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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re P.R. et al., Persons Coming Under the  
Juvenile Court Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.M.,

Defendant and Appellant.

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B260757

(Los Angeles County  
Super. Ct. No. DK06255)

APPEAL from an order of the Superior Court of Los Angeles County, Debra Losnick, Commissioner. Affirm.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant.

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

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V.M. (father) appeals from the dispositional order removing two children, S.M. and A.M., from the custody of M.N. (mother). We find no error and affirm.

### **FACTUAL AND PROCEDURAL SUMMARY**

Mother already had three daughters from previous relationships, C.N. (born 2001), M.N. (born 2002), and P.R. (born 2005), and was pregnant with S.M. (born 2010) when she met father. Father adopted S.M. after marrying mother in November 2010, and mother and her children went to live with father in Northern California. The blended family also included father's three children from another relationship. The parents eventually had a son together, A.M. (born 2014).

The parents could not handle the conflicts among their teenage children. As a result, mother moved to Los Angeles with her daughters in November 2013, except for a brief visit to father's house over Christmas. About six months later, after mother announced her intent to move back in with father, C.N., M.N. and P.R. claimed father had sexually abused them while they lived with him. C.N. and M.N. first disclosed the abuse to their maternal grandmother, who was their legal guardian, on April 8, 2014. The grandmother called mother, and the two women reported the abuse to police.<sup>1</sup>

In their initial interviews with police and the Department of Children and Family Services (DCFS), C.N., M.N. and P.R. described in great detail numerous acts of sexual abuse. Before the end of April, P.R. told a social worker that she and her sisters had made up the sexual abuse allegations because they were upset that father had thrown mother out of his house. Around the same time, P.R. reportedly told school officials that she had been "raped" by father. She claimed her older sister had told her to say the abuse did not happen, so mother could be happy. In subsequent interviews, P.R.'s older sisters

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<sup>1</sup> At the time, father was under investigation based on a referral made when his biological daughter, J.M., allegedly asked neighbors for help because father was touching her sexually. The referral was closed as unfounded after J.M. denied being sexually abused.

also said they had lied about the abuse because they were angry at father for abandoning mother.

The three girls underwent a forensic exam, which returned normal results that could not confirm or negate sexual abuse; they told the examiner they had lied about the abuse. Mother was reluctant to believe her daughters' sexual abuse claims because the exam results were normal and the girls had been changing their stories, and she insisted the abuse could not have happened because the girls were not left alone with father. Mother asked for permission to return to Northern California because she and father had a business together, and she wanted to show father his newborn son. In early June 2014, the principal of P.R.'s school reported that P.R. said she recanted because mother did not believe her. According to P.R., mother was waiting to get permission from DCFS to move back in with father. At a team decision meeting in mid-June, mother repeated she was uncertain about her daughters' allegations and wanted to return to Northern California. Father denied having engaged in inappropriate conduct with the children.

By court order, P.R., her half-sister S.M., and their half-brother A.M. were removed from mother's custody on July 7, 2014. Mother was visibly distraught at the time of removal; she said that she wanted father arrested and that he had given up custody of his older children to his sister because he knew something would happen. Later that day, mother told the social worker she had decided to file for divorce from father because P.R. did not want to return to father's home and had asked whether mother believed her; mother stated she had decided to stand by P.R. and move on.

On July 10, 2014, DCFS filed a petition under Welfare and Institutions Code section 300, subdivisions (b), (d), and (j)<sup>2</sup> on behalf of P.R., S.M., and A.M., alleging father had sexually abused P.R. and mother had failed to protect her, endangering the other two children.

In subsequent interviews, P.R. and her older half-sisters all denied the abuse. C.N. stated she loved watching "Law and Order: Special Victims Unit" and knew the girls

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

would be believed if they accused father of molesting them; she recanted after realizing they could get father in trouble. M.N. confirmed C.N. had come up with the idea, and they both had instructed P.R. to lie about having been abused by father.

Mother enrolled in parenting, sexual abuse and domestic violence classes and in individual counseling, but she continued to insist the abuse could not have happened. She told DCFS she reported the abuse to police because the girls told her that she did not love them unless she made the report. Mother still wished to reunite with father.

At the jurisdictional hearing, the three girls testified they had made up the sexual abuse allegations because they were angry at father. When asked about her various reports of abuse, P.R. described in vivid detail father going into the girls' room at night, getting in bed with M.N., and making motions under a blanket. She also described him getting in bed with her and C.N., but then recanted her testimony.

Mother testified that shortly before the girls made the original allegations of abuse in April 2014, she had told them she and father were planning to divorce because the girls were not his daughters. However, she also testified she had told the girls she and father had reconciled, and that she was planning on moving back in with him. Mother testified she did not believe P.R. was sexually abused by father.

The court sustained the allegations of sexual abuse of P.R. by father and mother's failure to protect her. The court found the parents already had reconciled by the time the girls disclosed the abuse and did not credit the girls' explanation that they accused father because they were angry at him for abandoning mother. The court considered the girls' recantations suspicious, noting that other children in the family had similarly recanted independent allegations of sexual and physical abuse. The court found P.R.'s in-court testimony about what she observed father do in the girls' room to be credible, as "[i]t appeared . . . she was reliving what she saw, not what she told the police officer." The court observed that mother's testimony "hurt the case" and found that while mother initially reported the abuse, her subsequent actions failed to establish she protected the children.

At the dispositional phase of the hearing, mother testified she was enrolled in classes and would not allow father to come to her home; if the children made disclosures of abuse, she would take them to police. Nevertheless, counsel for S.M. and A.M. was troubled by mother's testimony during the jurisdictional phase, noting that mother "took the children to the police after they practically begged her to do it. She didn't believe them then or now, and I think the children know it. [¶] Her allegiance is to [father], and that is where she is." With regard to mother's enrollment in classes and counseling, counsel argued "she is at the beginning of a process to enable her to provide a safe home for the children." P.R.'s attorney asked that P.R. be returned to mother's custody. Mother's and father's attorneys joined in that request.

The court agreed with counsel for S.M. and A.M. that mother either believed or wanted to believe the girls were not sexually abused. In light of the separate allegation that father had sexually abused J.M., the court noted "[t]here is just too much going on in this house for me to believe that the mother did not know or have a pretty good feeling of what was going on . . . ." The court declared P.R., S.M., and A.M. dependents of the court and declined to return them to mother's custody. It ordered reunification services for the parents, with individual counseling for mother and conjoint counseling for her and P.R.

Father appealed.

## **DISCUSSION**

Father does not challenge the jurisdictional findings or the dispositional order as to P.R. He contends only that the order removing S.M. and A.M. from mother's custody is not supported by substantial evidence because there is no evidence they would be in danger if returned to mother and because less drastic measures exist to protect them.<sup>3</sup>

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<sup>3</sup> A parent has standing to challenge the removal of that parent's child from the other parent's custody. (*In re R.V., Jr.* (2012) 208 Cal.App.4th 837, 849.)

“Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1653–1654.) The jurisdictional findings are prima facie evidence the child cannot safely remain in the home. (§ 361, subd. (c)(1).)” (*In re R.V., Jr., supra*, 208 Cal.App.4th at p. 849.) “[O]n appeal from [an order] required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.” [Citation.]” (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580–581.)

The court concluded mother’s actions after the sexual abuse was reported did not show she could protect the children from father. Father argues the evidence does not support that conclusion, inviting us to reweigh the evidence, redetermine issues of credibility, and draw inferences favorable to mother. However, on appeal, we do not pass on the credibility of witnesses, resolve evidentiary conflicts or evaluate the weight of the evidence. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250–251.) We draw all reasonable inferences in support of the court’s findings, view the evidence in favor of the court’s order, and must affirm that order even though other evidence might support a contrary conclusion. (*Ibid.*)

Father argues that mother’s reluctance to believe the sexual abuse occurred was reasonable because the girls recanted. However, the court was entitled to disbelieve the girls’ recantations, and the record supports the conclusion that the girls recanted because mother did not believe them and because they wanted to make her happy. Mother’s own testimony suggests she reported the abuse to police not because she initially believed the girls, but because they begged her to make the report if she loved them. Mother’s insistence that the abuse could not have happened because the girls were never alone with father is contradicted by the girls’ statements that father went into their bedroom when mother was cooking in the kitchen or working outside the home.

The commitment to protect her children from father, which mother professed at the dispositional portion of the hearing, was suspect because on the day of the children's removal, mother had vowed to divorce father and stand by P.R.; yet, subsequently, she made it clear she wanted to reunite with father and, even at the jurisdictional portion of the hearing, testified she did not believe father had sexually abused P.R. In that respect, the case is substantially similar to *In re R.V., Jr., supra*, 208 Cal.App.4th 837, 847, where the mother refused to believe the father had molested the child, who was ordered removed. While there is no evidence in the present case that mother had brought the children in contact with father after the abuse was disclosed in April 2014 and before they were removed from her custody in July 2014, the record indicates the children were removed because mother wanted to reunite with her husband and expected DCFS to permit her to move back in with him. The evidence supports the conclusion that mother does not truly appreciate that she may not reunite with father because she does not believe the sexual abuse occurred.

Father relies on *In re Hailey T.* (2012) 212 Cal.App.4th 139 to argue that removal of the children from mother's care was unwarranted, but that case is distinguishable. There, the ordered removal of a four-year-old girl was reversed because the cause of her infant brother's isolated eye injury was sharply disputed, and the appellate court deemed the evidence insufficient to support removal by clear and convincing evidence in the absence of other evidence of problems in the family. The girl was articulate and attended school, where she was available for observation to mandated reporters. (*Id.* at pp. 147–148.)

In contrast, here, the juvenile court credited the three girls' reports of long-lasting sexual abuse by father, which mother refused to believe. The court also was concerned about other referrals, which were deemed unfounded because father's children denied the alleged abuse. In light of the recurring allegations of abuse, the court's crediting of the girls' reports and concluding that mother's refusal to believe them was unreasonable is sufficient to support removing the children from her custody, particularly considering mother's repeatedly expressed desire to reunite with father.

**DISPOSITION**

The order is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.