relevancy of those cases or statutes here.

In light of the record before us, we conclude the juvenile court did not abuse its broad discretion when it excluded the eight-year-old daughter's and six-year-old son's testimony as cumulative. Similarly, and despite the relevancy of the proffered testimony, we conclude the juvenile court did not violate mother's right to due process because the testimony at issue was not of significant probative value.

### **3. Removal and Monitored Visitation**

Finally, mother challenges the juvenile court's disposition order removing her eight-year-old daughter and six-year-old son from her custody and care as well as the court's order requiring mother's visits be monitored.

**a. *Applicable Law and Standard of Review***

Section 361, subdivision (c)(1) permits the juvenile court to order a minor removed from his or her parent if the court finds by clear and convincing evidence that the minor is, or would be, at substantial risk of harm if returned home and there are no reasonable means by which the minor can be protected without removal. The court's “ ‘jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. [Citation.]” [Citation.] “ ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent's past conduct as well as present circumstances.” ’ ” (*In re A.F.* (2016) 3 Cal.App.5th 283, 292; *In re A.S.* (2011) 202 Cal.App.4th 237, 247.)

Before ordering removal, the juvenile court is required to “make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . . The court shall state the facts on which the decision to remove the minor is based.” (§ 361, subd. (e).) “To aid the court in determining whether ‘reasonable means’ exist for protecting the children, short of removing them from their home, the California Rules of Court require [the Department] to submit a social study which ‘must include’ among other things: ‘A discussion of the reasonable efforts made to prevent or eliminate removal.’ (Cal. Rules of Court, rule 5.690(a)(1)(B)(i).)” (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.)

We review the juvenile court's dispositional removal order under the substantial evidence standard of review. (*In re A.F.*, *supra*, 3 Cal.App.5th at p. 292.) “ ‘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 I.J.* (2013) 56 Cal.4th 766, 773.) Under this standard, our review " 'begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.' " ( *In re David H.* (2008) 165 Cal.App.4th 1626, 1633.) "We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence." ( *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) "[I]nconsistencies and conflicts in the evidence go to credibility of witnesses and weight of the evidence, which are matters for the trial court." ( *In re S.A., supra*, 182 Cal.App.4th at p. 1149.)

" 'However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, "[w]hile substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the evidence' [citation]; *inferences that are the*

*result of mere speculation or conjecture cannot support a finding [citations].* [Citation.] “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” ’ ” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) “ ‘[I]f the word “substantial” [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with “any” evidence. It must be reasonable . . . , credible, and of solid value . . . .’ ” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633; *In re I.C.* (2018) 4 Cal.5th 869, 892.)

We review the court’s visitation rulings for an abuse of discretion. (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.) “A juvenile court’s determination as to whether parental visits are in the best interests of a dependent child may be reversed only upon a clear showing of abuse of discretion. [Citations.] ‘ “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ ” ’ ” (*Ibid.*)

**b. Harmless Error**

Mother claims the removal and visitation orders must be reversed because “the Department’s reports contain no . . . discussion” regarding the required reasonable efforts to prevent removal and the juvenile court failed to articulate what reasonable efforts were considered. We disagree.

First, the Department’s October 2018 detention report included a section entitled, “Reasonable Efforts and/or Prior Intervention/Services Offered.” Among other things, that section

notes the Department had conducted in-person and telephonic consultations with mother as well as provided her with a family preservation referral.

Second, whether properly or adequately articulated in Department reports, the Department in fact had made reasonable, although ultimately unsuccessful, efforts to prevent removal of the children from mother. Between late-May 2018 (when the initial petition was filed and the children were detained from father) and early-November 2018 (when the children were detained from mother), the Department supervised the minor children while they remained in mother's care and custody. During that five-month period, mother undoubtedly knew a dependency case had been opened concerning her family based in part on her behavior. Yet despite the Department's supervision and guidance, her behavior during those months did not substantially improve. Instead, mother engaged in another heated argument with her 13-year-old daughter (almost coming to blows with her), failed to follow visitation orders for father, and did not sign up for therapy or other services until late-October. In addition, the children consistently reported the 16-year-old son (when he had been living in mother's home) and the 13-year old daughter often cared for the two youngest children, including at times when mother was not home, which sometimes was in the middle of the night. Finally, the children also reported mother regularly called the two youngest children "stupid" and "dumb."

Third, although as mother points out and the Department recognizes the juvenile court failed to articulate on the record what reasonable alternatives to removal were considered, that error was harmless and not grounds for reversal. (*In re J.S.*

(2011) 196 Cal.App.4th 1069, 1078–1079.) For the same reasons discussed above, despite the juvenile court’s failure to discuss or mention alternatives to removal, reasonable alternatives, such as releasing the two youngest children to mother under Department supervision and offering guidance and assistance to mother, were unsuccessful.

Mother also notes that the record reveals mother’s home was safe, and the children were healthy, well-nourished, free of marks and bruises, and dressed appropriately. She argues these facts outweigh countervailing facts and support her position that the removal and visitation orders must be reversed. However, we must affirm the judgment “if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.” (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 228.)

Thus, even assuming the Department and juvenile court failed adequately to discuss the reasonable efforts made to prevent removal of the children from mother, we conclude the Department in fact made reasonable but ultimately unsuccessful efforts to avoid removal. This case is, therefore, distinct from *In re Ashly F.*, on which mother relies, where Division One of this district cautioned against perfunctory or conclusory declarations of reasonable alternatives becoming “hollow formula[s] designed to achieve the result the agency seeks.” (*In re Ashly F.*, *supra*, 225 Cal.App.4th at p. 810.)

Finally, we conclude substantial evidence supports the removal order and the juvenile court did not abuse its discretion in ordering monitored visitation for mother. As noted exhaustively above, mother not only had hit some of her younger



children, she regularly called the two youngest children names, had difficulty controlling her anger, threatened suicide in the children's presence, left the minor children unattended, and repeatedly failed to follow Department and court-ordered rules with respect to the children's contact with father. Although mother testified otherwise and denied most of what the children had told Department social workers, the juvenile court found mother's testimony not credible. We do not reweigh the evidence or pass on the credibility of witnesses. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 228.) We appreciate the significant challenges mother faced as she was in the midst of a contentious divorce while supporting four minor children, some of whom were quite defiant with her, but that does not alter the substantial evidence supporting the juvenile court's orders. Based on the record before us, we find no error.

**DISPOSITION**

The December 21, 2018 orders are affirmed.  
NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.