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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JOSEPH V. et al., Persons Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESSE G. et al.,

Defendants, Objectors and  
Appellants.

B232895  
(Los Angeles County  
Super. Ct. No. CK84816)

APPEAL from orders of the Superior Court of Los Angeles County. Timothy R. Saito, Judge. Affirmed in part and reversed in part.

Andre F. Toscano, under appointment by the Court of Appeal, for Defendant and Appellant Jesse G. (father).

Lori A. Fields for Defendant and Appellant Maria V. (mother).

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for Objector and Appellant Joseph V. (minor).

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel for Plaintiff and Respondent.

## **INTRODUCTION**

Los Angeles County Department of Children and Family Services (DCFS) filed a petition alleging that siblings Joseph V., age 16, and Emily G., age 10, fell within the jurisdiction of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (b), (d) and (j). The petition alleged that the children's father had sexually abused their half-sister and that such conduct placed the children at substantial risk of sexual abuse. The petition also alleged that the children's mother, who lived in North Carolina, had failed to protect the children because she permitted them to reside with their father in California. At the jurisdictional hearing, DCFS recommended that the juvenile court sustain the allegations pertaining to father and dismiss the allegations pertaining to mother. The court, however, sustained the allegations against both parents, declared the children to be dependents of the court and ordered them removed from the parents' residences.

Father, mother and Joseph each appeal the juvenile court's jurisdictional and dispositional orders. We reverse the portion of the court's orders pertaining to Joseph and affirm the portion of the orders pertaining to Emily.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### ***I. Initial Investigation and Detention***

#### ***A. Initial investigation***

In October of 2010, Jesse G. (father) was living in Los Angeles, California with his two children, Joseph, then 16, and Emily, then 10. The children's mother, Maria V., was living in North Carolina and had three adult children from a prior relationship: Jasmine L. (then 21), Richard L. (then 24) and David L. (then 23). Between approximately 1996 and 2006, father and mother had lived together intermittently with Joseph, Emily, Jasmine, David and Richard.

On October 18, 2010, DCFS received a referral from the Los Angeles County Sheriff's Department alleging sexual abuse to Joseph and Emily (collectively children). A Los Angeles Sheriffs Department (LASD) detective reported that the children's half-sister Jasmine had informed law enforcement that father (Jasmine's stepfather) had

sexually abused her between the ages of four and eighteen. Jasmine stated that Joseph and Emily were supposed to be living with mother in North Carolina, but were currently residing with father in Los Angeles. Mother had allegedly sent the children to visit father and neither parent could afford to pay for their return trip to North Carolina. Although mother told Jasmine she did not believe father had “done anything sexual to the children,” Jasmine was concerned for the children’s safety.

### *1. Summary of LASD criminal investigation*

A DCFS social worker interviewed the detective who made the initial referral. The detective reported that, in 2009, Jasmine filed a criminal report accusing father of sexual abuse. The matter was referred to DCFS after Jasmine reported that Joseph and Emily were under the care of their father. The detective stated that he currently had a “weak case due to Jasmine being inconsistent with her story” and that the district attorney “did not want to take it.” He also informed DCFS that Jasmine had filed a criminal complaint against her father in North Carolina but dropped the charges. The detective stated that police had been unable to interview father about the allegations because he was frequently out of town for work. Father lived with his mother (the children’s paternal grandmother), who cared for the children when father was out of town.

The detective provided a report summarizing the investigation of Jasmine’s criminal complaint. The report stated that when Jasmine initially reported the incident, which occurred on June 9, 2009, she “was not able to give specific dates or times of the incidents, but was able to give specific details on certain incidents.” Jasmine alleged that father began sexually abusing her when she was four years old. Over a period of years, father had entered Jasmine’s room on a nightly basis and performed oral copulation on her. Father also tried to “force her to perform oral copulation on him but she would refuse.” On three or four occasions, father allegedly showered with Jasmine. Father continued to perform oral copulation on Jasmine until she was 10 or 12 years old, and then he started to “penetrate her vaginally with his penis.” She recalled “bleeding when he first attempted [*sic*].” Father would also “use his fingers and other foreign objects to penetrate her vagina.” Sometimes father would leave money in Jasmine’s underwear.

The last incident of abuse occurred in a hotel in Texas in 2006; Jasmine was 16 at the time of the incident.

The report stated that, during a second interview on June 10, 2009, Jasmine said that father “orally copulated” her from the age of four until the age of 12, and then began having sex with her. Jasmine reported that the sexual abuse occurred “almost every day for years” and that father had sex with her at least once a month when she was 12 years old. On one occasion, Jasmine’s older brother walked in on father and Jasmine while they were having sex and then backed out of the room. On another occasion, father came into her room and “began to orally copulate her and attempted to have sex with her.” Jasmine’s brother, who was sleeping in the room, woke up and yelled at father to leave the room.

Jasmine reported that no abuse occurred between the ages of 12 and 15 and that the last incident occurred when she was 16. On that occasion, the family was staying in a hotel in Texas. Father was left alone with Jasmine and began touching her. Jasmine pushed him away and left the room. Shortly thereafter, father moved to California and Jasmine has not seen him since.

The police report indicated that law enforcement also interviewed Jasmine’s brother, Richard L., in May of 2010. Richard said that, in 2000, he and Jasmine lived in North Carolina with mother and father. Richard woke up one night and saw father in bed with Jasmine “getting up from between Jasmine’s legs.” Richard could not remember if Jasmine or father were clothed. Father allegedly left the house shortly after this incident. Richard said that Jasmine later told mother what occurred and that this was the only inappropriate incident he witnessed between Jasmine and father.

The police report also summarized an interview with mother, which occurred in October of 2010. Mother said that although Jasmine never went into detail about what happened with father, mother knew father had “touched her sexually.” Mother said when her son David was about 7 or 8, he told her he saw father place Jasmine (who was then about 5) on the bed. Father was naked with an erection. David told mother that Jasmine began screaming and that father left the room. Mother also said father had admitted he

had touched Jasmine in a sexual manner and said he would never do it again. Mother reported that although Jasmine filed a criminal complaint with the North Carolina police, the case was dropped because Jasmine “told investigators she was no longer interested in pursuing prosecution against [father].”

The police also contacted Joseph, who reported that he had traveled from North Carolina to California in March of 2010 and that Emily arrived in California several months later. Joseph said his mother only wanted him and Emily to return to North Carolina so that father would be obligated to send her money. Joseph said his mother was an alcoholic and that he preferred to live with father. Joseph told officers he did not believe father had done anything to Jasmine and that her brothers, David and Richard, “put her up to making the allegations” because they did not like father. Joseph did not believe his father was capable of molesting anyone and had never seen his father act inappropriately with Emily.

## *2. Interview with mother*

On October 20, 2010, the social worker contacted mother, who was residing in North Carolina. Mother stated that she “ha[d] no family court order with father but only a verbal agreement with him on visits with kids.” Mother permitted Joseph and Emily to visit their father in California if he agreed to pay for the children’s flights. Mother stated that Joseph had been under the care of father since February of 2010 and that Emily had been under father’s care since July of 2010. Mother initially sent Joseph to California because he was having behavior problems in North Carolina; Emily was sent for summer vacation. Although both children were supposed to return to North Carolina in August, father told mother he did not have enough money to purchase a return ticket.

Mother stated that Jasmine disclosed father’s sexual abuse in 2006 and mother immediately kicked father out of the home. When mother was asked whether she had ever confronted father about Jasmine’s allegations, mother stated ““yes I did but he said nothing. All he told me was, I won’t do it again.”” Mother also explained that she was not aware of ““what the abuse consisted of”” because Jasmine ““never wanted to tell her.””

Mother told the social worker that, despite her knowledge about father's sexual abuse of Jasmine, she sent Joseph and Emily to be under his care because she did not believe the children were at risk. Mother explained that the children had always denied being abused by father and were primarily cared for by their paternal grandmother, who lived with father. Mother also stated that, in 2009, a social worker in North Carolina had investigated Jasmine's sexual abuse allegations "and told [mother] she could continue to send the kids to visit there [sic] father."

### *3. Interview with Jasmine*

The social worker contacted Jasmine, then 21, who was residing in California with her maternal aunt. Jasmine stated that she was sexually abused by father between the ages of 5 and 16 (approximately 1995-2006.) Jasmine informed the social worker that father had touched her vagina, performed oral copulation on her and tried to force her to perform oral sex on him. Jasmine was not able to tell the social worker how often the abuse occurred and did not recall if there was ever any penetration.

Jasmine stated that she and her older brother informed mother of the abuse when Jasmine was 10 years old (approximately 2000) and that father immediately moved out of the home. However, father continued to come by the house to visit his children Joseph and Emily; father later reconciled with mother and returned to the residence about 3 years later. Jasmine stated that father continued the sexual abuse after moving back into the home but she never told mother.

Jasmine said she filed a police report in North Carolina when she was 18 years old and filed a second report in California when she moved to the state in 2009. Jasmine reported that she rarely saw Emily or Joseph and that neither had ever alleged that they were sexually abused by father.

### *4. Interviews with Joseph and Emily*

On October 21, 2010, the social worker interviewed Joseph, who stated that he was aware of Jasmine's allegations because he had previously been interviewed by a detective. Joseph said he had been under the care of his father for approximately six months "after his mother sent him from North Carolina . . . for education purposes."

Emily came to live with father and Joseph approximately four months later. Joseph stated that he preferred to stay “in California under the care of his father due to mother’s alcohol problems.” Joseph reported that, when he left North Carolina, mother was drinking about 5 beers a day. Joseph said his father had never sexually abused him or Emily. He also said he did not believe Jasmine’s allegations and questioned why she had waited so long to report the abuse.

The social worker also spoke to Emily, who reported that she was supposed to return to her mother before school started in North Carolina but that she “wanted to stay with her father longer.” Emily reported that she “like[d] it here” and that she “did not want to return to her mother right now.” Emily told the social worker mother drank on a daily basis and that ““she drinks one and then once she finishes it she gets another one.”” Emily denied ever seeing her father touch Jasmine in an inappropriate manner and stated that nobody had ever touched her “inappropriately on her private areas.” Emily said she was comfortable in father’s presence and was not afraid of him.

#### *5. Interview with other family members*

The social worker spoke to the children’s maternal aunt, who resided with Jasmine. The aunt reported that Joseph had been living with father and paternal grandmother since March 2010 and that Emily had been living with them since July 2010. The maternal aunt reported that neither child had ever disclosed being abused by their father. The aunt stated that she was aware of Jasmine’s allegations but that ““she just like makes to make a lot of things up like her mother.””

The social worker visited the father’s home and was greeted by the children’s paternal grandmother, who indicated that father lived in the home but was on a business trip. Grandmother, who also lived in the home, said she cared for Joseph and Emily when father was away. Grandmother reported that Joseph had been living in the home since the beginning of 2010 because he was in “too much trouble at school” and mother “could not handle him anymore.” Emily had arrived in July. Grandmother stated that she allowed mother to live in a motor home that grandmother owned in North Carolina. However, when the children came to California, grandmother asked mother to start

paying rent. According to grandmother, mother was “having Jasmine falsify sexual abuse allegations” so that she could get the children back and live rent free in the mobile home. The grandmother also alleged that mother had an alcohol problem and that Joseph and Emily would be “better taken care of by herself and her son.”

Grandmother reported that the family’s home had three bedrooms. Father and Joseph each had their own room and Emily slept in a bedroom with grandmother. Grandmother had never seen father engage in any improper conduct toward Joseph or Emily and the children had never disclosed any sexual abuse.

#### *6. Interview with father*

On October 21, 2010, father contacted the social worker and stated that he was out of town for work. Father stated that Jasmine’s allegations were “unfounded” and said she “like[d] to make things up.” Father believed mother was calling in the referrals because he told her she could no longer stay in the mobile home in North Carolina.

#### *B. Section 300 petition and detention hearing*

On October 26, 2010, DCFS filed a petition alleging that Joseph and Emily fell within the jurisdiction of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (b), (d) and (j).<sup>1</sup> The petition included an identical allegation, each subdivision stating, in relevant part: “On numerous prior occasions, the children[’s] . . . father . . . sexually abused the children’s then 4 year old sibling Jasmine . . . for 12 years since the child was 4 years old. . . . The children’s mother . . . failed to take action to protect the sibling when she knew of said sexual abuse of the sibling by the father resulting in the ongoing sexual abuse to the sibling. The mother allowed the children . . . to reside in the fathers’ home and have unlimited access to the father despite the mother’s knowledge of the father sexually abusing the sibling [*sic.*]. Such sexual abuse of the sibling on the part of the father and the failure to protect the children on the part of the mother endangers the children’s physical and emotional health and safety and places the

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<sup>1</sup> Unless otherwise noted, all further statutory citations are to the Welfare and Institutions Code.



children at risk of physical and emotional harm, damage, sexual abuse and failure to protect.”

The petition included a second allegation under subdivision (b) alleging that mother was a “current abuser of alcohol which renders the mother incapable of providing regular care for the children. . . . The mother’s abuse of alcohol endangers the children’s physical and emotional health and safety and creates a detrimental home environment, placing the children at risk of physical and emotional harm and damage.”

DCFS filed a detention report in support of the petition, which contained a summary of its initial investigation. The report concluded that the children were “at high risk if they continue in the care of father and mother. Mother is not able to protect her children from any abuse as she allowed the children to reside with there [*sic*] [father] after she was aware of the sexual abuse to her adult daughter, Jasmine . . . by [father] when she was a minor.”

At the detention hearing, which was held on October 26, the mother and father each entered a general denial and requested that the children be released to them. The children’s counsel argued that neither child should be released to their mother because both had “verif[ied] the [alcohol-related] allegation in (b)(2).” According to counsel, both children wanted to “go back to the father. They both adamantly state that they have never been touched inappropriately or that the father has abused them in any way.” Counsel requested that if the court was unwilling to release the children to the father, it should give DCFS discretion to release them to the “the paternal grandmother with the father out of the home.”

The juvenile court explained that although the “allegations and the statements in the report [we]re serious,” it found “very little risk to Joseph if [he] were . . . release[d] to father.” The court continued: “Joseph is 16. I think he’s in a very different position. And I think he’s able to protect himself in a way that perhaps the other siblings were not. [¶] . . . [G]iven his age, I see very little risk to him.” The court expressed concern, however, that the children would be separated if Joseph was released to his father. The court suggested that DCFS permit the children to remain in the house “if father moves

out.” After the parties conferred on the matter, father’s counsel indicated that he wanted the children to stay together and was “willing to move out.”

Thereafter, the court ruled that there was prima facie evidence that “these children are persons described by Welfare and Institutions Code section 300(b), (d), and (j).” The court granted DCFS custody of the children and ordered family reunification services. The father was permitted to have unmonitored visits with Joseph and monitored visits with Emily; mother was permitted monitored visits with both children.

## ***II. Jurisdictional/Dispositional Reports***

### ***A. The initial jurisdictional/disposition report***

On November 29, 2010, DCFS filed a “Jurisdiction/Disposition Report” indicating that, since filing its detention report, the agency had conducted additional interviews of Jasmine, Joseph, mother, father, the paternal grandmother and various other family members and government agents.

#### ***1. Summary of interviews***

##### ***a. Jasmine***

In an interview conducted November 20, Jasmine provided information that was substantially consistent with statements that she had previously provided to DCFS and the LASD. Jasmine alleged that father began sexually abusing her when she was four years old and that the abuse consisted primarily of oral copulation. Jasmine alleged that father began trying to penetrate her vaginally with his penis when she was around 10, and finally succeeded in doing so when she was about 11, which caused her to bleed. As she got older, father began leaving money in her underwear. Jasmine could not recall any abuse from the age of 12 to 15 and reported that the last incident occurred in a hotel in Texas when she was 16. At that time, father tried to touch her but she pushed him away.

Jasmine reported that, on one occasion, her older brother walked in when father was on top of her. Jasmine said she told mother what was occurring and mother made father leave temporarily. Jasmine stated that when she found out Emily had been sent to stay with her father, she became upset and told mother ““he hurt me my entire life, he was a monster and you are going to send her (Emily) to him[?] . . . I just don’t

understand what my mother saw in him and always forgave him.” Jasmine stated that she felt like she needed counseling to deal with what had happened and “to try and understand why her mother failed to protect.”

The social worker commented that Jasmine “appeared honest and sincere and was emotional at times during the interview.” The social worker also believed Jasmine had been “consistent with her recollection of the sexual abuse.”

*b. Interviews of Joseph and Emily*

Joseph informed the social worker that he was “passionate about skate boarding” and was sponsored by a local skateboard shop. Joseph was hopeful that he would receive a professional skateboard contract and expressed concern that his career would be “over” if he was forced to return to North Carolina, explaining: “I need to be [in Los Angeles for the exposure], it’s my dream, please let me stay here.” Joseph reported that his father was a “cool dude” who traveled with him to skateboard parks and understood his desire to become a professional skateboarder. Joseph admitted he had used marijuana, but said that he had remained drug free for the past month.

Joseph reported that his mother wanted him out of her house because “she was tired that all he wanted to do is skate.” Although Joseph was unsure why his parents separated four years ago, he “guessed” his father “does not like her drinking.” Joseph denied that the separation had anything to do with sexual abuse and said that he had never been touched in an inappropriate manner.

Joseph alleged that mother would normally have “about two beer on her days off” and would “yell when she gets upset” because she “hates her life.” Joseph also stated that mother and father frequently argued because “mother always wants more money from father. . . . ‘He sends her thousands of dollars in checks and it’s never enough.’”

Joseph said his mother had recently moved in with a new boyfriend, who Joseph described as a “great person” with a “real nice big house.” Joseph said that if Emily wanted to go back to North Carolina to live with mother she would “be fine” and that mother would “take good care of her.”

Emily, who the social worker described as “very sweet,” said that she resided with her mother but came to spend the summer with her father. Emily stated that she had never been touched inappropriately in her “private parts” and that she liked both of her parents. Emily reported that her mother “treats her well” and that she missed her “school and friends in North Carolina.” When asked whether she wanted to return to North Carolina, Emily stated ““that would be fine,”” adding: ““if my dad wants I can stay here to [sic] and visit my mom in the summer’ . . . . ‘I’m ok here or with my mom.’”” Emily also said she knew her mother’s current boyfriend, Deron, who Emily described as “very nice.”

*c. Interviews of father and mother*

Father told the social worker that Jasmine had fabricated the sexual abuse allegations. Father said he had finally decided to leave mother and move to California because he was tired of her yelling and alcohol abuse. According to father, mother would normally have three beers after work to relax; sometimes she would have more, which would cause her to yell and make comments like ““I hate my life.’”” Father said that although mother drank alcohol and was emotionally abusive, she was not physically abusive towards her children because she knew he had asked the neighbors to monitor her behavior. Father did not believe the children would be at risk of abuse if returned to mother.

Mother told the social worker that her relationship with father had ended several times “over the sexual abuse allegations and problems with him not being able to hold a job down.” Mother reported that, in 2001, Richard saw father on top of Jasmine. Father later admitted to mother that he touched Jasmine and promised he would never do it again. When mother asked father why he had done it, he said he was “reading a book and it talked about being able to take control over someone and maybe that is why he did it.” Mother reported that in 2006, the family stayed in a hotel together and Jasmine became upset. Jasmine later told mother that father had tried to touch her while she was sleeping, which caused mother to permanently separate from father.

Mother admitted that she drank one or two beers on her days off, but denied that she ever got drunk or abused alcohol. Mother stated that she worked twelve-hour nursing shifts and was regularly subjected to alcohol and drug testing as part of her job. Mother provided documentation to substantiate these claims, which included a worker handbook describing the employee drug test policy and two negative drug and alcohol tests that had been conducted that month. She also provided three references from co-workers who attested to her good character and strong work ethic.

Mother told the social worker that she allowed Joseph and Emily to visit their father in California because she did not have any knowledge that he was ever inappropriate with his own children. She also said North Carolina children's protection services "investigated the allegations and made an arrangement that father would agree to have supervised contact with the children during visits." She further stated grandmother had agreed to monitor the father's contact.

*d. Interviews with other government agents*

DCFS spoke to North Carolina social worker Karla Joyner, who had investigated a referral Jasmine made in that state. Joyner stated that she had interviewed "all parties involved, including the victim Jasmine," who Joyner found to be "very credible." Joyner reported that North Carolina child protection services sustained an "allegation of neglect toward father because . . . Joseph and Emily resided in the home when Jasmine indicated she was sexually abuse [*sic*]." Joyner also reported that, after the allegation was sustained, a "safety plan was established that it would be up to mother if she was going to allow the children to visit father but that due to the sexual abuse allegations paternal grandmother would have to monitor all contact between the children and father." Joyner indicated that father and grandmother participated in the safety plan meetings and that grandmother agreed to monitor all contact between father and his children. Joyner also stated that North Carolina had investigated alcohol abuse allegations against mother but found "no risk o[f] alcohol abuse."

Joyner provided a copy of the safety plan, which stated that father could visit with the children and that paternal grandmother agreed to supervise any contact and "report

any concerns to appropriate authorities.” The safety plan, which mother, father and grandmother all signed, also stated that North Carolina authorities concluded that these “safety interventions” would “adequately provide for the children’s safety for the immediate future.”

DCFS conducted a second interview with the LASD detective who was investigating Jasmine’s criminal allegations against father. The detective indicated that father had been advised by his lawyer not to speak to anyone regarding the allegations. The detective also stated that he had spoken with Jasmine and that she was “consistent with her story.” Although the detective presented the case to the district attorney, it was “rejected because they did not think they had enough to win a trial.”

*e. Interviews with other family members*

The social worker spoke to the children’s grandmother, who denied having any knowledge regarding the sexual abuse allegations and stated that mother and Jasmine were “making things up because they want her son to continue and provide financially for the children.” Grandmother said that although she had seen mother yell, she had never seen mother act aggressively or abusively toward the children.

The social worker interviewed mother’s boyfriend Deron, who is an electrician in the Marine Corps. Deron stated that he had been dating mother for approximately two years and that she had moved in with him six months earlier. Deron owned a four bedroom house with a large converted garage; Emily had her own bedroom in the house and Joseph was supposed to live in the garage. Deron stated that mother was “an awesome mother” and that he had never seen her under the influence of alcohol or drugs. He also said he had never seen her abuse any of her children.

The children’s maternal aunt reported that Jasmine had lived with her in California for two years and that she believed Jasmine’s allegations because ““she is not a liar.”” The aunt felt that Jasmine could benefit from counseling. The aunt also reported that she had seen mother drink “a beer or two” at social gatherings or after work, but had never seen mother drunk.

## *2. Social worker's assessment and recommendations*

The social worker concluded that there was “no doubt mother made a poor decision by allowing the children to visit with father in California despite her knowledge that [father] sexually abused . . . Jasmine. Mother thought that the children were protected since paternal grandmother . . . was monitoring all contact.”

The social worker believed that it would be in the best interests of Emily to “be release[d] to her mother.” DCFS was also “not opposed that [Joseph] be released to mother,” but expressed concern that he had “pleaded” to stay in California and might try to “run away” if he was forced to return to North Carolina. As a result, DCFS recommended that it was more suitable to leave Joseph in the custody of his grandmother.

### *B. Addendums to the Jurisdictional/Disposition Report*

#### *1. January 23, 2011 addendum*

On January 23, 2011, DCFS filed an addendum to the jurisdictional report indicating that it had received a psychological report and assessment from mother's therapist. The therapist concluded that mother presented well and showed no signs of mood altering chemicals. The addendum also indicated that mother had undergone additional drug and alcohol tests in December 2010 and January 2011, which had been negative.

The addendum concluded that, “[a]t this time DCFS believes it is in the children's best interest that Emily and Joseph be released to their mother and the matter as to mother be dismissed.” The addendum stated that Joseph had been performing poorly in school and admitted to smoking marijuana. It also noted that father was rarely available to assist grandmother in caring for Joseph due to his work schedule. DCFS recommended that, if the court was inclined to leave Joseph in grandmother's care, it should order him to participate in individual counseling and substance abuse counseling with random drug testing.

## *2. February 9, 2010 addendum*

On February 9, 2011, DCFS provided a second addendum stating that it had conducted a “multidisciplinary assessment team” (MAT) meeting to assess the children’s situation. The MAT report indicated that Emily said she loved her grandmother and wanted to remain in Los Angeles. Emily also said father was “really nice, works hard, and has not hurt her in any way.” Joseph told members of the MAT team he did not want to return to North Carolina because his half brothers had had physically and emotionally abused him in the past. Joseph stated that he “loves L.A.” and wanted to remain with his paternal grandmother and father, who Joseph described as a “good person” who had “always shown him respect.” He said that although his relationship with mother was good, ““things could be better.””

The MAT report stated that Joseph and Emily were “easily engaged and cooperating through the assessment process.” It also stated that the father had a “good . . . quality” relationship with both of his children, as evidenced by the fact that that they “shared laughs, discussed family issues without argument, and [the children] followed father’s directives without complaint.” Emily and Joseph also appeared to have a “healthy connection.”

The report indicated that Joseph tested in a normal range on a “Youth Outcome Questionnaire” and that neither child had any complaints about anxiety, depression, or social or thought problems. Both children also reported sleeping well, appeared well groomed, dressed appropriately and cared about their hygiene and appearance. Joseph was described as “relaxed, “composed, coherent and logical,” although somewhat “impatient.” Emily was described as “relaxed,” “patient and cheerful,” with “concise” speech and a “coherent and logical” “thought form.”

Joseph said he had become more responsible and focused since attending school in California, and “enjoys spending time with skateboarding professionals as they support him in his skateboarding hobby.” He also spoke “highly of his love for drawing.” Mother reported that although Joseph was diagnosed with ADHD in elementary school, father said he was beginning to ““mellow”” out and focus more, especially while



skateboarding. Although Joseph denied having a history of alcohol or drug use, father reported that his son had used marijuana and grandmother reported he had received a ticket at school for smoking marijuana.

DCFS's February addendum to the jurisdictional report concluded that "there are no concerns regarding the children's safety if they returned to the care of their mother. . . . [D]CFS believes it is in the best interest of the children that they be allowed to return to their mother." At a February status hearing, DCFS reiterated these beliefs, stating that its investigation demonstrated that "the counts against mother are not sustainable and that those counts should be dismissed from the petition."

### **III. *Adjudication Hearing***

In April of 2011, the juvenile court held a hearing on the section 300 petition. DCFS announced that it was "recommending striking the mother entirely from the petition. . . . We're proceeding solely on the allegations of sexual abuse regarding the father." It also filed a last minute information recommending that the "petition filed 10-26-11, subdivision 'd' as to father be sustained and that children be declared dependents of the court; that full legal [and] physical custody be granted to mother with monitored only visits to father; and that a family law order be granted to the mother and jurisdiction be terminated."

#### **A. *Opening statements and witness testimony***

In opening statements, counsel for DCFS argued that the evidence would show that Jasmine was a credible witness who had made consistent statements about the sexual abuse allegations. Father's counsel, however, argued that the evidence would show that Jasmine was not credible because she had made inconsistent statements to several different investigators. Father's counsel also argued that, even if Jasmine's allegations were found to be true, it was "abundantly clear that nothing has ever happened to [Joseph or Emily]."

DCFS called Jasmine to testify as a witness. Jasmine stated that all of her prior statements to law enforcement and DCFS had been true. She also provided detailed testimony describing the nature of the abuse, where the abuse had occurred and when it

had occurred. In addition, Jasmine identified individuals who had witnessed incidents of the abuse (Richard and David) or been told about the abuse (mother).

At the conclusion of Jasmine's testimony, mother's counsel called father to testify. Prior to his testimony, father's counsel informed the court that he would be taking the "fifth" on "every single question." Mother's counsel proceeded to ask father a series of questions; in response to each question, father stated "under the advisement of counsel, I do wish to plead the Fifth Amendment."

### *B. Closing argument*

At closing argument, DCFS's counsel argued that "there [wa]s not sufficient evidence to sustain count (b)(2) that is related to alleging that mother has a history of alcohol abuse and currently uses alcohol which renders her unable to care for the children." Counsel clarified that although it had initially included the allegation in the petition, its investigation demonstrated that the allegation was "unsustainable." DCFS's counsel also recommended that "the mother be stricken from the petition regarding any language that would indicate that she has failed to protect the children or knew or should have known." Although counsel acknowledged that the evidence showed mother failed to protect Jasmine when she was a child, she argued that the agency had assessed the evidence as it "has transpired over the last year, in that . . . mother did not fail to protect Joseph and Emily because, when she made a plan to have these children not be with her in her care for a period of time, whether it was intended vacation or more long term stay, she sent the children to stay with their grandmother."

With regard to father, DCFS's counsel argued that Jasmine's testimony had been "credible" and "submit[ted] that [Joseph and Emily] [we]re at risk of sexual based upon [father's] abuse of their adult sibling when she was a child." In support of its assertion that father's sexual abuse of Jasmine was sufficient to sustain a finding of substantial risk of sexual abuse to the children, counsel cited three cases: *In re Karen R.* (2001) 95 Cal.App.4th 84 (*Karen R.*), *In re P.A.* (2006) 144 Cal.App.4th 1339 (*P.A.*) and *In re Andy G.* (2010) 183 Cal.App.4th 1405 (*Andy G.*). Counsel asserted that although Joseph was 16 and a male child, *Andy G.* "la[id] out how he [was] at risk," explaining that "when a

parent abuses his or her own child or permits such abuse to occur in the household, the parent also abandons and contravenes the parental role . . . which may justify state intervention including an interruption of parental custody.”

Father’s counsel contended that Jasmine and mother’s testimony were “simply not credible,” which was why the “the detective [didn’t] file any charges.” Counsel noted that there were numerous inconsistencies between the statements Jasmine made to DCFS and her testimony at the adjudication hearing, including whether she was ever abused between the ages of 12 and 15, whether and when she informed mother of the abuse, where the last incident of abuse occurred and how many times her brothers witnessed the sexual abuse. Counsel also argued that it was “implausible” that the sexual abuse could have gone on for years without anyone reporting it and without Joseph ever witnessing a single incident. According to counsel, “[t]he motive here . . . continues to be financial.” Alternatively, fathers’ counsel argued that even if Jasmine was found to be credible, there was no evidence that father “poses a substantial risk of harm or sexual abuse to his 16-year old son . . . and the same thing with Emily.”

Counsel for the children stated that she found Jasmine to be credible, but expressed disbelief that the DCFS wanted to “have . . . mother’s failure to protect taken out of the petition.” The children’s counsel argued that, based on Jasmine’s testimony and other evidence in the record, mother was aware of the abuse from the very first incident but repeatedly allowed father to return to the house. Counsel also argued that while mother said she was sending the children to California to be in the care of grandmother, the detention report indicated that she told DCFS that the children were sent to their father.

The children’s counsel, however, argued that Joseph was “differently situated” and requested that he be dismissed from the petition. Counsel recommended that Emily be placed with grandmother “at least until mother has taken some classes and learned how she failed to protect her daughter.”

### *C. Juvenile court's ruling*

The juvenile court dismissed allegation (b)(2), which related to mother's alleged alcohol abuse. However, the court sustained allegations (b) (1), (d) and (j) with amended language regarding the allegations against mother: "[C]ounts number (b)(1), (d)(1) and (j)(1) are sustained as amended in this case, to include the added language after the sentence 'the mother allowed the children Joseph and Emily to reside in the father's home and have unlimited access to the father despite the mother's knowledge of the father sexually abused the sibling.['] Mother also allowed the children Joseph and Emily to reside with the paternal grandmother in which she knew or reasonably should have known that father would have unlimited access to the children despite mother's knowledge of the father's sexual abuse of the sibling.'"

The court stated that Jasmine's testimony was "very credible. . . . [S]he gave detailed accounts of the abuse and how it gradually escalated over time." The court also noted that, according to the detective reports, Jasmine had "been consistent in her s[tory]" and was "able to recount . . . how mother knew about the incident. Even though Jasmine's mother had made the father leave for a period, [she] eventually took the father back, putting the father over the concerns of the child. Mother herself admitted that she was told directly by [father] about the abuse, why he did it. However, the mother didn't do anything to protect the child, nor did she report the incident to enforcement. [¶] . . . There were several references in the report with regards to the mother sending the children to the father." The court further noted that mother allowed the paternal grandmother to monitor visits between father and the children even though there was evidence grandmother did not believe the sexual abuse allegations.

In regards to Joseph, the court found that the case was controlled by the holdings in *Karen R.*, *supra*, 95 Cal.App.4th 84, *P.A.*, *supra*, 144 Cal.App.4th 1339 and *Andy G.*, *supra*, 183 Cal.App.4th 1405. The court explained that "[a]lthough [Joseph] is older than his sister . . . the court would point out that sexual abuse can occur at any age and in different forms."

The court declared the children dependents under section 300 and found by clear and convincing evidence that “there’s a substantial danger if the children were returned to the home to the . . . physical and emotional well-being of the children. There are no reasonable means by which the children’s physical health can be protected without removing them from the parents’ custody.”

The court ordered mother to attend a DCFS-approved program of individual counseling to address case issues including sexual abuse awareness and child protection. The father was ordered to attend a DCFS-approved program of individual counseling to “address case issues including sexual abuse perpetration . . . .” The court also ordered the children to attend “individual counseling” as needed. Both parents were permitted monitored visitation rights; mother was also permitted to have unmonitored telephonic contact with her children.

Mother, father and Joseph each filed a timely appeal.

## **DISCUSSION**

### ***I. Summary of Legal Issues and Standard of Review***

Father argues that there is insufficient evidence to support the juvenile court’s finding that he sexually abused Jasmine. Alternatively, father argues that the juvenile court erred in finding that his sexual abuse of Jasmine was sufficient to establish a substantial risk of sexual abuse to Joseph or Emily. Joseph agrees with father, arguing that DCFS provided no evidence indicating that he was at substantial risk of sexual abuse. Mother argues that there is insufficient evidence to support the juvenile court’s findings that she failed to protect Joseph and Emily from a substantial risk of sexual abuse.

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Substantial evidence is “evidence that is reasonable, credible, and of solid value.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.) Under this standard of review, we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of

the evidence and witnesses. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Tania S.* (1992) 5 Cal.App.4th 728, 733.)

## ***II. Substantial Evidence Supports The Juvenile Court's Finding that Father Sexually Abused Jasmine***

Father argues that there was insufficient evidence to support the juvenile court's finding that he sexually abused Jasmine. This argument is without merit. As summarized above, Jasmine informed numerous different government agencies that father committed repeated acts of sexual abuse against her over an extended period of time. Jasmine also testified at length about these occurrences during the adjudication hearing.

The juvenile court concluded that Jasmine was "very credible." Numerous other individuals who interviewed Jasmine reached a similar conclusion: a North Carolina social worker found Jasmine to be "very credible"; a DCFS social worker found that Jasmine appeared "honest" and had been "consistent with her recollection of the sexual abuse"; an LAUSD detective concluded Jasmine was "consistent with her story." Jasmine's allegations were also corroborated by other witnesses. Mother told the LASD and DCFS that she was aware of the sexual abuse and that father had admitted to committing abuse. Jasmine's brother, Richard L., told Los Angeles police that on one occasion, he woke up and saw father in bed with Jasmine, "getting up from between Jasmine's legs."

Father, however, maintains that we must reject the juvenile court's finding because of various "inconsistencies" in Jasmine's statement. Father further asserts that "it just was not believable that . . . from age 12 until 18 [Jasmine] never said anything about being abused to a teacher, a nurse, or a friend." Father characterizes mother's statements about father's admissions as "just plain bizarre" and asserts that there was evidence indicating that mother was acting for a financial motive.

Father's arguments overlook the limited nature of our review. We determine only whether there is any substantial evidence, contradicted or uncontradicted, that supports the juvenile court's order, resolving all conflicts in support of the determination and

indulging all legitimate inferences to uphold the lower court's ruling. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212; *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) We must defer to the lower court on issues of credibility. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) If there is substantial evidence to support the juvenile court's order, we must uphold the order even if other evidence supports a contrary conclusion. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.) The testimony of even "a single witness can be sufficient to uphold a judgment." (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 195 (*Rubisela E.*)).

Because the record contains substantial evidence that father sexually abused Jasmine, we are required to uphold the juvenile court's finding on this point. (See *Rubisela E., supra*, 85 Cal.App.4th at p. 195 [rejecting father's argument that "inconsistencies in [child's] retelling of the incident to various investigators . . . compel a conclusion that her testimony and the evidence as a whole does not support a finding that Father ever touched [child] in a sexual way"]; *P.A., supra*, 144 Cal.App.4th at pp. 1343-1344 [rejecting father's arguments that "inconsistencies in [child's] various statements and the absence of any corroborating evidence precluded a finding that father sexually abused the child"].)

### ***III. Substantial Evidence Supports The Juvenile Court's Finding that Emily Was at Substantial Risk of Sexual Abuse***

Father argues that, even if we accept the juvenile court's findings that he sexually abused Jasmine, such evidence was insufficient evidence to support a finding that Emily was "at a substantial risk of suffering sexual abuse" within the meaning of section 300, subdivisions (d) or (j).<sup>2</sup>

In *Rubisela E., supra*, 85 Cal.App.4th 177, Division Two of this court held that a father who engaged in "sexual abuse on multiple occasions" with his 13-year-old

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<sup>2</sup> Father concedes that jurisdiction is appropriate under section 300, subdivisions (d) and (j) if there is substantial evidence to support a "finding of a substantial risk that the child who is the subject of dependency proceedings will be sexually abused by a parent or member of the child's household." (*P.A., supra*, 144 Cal.App.4th at p. 1347, fn. 6.)

daughter inferentially supported a finding that the father posed a substantial risk of sexual abuse to his 9-year-old daughter. The court explained that it was “reasonable for the juvenile court to determine that in [the 13-year-old’s] absence, [the father was] likely to focus on his only other daughter.” (*Id.* at p. 193.) Similarly, in *In re Maria R.* (2010) 185 Cal.App.4th 48, 60-61 (*Maria R.*), the court concluded that evidence establishing that father had sexually abused his 12- and 14-year-old daughters, as well as two adult daughters from a previous marriage, was sufficient to support the juvenile court’s finding that father posed a risk of sexual abuse to his 10-year-old daughter. We are not aware of any case that has disagreed with *Rubisela E.*’s conclusion that a juvenile court may infer a substantial risk of sexual abuse to a child who is the same age and gender as another sibling who was sexually abused by a parent in the household.

We agree with *Rubisela E.*’s reasoning, which applies here. As discussed above, there is substantial evidence that father sexually abused Jasmine on numerous different occasions. The abuse began when Jasmine was four or five years old and continued until she was age 16. Emily is the same gender as Jasmine and is currently the age at which father abused Jasmine. Moreover, Jasmine has consistently expressed concerns that father is likely to engage in similar conduct toward Emily. In light of this evidence, it was reasonable for the juvenile court to conclude that father’s sexual abuse of Jasmine demonstrated that there was a substantial risk he would engage in similar conduct toward Emily, thereby providing jurisdiction under section 300, subdivisions (d) and (j).

***IV. There is Insufficient Evidence to Support the Juvenile Court’s Finding that Joseph Was at Substantial Risk of Sexual Abuse***

Father next contends that there was insufficient evidence to conclude that Joseph faced a substantial risk of sexual abuse. Father asserts that his sexual abuse of Joseph’s female half-sister is, standing alone, insufficient to establish substantial risk of sexual abuse to Joseph, who is a 16-year-old male and father’s biological son. Joseph has appealed the portion of the jurisdictional order pertaining to him on the same ground.



*A. Courts are divided as to whether sexual abuse of a female child is  
sufficient to establish substantial risk of sexual abuse to a male sibling*

There is currently a split among the courts as to whether a parent's sexual abuse of a female minor is sufficient to support a finding that a male sibling is at substantial risk of sexual abuse.<sup>3</sup>

*1. In re Rubisela E., In re Karen. R., In re P.A. and In re Andy G.*

In *Rubisela E.*, *supra*, 85 Cal.App.4th 177, Division Two of this court found that a father's repeated sexual abuse of his 13-year-old daughter was, by itself, insufficient to support a finding that the victim's four brothers were at similar risk of sexual abuse. (*Id.* at p. 199.) In reaching its ruling, however, the court also stated "[w]e do not discount the real possibility that brothers of molested sisters can be molested [citation] or in other ways harmed by the fact of the molestation within the family. Brothers can be harmed by the knowledge that a parent has so abused the trust of their sister. They can even be harmed by the denial of the perpetrator, the spouse's acquiescence in the denial, or their parents' efforts to embrace them in a web of denial." (*Id.* at p. 198.) Despite this acknowledgment, the court concluded that, in the case before it, the record contained no evidence of any such harm, thereby requiring reversal of the jurisdictional order as to the four brothers.

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<sup>3</sup> In the sections that follow, we summarize several of the earliest cases that considered whether a parent's sexual abuse of a female child is, standing alone, sufficient to support a finding that a male sibling is at substantial risk of sexual abuse. The holdings of these earlier cases have been discussed and applied in numerous more recent decisions. (See, e.g., *In re Ana C.* (2012) 204 Cal.App.4th 1317, 1332 [affirming juvenile court's finding that father's sexual abuse of female child was sufficient to establish that male siblings were at substantial risk of sexual abuse]; *In re Jordan R.* (2012) 205 Cal.App.4th 111, 137-138 [affirming juvenile court finding that father's sexual abuse of female niece living in the home was insufficient to establish that two-year old son was at substantial risk of sexual abuse]; *In re Alexis S.* (2012) 205 Cal.App.4th 48, 54-55 (*Alexis S.*) [reversing dispositional order finding that father's sexual abuse of non-biological female child was sufficient to establish substantial risk of sexual abuse to father's biological sons].)

In *Karen R.*, *supra*, 95 Cal.App.4th 84, Division Three of this court disagreed with *Rubisela E.* The evidence showed that father had “committed two incidents of forcible incestuous rape” against his 13-year-old daughter. (*Id.* at pp. 90-91.) The victim’s male sibling had witnessed other forms of physical abuse by the father and heard his sister report the rape to his mother, who refused to help. Father and mother then continued to physically abuse the daughter in the presence of the son. (*Id.* at p. 90.) The court concluded that there were two independent bases for asserting jurisdiction over the male sibling pursuant to section 300, subdivision (d).

First, the court found that, by witnessing the sexual abuse of his sister, the male sibling had been a direct victim of “sexual abuse” within the meaning of subdivision (d). The court explained that subdivision (d) applied where “[t]he child has been sexually abused . . . as defined in Section 11165.1 of the Penal Code. . . .” [¶] Penal Code section 11165.1 defines sexual abuse to include . . . violations of Penal Code section 647.6 (child molestation)[,] ‘ . . . [which] states a misdemeanor offense for every person who “annoys or molests any child under the age of 18.”’ [Citations.]” (*Karen R.*, *supra*, 95 Cal.App.4th at p. 90.) The court further explained that cases interpreting section 647.6 had concluded that the statute ““does not require a touching [citation] but does require (1) conduct a “normal person would unhesitatingly be irritated by” [citations], and (2) conduct ““motivated by an unnatural or abnormal sexual interest”” in the victim [citations].’ [Citations.]” (*Id.* at pp. 89-90) The court concluded that both elements of section 647.6 had been satisfied because, although no sexual act had been directly perpetrated against the male sibling, the evidence nonetheless demonstrated that he had witnessed the sexual abuse of his sister and was irritated or disturbed by such conduct.

Alternatively, the court ruled that the father’s sexual abuse of his daughter demonstrated that the male sibling “was at substantial risk of sexual abuse” within the meaning of subdivision (d). (*Karen R.*, *supra*, 95 Cal.App.4th at p. 85.) Contrary to the holding in *Rubisela E.*, the court explained that a “father who has committed two incidents of forcible incestuous rape of his minor daughter reasonably can be said to be so sexually aberrant that both male and female siblings of the victim are at substantial

risk of sexual abuse within the meaning of section 300, subdivision (d), if left in the home. To the extent other cases suggest only female siblings are in substantial danger of sexual abuse after a sexually abused female sibling has been removed from the home due to sexual abuse by a father, we respectfully disagree.” (*Id.* at pp. 90-91.)

In *P.A.*, *supra*, 144 Cal.App.4th 1339, the same division elected to follow *Karen R.*’s holding that a father’s sexual abuse of a female child is sufficient to establish a substantial risk of sexual abuse to a male sibling. The evidence showed that the father sexually abused his nine-year old daughter by touching her vagina under her clothes, but over her underwear, on two occasions. The court concluded that such evidence was sufficient to support jurisdiction over the victim’s two brothers, ages five and eight. The court explained that although the abuse at issue was “less shocking than the abuse in *Karen R.*[,] . . . we are convinced that where, as here, a child has been sexually abused, any younger sibling who is approaching the age at which the child was abused, may be found to be at risk of sexual abuse. As we intimated in *Karen R.*, aberrant sexual behavior by a parent places the victim’s siblings who remain in the home at risk of aberrant sexual behavior.” (*Id.* at p. 1347.)

More recently, in *Andy G.*, *supra*, 183 Cal.App.4th 1405, a father was found to have sexually abused his 12 and 14 year-old daughters by fondling their genitals, showing them pornographic movies and masturbating in their presence. On one occasion, the father asked his daughter to take her two-year old brother to the store and, when the daughter reached to take her male sibling, father exposed his penis to her. Division Eight of this court held that this evidence was sufficient to support jurisdiction over father’s two-year-old son under section 300, subdivisions (d) and (j). While acknowledging that the male child was not approaching the age at which his half-sisters were abused, the court nevertheless “agree[d] with the proposition advanced in *In re P.A.* that ‘aberrant sexual behavior by a parent places the victim’s siblings who remain in the home at risk of aberrant sexual behavior.’ [Citation.]” (*Id.* at p. 1414.)

## 2. *In re Maria R.*

In *Maria R.*, *supra*, 185 Cal.App.4th 48, the Fourth District Court of Appeal departed from *Karen R., P.A.* and *Andy G.*, concluding that a father's sexual abuse of his female daughters was, standing alone, insufficient to establish substantial risk of sexual abuse to a male sibling. The evidence showed that father had sexually abused his 12- and 14-year-old daughters, as well as two adult female children from a previous marriage. DCFS sought jurisdiction over father's eight-year-old son under subdivision (j), which applies where "the child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions." DCFS argued that the father had sexually abused the son's female siblings within the meaning of subdivision (d), thereby establishing that the son faced a substantial risk of sexual abuse.

The court began its analysis by considering whether "a parent's sexual abuse of a daughter, either alone or in combination with a factor or factors that have no established correlation with sexual abuse, is sufficient to establish that the parent's son is at risk of sexual abuse by that parent within the meaning of subdivision (d)." (*Maria R.*, *supra*, 185 Cal.App.4th at p. 63.) The court explained that "[s]ome appellate courts have effectively expanded the statutory definition of 'sexual abuse' by stating or implying that a child may be found to be at substantial risk of sexual abuse within the meaning of subdivision (d) based on emotional or 'other harm' to that child caused by sexual abuse occurring in the household, the disclosure of sexual abuse within the child's family, or by inadvertently witnessing an abusive act on a sibling. (Citation.) Other courts have held that when a child has been sexually abused, the court may conclude, on the basis of this fact alone, that younger siblings are also at risk of sexual abuse." (*Id.* at p. 65.)

After summarizing the holdings in *Rubisela E.*, *Karen R., P.A.*, and *Andy G.*, the court stated "while we agree . . . that the brothers of molested girls may be harmed by the fact of molestation occurring in the family, we cannot agree with prior cases to the extent that they have held or implied that the risk that the brothers face may – in the absence of evidence demonstrating that the perpetrator of the abuse may have an interest in sexually

abusing male children – be deemed to be one of ‘sexual abuse’ within the meaning of subdivision (d). . . . [T]he phrase ‘sexual abuse’ for purposes of section 300 is defined by reference to the offenses enumerated in Penal Code 11165.1, whether the allegation of sexual abuse is filed under subdivision (d) or (j). [Citation] Penal Code section 11165.1 refers to specific sex acts committed by the perpetrator on a victim . . . and *does not include* in its enumerated offenses the collateral damage on a child that might result from the family’s or child’s reaction to a sexual assault on the child’s sibling.” (*Maria R.*, *supra*, 185 Cal.App.4th at pp. 67-68.)

The court continued, “[i]n expanding the definition of ‘sexual abuse’ to authorize the exercise of jurisdiction as to a child whose sibling has been sexually abused, courts have undoubtedly acted pursuant to the common sense notion that any child who is residing with a parent or other adult who has sexually abused the child’s sibling, and/or a parent who has minimized the sexual abuse of the child’s sibling, is living in a dysfunctional and potentially harmful environment. However, in holding that brothers of girls who have been sexually molested by a parent may, on that basis alone, be found to be at risk of *sexual* abuse, courts appear to have essentially disregarded the language in section 300, subdivision (j) that requires that there be a substantial risk of abuse or neglect, *as defined* in subdivision (a), (b), (d), (e) or (i), and/or the statutory language defining ‘sexual abuse’ for purposes of subdivision (d). However, a reviewing court ‘may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used.’ [Citation.]” (*Maria R.*, *supra*, 185 Cal.App.4th at p. 68.)

The court further explained that “[i]n addition to the lack of support in the relevant statutory provisions for the proposition that a brother of a girl who has been sexually abused by a parent is at a risk of *sexual* abuse, there is a lack of evidentiary support for this general assertion in the case law as well. None of the courts that have held or impliedly concluded that a child, regardless of gender, whose sibling was sexually abused, may be found to be at risk of *sexual abuse* under subdivision (d), either directly or under subdivision (j), has cited any scientific authority or empirical evidence to

support the conclusion that a person who sexually abuses a female child is likely to sexually abuse a male child. [Citations.] In the absence of evidence demonstrating that a perpetrator of sexual abuse of a female child is in fact likely to sexually abuse a male child, we are not persuaded that the rule of general applicability enunciated in *P.A.*, and repeated by the *Andy G.* court, is grounded in fact. For this reason, we decline to adopt the reasoning of *P.A.* and *Andy G.*” (*Maria R.*, *supra*, 185 Cal.App.4th at p. 68.)

The court ruled that, based on its interpretation of section 300, DCFS had failed to establish that the son was at substantial risk of sexual abuse: “Since there is no evidence in the record that would tend to support a finding that [father] has an interest in engaging in sexual activity with a male child, we cannot, despite the Agency’s urging, conclude that [father’s] sexual abuse of his daughters – as aberrant as it is – establishes that [the male sibling] is at substantial risk of *sexual abuse* within the meaning of subdivision (j), as defined in subdivision (d) and Penal Code section 11165.1.” (*Maria R.*, *supra*, 185 Cal.App.4th at p. 68.)

The court further noted, however, that this finding did not necessarily preclude jurisdiction over the male sibling pursuant to subdivision (j). The court explained that where a child’s sibling has been sexually abused, “the basis for taking jurisdiction of [the child] under subdivision (j) is not limited to a risk of sexual abuse, as that term is defined by subdivision (d) and Penal Code section 11165.1.” (*Maria R.*, *supra*, 185 Cal.App.4th at p. 63.) The court further explained that “[s]ubdivision (j) *does not* state that its application is limited to the risk that the child will be abused or neglected *as defined in the same subdivision* that describes the abuse or neglect of the sibling. Rather, subdivision (j) directs the trial court to consider whether there is a substantial risk that the child will be harmed under subdivisions (a), (b), (d), (e) *or* (i) of section 300, notwithstanding which of those subdivisions describes the child’s sibling. Further, subdivision (j) contains a specific legislative directive to trial courts to consider multiple factors, including ‘the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental

condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.” (Id. at p. 64.)

Thus, according to the court, “where . . . a child’s sibling has been sexually abused by a parent, subdivision (j) allows the court to assume jurisdiction of the child if, after considering the totality of the child’s circumstances, the court finds that there is a substantial risk to the child in the family home, under *any* subdivision enumerated in subdivision (j), taking into consideration the totality of the child’s and sibling’s circumstances.” (*Maria R.*, *supra*, 185 Cal.App.4th at p. 65.)

The court concluded that, in the case before it, there was evidence suggesting that the male child may have suffered, or was at substantial risk of suffering non-sexual forms of abuse referenced in subdivision (j), including, in part, “serious physical harm” (§ 300, subd. (a), “serious physical harm or illness” as a result of inadequate care (§ 300, subd. (b)), and “acts of cruelty” (§ 300, subd. (i)). In support, the court cited portions of the record indicating that: (1) the home environment of the children was “extremely dysfunctional, and poses a high risk to their well-being”; (2) father was “violent and physically abusive” and “had repeatedly acted in disregard of the children’s physical safety and their emotional well being”; and (3) a neighbor reported seeing child pornography in the home. (*Maria R.*, *supra*, 185 Cal.App.4th at p. 69.)

The court concluded that, given this additional evidence of “harm or risk of harm to the children” (*Maria R.*, *supra*, 185 Cal.App.4th at p. 69), the “appropriate disposition as to [son], [wa]s to remand with directions to the court to detain him in protective custody pursuant to section 319 and order the Agency to assess any harm that [the son] may have suffered, or any risk to him that may exist, under section 300.” (Id. at p. 70.)

3. *We agree with Maria R.’s conclusion that sexual abuse of a female sibling does not, standing alone, establish substantial risk of sexual abuse to a male sibling*

We agree with *Maria R.*’s conclusion that a parent’s sexual abuse of a female child is, standing alone, insufficient to demonstrate a substantial risk of sexual abuse to a male sibling. If the Legislature intended to provide the juvenile court jurisdiction over

any child whose sibling was subject to sexual abuse it could have said so. Subdivision (d), however, provides jurisdiction only if a child has been sexually abused or is at substantial risk of sexual abuse. Similarly, subdivision (j) provides jurisdiction where a child's sibling was subject to any form of abuse enumerated in subdivisions (a), (b), (d) (e) or (i), and the child is "at substantial risk" of any of those forms of abuse. Thus, where DCFS asserts jurisdiction under subdivision (j) on the basis of sexual abuse to the child, it must demonstrate a "substantial risk" of sexual abuse. Interpreting subdivisions (d) and (j) as providing jurisdiction based solely on the fact that a male child's sibling has been sexually abused effectively reads the "substantial risk" element out of the statute.

We also agree with *Maria R.*'s conclusion that, where, as here, a male child's female sibling has been sexually abused, subdivision (j) does not require a showing that the male child is at substantial risk of sexual abuse. Rather, jurisdiction is proper under subdivision (j) if the evidence shows that the child is at substantial risk of any of the forms of abuse referenced in that subdivision, which includes the abuse described in section 300, subdivision (a), (b), (d), (e) or (i). For example, if the record contains substantial evidence that a male child's exposure to the sexual abuse of a female sibling places the child at substantial risk of "physical abuse or illness" (see § 300, subds. (b), (j)), jurisdiction would be proper regardless of whether that child faced a substantial risk of sexual abuse.

*B. The juvenile court's finding that Joseph is at substantial risk of sexual abuse is not supported by substantial evidence*

In the juvenile court proceedings, DCFS argued that father's sexual abuse of Jasmine demonstrated that Joseph was at substantial risk of sexual abuse, thereby supporting jurisdiction under subdivisions (b), (d) and (j).<sup>4</sup> At the adjudication hearing,

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<sup>4</sup> Although DCFS has asserted jurisdiction under subdivisions (b), (d) and (j), it maintains that jurisdiction is appropriate under each subdivision based solely on father's "aberrant sexual behavior" toward Jasmine. For example, DCFS contends that jurisdiction is proper under subdivision (b) "given the deviance of abuse" committed on Jasmine. It also argues that jurisdiction is proper under subdivision (j) because a



the only witness DCFS called to testify was Jasmine, who provided a detailed description of the repeated acts of sexual abuse that father committed against her. At the conclusion of her testimony, DCFS argued that, under the holdings of *Karen R., P.A.* and *Andy G.*, evidence of such aberrant sexual behavior was sufficient to sustain a finding of substantial risk of sexual abuse to a male sibling. The juvenile court was persuaded by these arguments, stating that the cases “submitted by [DCFS were] on point” and that “sexual abuse can occur at any age and in different forms.”<sup>5</sup>

*1. There is insufficient evidence to support the juvenile’s courts finding that Joseph is at substantial risk of sexual abuse*

While we agree with the juvenile court’s assertion that sexual abuse can occur at any age and may come in different forms, we disagree with its implicit finding that a court may assume that a male child is at substantial risk of sexual abuse based solely on a finding that the child’s female sibling was subject to sexual abuse.

DCFS failed to cite or introduce any evidence apart from father’s sexual abuse of Jasmine to support its assertion that Joseph was at substantial risk of sexual abuse. There is no evidence that father ever sexually abused or otherwise acted inappropriately toward Joseph; there is no evidence that father has ever engaged in any conduct suggesting he had a sexual interest in male children; there is no scientific or empirical evidence in the record suggesting that a person who sexually abuses a female child is likely to sexually abuse a male child; there is no evidence suggesting that father has a sexual interest in his biological children; there is no evidence that Joseph ever witnessed the abuse or had any knowledge of the abuse, which last occurred over five years ago. In addition, Joseph is

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substantial risk of sexual abuse to Joseph was “inherent in the ongoing and aberrant nature of the sexual abuse. . . .”

<sup>5</sup> Although the juvenile court accepted the holdings in *Karen R., P.A.* and *Andy G.* as providing a proper basis for jurisdiction, prior comments from the court suggest that it did not believe Joseph was at risk of sexual abuse. At the initial detention hearing the juvenile repeatedly stated that, based on his age and circumstances, it saw “very little risk” to Joseph.

more than 10 years older than the age at which father's abuse of Jasmine began and is now older than the age at which father's abuse of Jasmine ended.

This case is therefore factually distinct from *Karen R.*, *P.A.*, and *Andy G.* In *Karen R.*, the male sibling was only eight years old and witnessed his 13-year-old sister wrapped in a towel complaining to mother that father had raped her; in response to those allegations, mother and father continued to physically abuse the female child in the male child's presence. In *P.A.*, the five and eight-year old male siblings were "approaching the age at which father began to molest [the female sibling]," who was nine at the time of the abuse. (*P.A.*, *supra*, 144 Cal.App.4th at p. 1345.) One of the sons reported that father occasionally slept in his bed and both male siblings slept in the same bedroom where father had sexually abused their sister. Finally, in *Andy G.*, the male child was only two years old and, during one incident of abuse, the father used the male child to lure his stepdaughter toward him before exposing his penis to her. Therefore, although each of these cases concluded that "aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior" (*P.A.*, *supra*, 144 Cal.App.4th at p. 1347; *Andy G.*, *supra*, 183 Cal.App.4th at p. 1414; *Karen R.*, *supra*, 95 Cal.App.4th at pp. 90-91), there was additional evidence in the record that, arguably at least, supported a finding of substantial risk of sexual abuse to the male child. No similar evidence exists here.<sup>6</sup>

For the first time on appeal, DCFS argues that additional evidence in the record does support a finding of substantial risk of sexual abuse to Joseph. Specifically, DCFS argues that there is evidence that: (1) Joseph's two half-brothers saw father sexually abuse Jasmine, and (2) Joseph does not believe Jasmine's allegations and has suggested that mother and Jasmine fabricated the allegations for pecuniary gain. DCFS has not, however, explained how those facts are relevant to determining whether Joseph is at risk

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<sup>6</sup> For the purposes of this appeal, we need not decide whether the "additional" evidence at issue in *Karen R.*, *P.A.*, and *Andy G.* – including the young age of the male children and their direct exposure to the sexual abuse – is sufficient to demonstrate substantial risk of sexual abuse to the male child. No such evidence exists here.

of sexual abuse. As the court explained in *Maria R.*, “the phrase ‘sexual abuse’ for purposes of section 300 is defined by reference to the offenses enumerated in Penal Code 11165.1, whether the allegation of sexual abuse is filed under subdivision (d) or subdivision (j). [Citation] Penal Code section 11165.1 . . . *does not include* in its enumerated offenses the collateral damage on a child that might result from the family’s or child’s reaction to a sexual assault on the child’s sibling.” (*Maria R.*, *supra*, 185 Cal.App.4th at pp. 67-68.)

2. *There is insufficient evidence to show that Joseph is at substantial risk of any other form of abuse referenced in subdivision (j)*

Unlike in *Maria R.*, DCFS has also pointed to no evidence in the record suggesting that father’s sexual abuse of Jasmine (or any other parental conduct) placed Joseph at substantial risk of any other form of abuse or harm referenced in subdivision (j), such as physical abuse, illness or cruelty. Joseph has consistently stated that his father has never abused him in any way and that he has never seen his father abuse any of his siblings. Joseph has also consistently maintained that he enjoys living with his father, who he describes as “a good person [that has] always shown him respect.” DCFS’s own “MAT assessment” concluded that “[t]he quality-of father-child relationship was good as evidenced by father and Joseph sharing laughs, discussing family issues without argument, and Joseph following father’s directives without complaint.”

The record is also devoid of any evidence suggesting that Joseph has ever experienced any mental, social or emotional problems. The MAT assessment indicated that Joseph scored within a “normal community sample range” on a “Youth Outcome Questionnaire” and did not report any “somatic complaints, anxiety/depression, or social or thought problems.” Joseph slept well, dressed appropriately, appeared well-groomed, cared about his hygiene and appearance and demonstrated a “coherent and logical” thought form.

In sum, while the record contains extensive evidence that father engaged in significant aberrant sexual conduct toward his stepdaughter, it does not contain

substantial evidence suggesting that such conduct placed father's 16-year old son at substantial risk of sexual abuse or any other form of abuse referenced in subdivision (j).<sup>7</sup>

***V. Substantial Evidence Supported the Juvenile Court's Jurisdictional Finding Against Mother as to Emily***

Mother argues that there is insufficient evidence to support the juvenile court's finding that she failed to protect Joseph and Emily from a substantial risk of sexual abuse when she sent the children to reside with their father in California. In the juvenile court proceedings, DCFS recommended that the court dismiss the "failure to protect" allegations against the mother and dismiss her as a nonoffending parent. DCFS explained that, after filing its section 300 petition, it discovered that mother had sent the children to California pursuant to a "safety plan" that was approved by North Carolina child protection services. The children's counsel, however, argued that the failure to protect allegations pertaining to Emily should be sustained because there was evidence that mother sent the children to reside with father, which exceeded the scope of conduct permitted in the safety plan.

The juvenile court sustained jurisdictional allegations alleging that mother had failed to protect the children by allowing them "to reside in father's home . . . despite . . . knowledge of father's sexually abusing [Jasmine]." The court also amended the petition to add language stating that mother had failed to protect the children by allowing them to "reside with paternal grandmother, where mother knew or . . . should have known that father would have unlimited access to the children." In support of its ruling, the court noted that "there were several references in the [evidence] with regards to the mother

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<sup>7</sup> To the extent DCFS is arguing that we may infer that father's sexual abuse of Jasmine has caused Joseph to suffer emotional harm or places him at risk of emotional harm, the argument is without merit. None of the section 300 subdivisions that DCFS alleged in its petition – (b), (d), and (j) – permit the court to assert jurisdiction based on a finding of emotional damage or harm to the child. (*See In re Daisy H.* (2011) 192 Cal.App.4th 713, 717-718.) Although subdivision (c) provides jurisdiction based on "serious emotional damage" or substantial risk of serious emotional damage, DCFS did not pursue jurisdiction under that subdivision.

sending the children to the father. . . .” The court also noted that mother had permitted the paternal grandmother to monitor visits between father and the children despite evidence that the paternal grandmother did not believe father had sexually abused Jasmine.

Mother does not dispute that: (1) father sexually abused Jasmine; (2) she was aware of that conduct; and (3) despite such knowledge, she sent the children to visit father in California. She argues, however, that her decision to allow the children to visit father in California did not constitute a “failure to protect” because “the record shows . . . she had been acting in accordance with the instructions and agreement reached by the North Carolina [child protection services] . . . .” Mother contends that her “reliance upon the agreement formulated by the North Carolina Department was entirely reasonable” and shows that “she was not, as the court implied, simply sending the children to Father with no recognition of the safety issues that existed stemming from Jasmine’s sexual abuse.”

In regard to Joseph, we agree that there was insufficient evidence to support the juvenile court’s jurisdictional findings that mother failed to protect her 16-year-old son from a substantial risk of sexual abuse. As explained above, the record does not contain substantial evidence that Joseph faced a substantial risk of sexual abuse. That finding compels us to also conclude that mother did not fail to protect Joseph.

We disagree, however, that the juvenile court erred in concluding that mother failed to protect Emily. DCFS’s jurisdictional report indicated that North Carolina child protection services had sustained an allegation of neglect toward father because “the children Joseph and Emily resided in the home when Jasmine indicated she was sexually abused.” After making this finding, North Carolina established a safety plan that permitted mother to decide “if she was going to allow the children to visit the father but that due to the sexual abuse allegations paternal grandmother would have to monitor all contact between the children and father.” The social worker provided a copy of the safety plan, which stated that “father agrees that he will have supervised contact with Joseph and Emily during visitations” and that paternal grandmother “agrees to supervise

contact . . . during visitation [with] children.” The safety plan was signed by father, mother and paternal grandmother.

Although the safety plan allowed mother to permit the father to have monitored visits with the children, there are numerous statements in the record indicating that mother sent Emily to reside in her father’s home. Although grandmother resided in the home with father, there is evidence that Emily remained under father’s custody and control. Mother, paternal grandmother and Emily all told DCFS that mother sent the children to father, rather than the grandmother, and that Emily remained “under the care of” father. Paternal grandmother told DCFS that she was responsible for providing care to the children when father was away on business trips. In father’s “parentage statement,” he indicated that Emily “spends every summer with me.” Additional evidence suggests that father had unmonitored contact with Emily. Emily, for example, told DCFS that father picked her up from school “every day.” Joseph stated that father had traveled to North Carolina to pick Emily up from mother and transport her back to California.

Based on the evidence in the record, the juvenile court reasonably concluded that mother’s conduct was not “in accordance with the instructions” in the North Carolina safety plan. That plan provided mother discretion to allow Emily to visit her father and directed that any such visits were to be monitored by paternal grandmother. The record, on the other hand, shows that mother (1) permitted Emily to reside in the same house with father; (2) allowed Emily to remain under father’s custody and control; and (3) allowed father to have unmonitored contact with Emily. Moreover, mother permitted all of this to occur shortly after North Carolina sustained an allegation of neglect toward father. Because substantial evidence shows that mother exceeded the scope of the restrictions set forth in the safety plan, the juvenile court reasonably concluded that she failed to protect Emily from father.<sup>8</sup>

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<sup>8</sup> Because we conclude that substantial evidence shows that mother exceeded the scope of the safety plan, we need not address the juvenile court’s alternative conclusion that jurisdiction was appropriate because mother allowed Emily to reside with paternal

**VI. *The Juvenile Court's Dispositional Order Removing Emily from the Parental Home is Supported by Substantial Evidence***

Mother and father both argue that, regardless of whether there was substantial evidence to support the juvenile court's jurisdictional order declaring Emily a dependent of the court, there was insufficient evidence to support the court's dispositional order removing her from their homes.

*A. Summary of applicable law*

The juvenile court ordered Emily removed from the parental homes pursuant to section 361, subdivision (c)(1). That subdivision requires that, before ordering a child physically removed from his or her parent's home, the juvenile court must find by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . ."

"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." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136 [disapproved on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.]) "In this regard, the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) "The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion." (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

We review a dispositional order under "the substantial evidence test, . . . bearing in mind the heightened [clear and convincing] burden of proof" that is required to remove a child from a parent's residence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

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grandmother despite the fact that grandmother did not believe Jasmine's sexual abuse allegations.

*B. The juvenile court's dispositional order regarding Emily is supported by substantial evidence*

Removal from the parental home under section 361, subdivision (c)(1) is proper if clear and convincing evidence demonstrates: (1) “a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home”; and (2) “there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.”

Both elements of subdivision (c)(1) have been satisfied as to father. In regards to the first element, we have concluded that the record contains substantial evidence that father’s sexual abuse of Jasmine establishes that Emily is at substantial risk of sexual abuse. This evidence is also sufficient to demonstrate that leaving Emily in father’s home would subject her to a substantial risk of her physical or emotional well-being within the meaning of section 361, subdivision (c)(1). (See *Andy G.*, *supra*, 183 Cal.App.4th at p. 1415 [evidence establishing child faced a substantial risk of sexual abuse under section 300 subdivisions (d) and (j) was sufficient to satisfy 361, subdivision (c)’s substantial risk element]; see also *In re Rocco M.* (1991) 1 Cal.App.4th 814, 826 [“Since the evidence warranted a finding of substantial risk of serious physical injury, it also appears to have supported a finding under section 361 . . . of a substantial danger to the minor’s physical health”].)

In regards to the second element, father contends that the juvenile court failed to consider other reasonable means of protecting the child, including leaving Emily in his custody while imposing conditions that would require paternal grandmother (who also resides in the home) to monitor father’s conduct with Emily. Given father’s sexual abuse of Jasmine, the juvenile court did not abuse its discretion in concluding that there were no reasonable means of protecting Emily other than removing her from father’s home. (See *Rubisela E.*, *supra*, 85 Cal.App.4th at p. 199 [where evidence showed father had molested female child’s sibling, the court did not “abuse its discretion in ordering Father to remain outside . . . home”].) Moreover, as the juvenile court pointed out, there was



evidence in the record suggesting that the paternal grandmother did not believe Jasmine's allegations that father had engaged in sexual abuse. It was therefore reasonable for the court to conclude that paternal grandmother's presence in the home would not adequately protect Emily.

Both elements of subdivision (c)(1) have also been satisfied as to mother. The evidence shows that mother sent Emily to reside with father despite her knowledge that he had sexually abused Jasmine. Although North Carolina child services agreed that mother could permit Emily to have monitored visits with her father, the evidence shows mother exceeded the scope of this agreement by (1) sending Emily to reside with father, and (2) allowing father to personally transport Emily from North Carolina to California. The fact that mother has allowed father to have unfettered access to Emily constitutes substantial, clear and convincing evidence that Emily would face a substantial risk to her physical health and emotional well-being if left in mother's home. (*See Maria R., supra*, 185 Cal.App.4th at 70-71 [mother's failure to protect children from father's sexual abuse supported juvenile court finding of substantial risk under section 361, subd. (c)(1)].)

There is also substantial evidence supporting the juvenile court's findings that there were no reasonable means by which Emily's health could be protected without removing her from mother. After sustaining an allegation of neglect against father, North Carolina elected to leave Emily in mother's care and gave her discretion to permit visits with father if certain restrictions were followed. Mother, however, failed to ensure those restrictions were adhered to. Given these past failures, we cannot conclude that the juvenile court abused its discretion in concluding that removal was necessary.

### **DISPOSITION**

The juvenile court's jurisdictional and dispositional orders regarding Joseph are reversed. The juvenile court's jurisdictional and dispositional orders regarding Emily are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.