Filed 3/19/18 In re K.W. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.W., a Person Coming Under the Juvenile Court Law.	B279849 (Los Angeles County Super. Ct. No. DK17553)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.W., Defendant and Appellant.	

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

Christina Gabrielidis for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and David

Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

K.W. (Mother) appeals the juvenile court's jurisdiction findings and disposition order concerning her then-five-year-old son, K.W.[1] The court believed K.W. had suffered, or was at substantial risk of suffering, severe emotional harm as a result of Mother's repeated allegations that K.W.'s father had sexually abused K.W. notwithstanding of police and Los Angeles County Department of Children and Family Services (DCFS) investigations that concluded the allegations were unsubstantiated. We consider whether substantial evidence supports the juvenile court's jurisdiction findings and its order removing K.W. from Mother's physical custody.

I. BACKGROUND

Marriage dissolution proceedings were pending between Mother and K.W.'s father, J.W. (Father), when Mother first reported that Father had sexually abused K.W. Evidence before the juvenile court at jurisdiction and disposition indicated Mother had variously accused Father of such abuse—at times in K.W.'s presence—to DCFS, the Pasadena Police Department, personnel at K.W.'s school, and others. There was also evidence Mother persisted in the accusations even after several interviews and examinations of K.W. did not substantiate any abuse had occurred. Mother's position was, and remains, that she was merely reporting what K.W. told her, but DCFS and the juvenile court suspected Mother was coaching K.W. to accuse Father of sexual abuse and of being a "bad man." We will summarize the

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[1] Mother and her son share the same initials. In this opinion, we refer only to her son by the initials K.W.

pertinent events leading up to the jurisdiction and disposition hearings, and in doing so, we adhere to binding precedent that requires us to "'draw all reasonable inferences from the evidence to support the findings and orders of the [juvenile] court'" and to "'review the record in the light most favorable to the court's determinations.'" (*In re R.T.* (2017) 3 Cal.5th 622, 633 (*R.T.*); accord, *In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*).)

A. Preliminary Proceedings

In 2014, Mother and Father (who was employed as a police officer) got into an argument in K.W.'s presence and Father was arrested for spousal battery. No charges against Father were filed, however, and a DCFS investigation into the incident for possible emotional harm to K.W. was closed as "inconclusive." In July of that same year, the family law court overseeing marriage dissolution proceedings between Mother and Father granted joint legal and physical custody of K.W. to both parents. The custody order entered by the family law court gave Father physical custody of K.W. every other Wednesday and every other weekend, with Mother having custody of K.W. at all other times.

Roughly two years later, while the marriage dissolution proceedings were still pending, a DCFS social worker received an "[e]mergency response referral" triggered by a report from Mother. She stated that K.W. said he and Father "have secrets that he is not supposed to tell anyone about" and that K.W. had told Mother that "his father has threatened to kill him if he says anything." According to Mother, when she spoke to K.W. he made a motion like he was giving oral sex and said "his father does that to him and he does it really hard and some stuff comes out of him." Mother refused to let K.W. participate in court-

ordered visitation with Father the weekend following these claimed disclosures by K.W.

Two days after receiving the emergency referral, a DCFS social worker interviewed Mother and K.W. separately. After some initial reluctance, K.W. responded "favorably" when asked about Father, explaining he liked to watch movies with him. The social worker asked K.W. about any secrets he might have with Father and K.W. answered they had "secrets about trains and Lego's." The social worker observed K.W. "did not appear to be familiar with any of the sexual behaviors reported by mother," did not disclose any "inappropriate conduct by father," and did not "display any of the behavior described by [M]other."

Mother's report to DCFS also triggered a report to the Pasadena Police Department (PPD). PPD officers interviewed Mother and K.W. the day after their DCFS interviews. In her interview with the police, Mother said K.W. told her that he and Father "exercise" together and explained the exercise by inserting his extended index finger into his opposite hand balled up into a clenched fist. Mother claimed K.W. said "when his dad does this exercise, his head gets big and explodes and stuff comes out." Mother told the police she had contacted "[DCFS] and her attorney" to file a report. When the officers separately interviewed K.W. and asked if he exercised with Father, K.W. said yes and made the hand gesture Mother described. The officers asked K.W. what that gesture meant and K.W. said he did not know. K.W. denied he had ever seen Father's penis and K.W. also denied Father had ever touched his penis.

The next day, PPD officers accompanied Mother and K.W. to an assault treatment center at an area hospital where they both underwent forensic interviews. K.W. did not disclose

experiencing any inappropriate touching and he said he was not worried about anyone hurting him. K.W. did, however, demonstrate the aforementioned finger-and-fist hand gesture when discussing "exercise" done by his Father, and K.W. said Father would "explode from his head" and rainbow-colored hot lava would come out. During her interview, Mother described seeing K.W. make the hand gesture, which caused her to become concerned. Mother called a friend, Mother next called her lawyer (at her friend's urging), and her lawyer told her to call DCFS (which triggered the initial referral).

That same day, and having learned K.W. did not describe suffering any abuse during his earlier DCFS interview, Mother provided DCFS with video recordings in which she "repeatedly ask[ed] [K.W.] questions indicating father is sexually abusive," apparently with the intention he would disclose being abused. The social worker found Mother's video interrogation of K.W. in this manner inappropriate and believed there was no further need for DCFS involvement with the family because there was no evidence K.W.'s behavior was due to sexual abuse. DCFS closed Mother's referral as "unfounded."

Within 24 hours of the decision to close the referral, however, DCFS received another referral alleging Father had sexually abused K.W. That referral was generated because Mother took K.W. to a therapist, apparently to corroborate her suspicions of abuse by Father, and the therapist (Casey Meinster) reported what she learned from Mother to DCFS.[2] The Meinster

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[2] The PPD detective investigating Mother's allegations reported it was Mother who described the alleged abuse when meeting with therapist Meinster—K.W. only demonstrated the hand gesture. Another therapist Mother sought out to evaluate

referral related various allegations of abuse—many of which painted a far more disturbing picture than Mother described when first interviewed by the police and DCFS. Briefly summarized, the referral alleged: Father hit K.W. with the back of his hand; Father played a "matching" game with K.W. that involved Father touching his "wee wee"; Father played "patty cake" with K.W. where both would clap their hands and then father would touch K.W.'s privates; Father and K.W. would play a game called "funny face" where K.W. would make funny faces and Father would photograph K.W.'s genitals; Father put his finger in K.W.'s anus and it "scratched him"; and Father "'tickle[d]'" K.W.'s privates in the bathroom and when K.W. told Father to stop, Father got upset and hit K.W. on the head with his penis.

DCFS also received a phone call from K.W.'s pediatrician, Dr. Laurence Lopez, inquiring whether DCFS had opened a case to investigate whether K.W. had been sexually abused. The social worker who fielded the call told Dr. Lopez that she could only provide limited information to him about the referral concerning K.W. Dr. Lopez then handed the phone to Mother and Mother stated K.W. had "remained consistent in his statements about [Father] putting his penis in him to his therapist" and emphasized the social worker was "supposed to investigate this issue." The social worker informed Mother additional interviews

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K.W., Jacqueline Woods, took it upon herself to investigate the alleged abuse by interviewing other personnel who spoke to K.W., including therapist Meinster. Woods reported that Meinster said what she reported to DCFS was a combination of what Mother said and what K.W. said. As already explained, we state the facts in the light most favorable to the juvenile court's order.

of her and K.W. would be necessary, and Mother stated K.W. "has been asked about the allegations many times today and he is beginning to shut down." The social worker and Mother agreed to delay interviewing K.W. "to avoid him feeling overwhelmed or shutting down for being asked of the same topic again."

When K.W. and Mother returned to DCFS for interviews, Mother told the social worker that "[K.W.] is ready to talk . . . ." When the social worker greeted K.W., K.W. said, "You have to protect me, my dad's a bad man. You have to protect me! My mom said you would protect me!" Mother told the social worker she was concerned the previous DCFS referral had been closed, and the social worker told her it was closed because there was no evidence of sexual abuse and "this is why the family is referred to therapy." Mother asked that K.W. undergo another forensic interview and a forensic physical exam, explaining K.W. had been making "additional disclosures including anal penetration and oral copulation."

The social worker, accompanied by a supervisor, interviewed K.W. in private. During that interview, K.W. "immediately and repeatedly" told the social workers that they needed to protect him because Father was a "bad man." When asked who told him that, K.W. said Father "has something wrong with his brain." The social workers asked K.W. whether Mother had told him to make such statements and K.W. looked away and said, "No it was somebody else."

After interviewing K.W. in private, the social worker told K.W. there was a surprise in the playroom. K.W. closed his eyes and was taken to the playroom where Father was sitting. When K.W. opened his eyes, he initially turned away and grabbed the leg of a DCFS psychologist who was observing, but when Father

said, "It's me, [K.W.]," K.W. immediately smiled and ran into his arms. The psychologist and the social workers did not observe K.W. exhibiting trauma or fear when visiting with Father in the playroom.

To further investigate the second sexual abuse referral, the social worker contacted the PPD detective who investigated the allegations, as well as staff at K.W.'s pre-school. The detective said he determined the allegations were again unfounded, as there is no evidence of abuse. The detective specifically mentioned he found Mother not to be credible, in part because she claimed K.W. told therapist Meinster about the digital penetration and oral copulation when his interview of the therapist revealed Mother made all the allegations and K.W. said nothing.[3] K.W.'s pre-school teacher reported hearing K.W. say, "My mom told me my dad's a bad guy, but he's not." K.W.'s teacher also reported overhearing Mother tell K.W. that he was never going to see his father again. School staff more generally reported that Mother often made inappropriate statements and discussed things with K.W. that should only be discussed with adults.

In the meantime, Mother took K.W. to another therapist—the previously mentioned Jacqueline Woods (Woods).[4] She

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[3] PPD officers who initially interviewed Mother were also apparently incredulous, finding it odd that Mother told them she did not want Father to face any "jail time" and wanted him to "continue to be involved in [K.W.'s] life" despite accusing Father of committing a heinous crime against their son.

[4] According to Woods, therapist Meinster "decided not to take the case" because she did not have enough experience with small children.

interviewed K.W. twice, and during those interviews, K.W. told her Father made him do "bad exercises," hit him on his back, and "threw [him] really hard." When asked what the "bad exercises" were, K.W. demonstrated the finger-in-fist gesture and told Woods Father showed him how to do it and they both did it "[a]ll the time." When asked whether he wanted to go see Father soon, K.W. said, "No cause I don't like his exercises."

DCFS eventually closed the second sexual abuse referral as "unfounded" and subsequently sought and received a removal order to protect K.W. from emotional abuse based on Mother continued questioning of K.W. about sexual abuse, Mother's suspected coaching of K.W., and Mother's "apparent unaddressed mental issues." Contemporaneous with detaining K.W. from Mother, DCFS filed a petition in juvenile court alleging K.W. was a child described by Welfare and Institutions Code section 300, subdivision (c).[5] The petition alleged Mother "emotionally abused the child by e[n]meshing the child in the ongoing custody dispute between [Mother] and [Father]." The petition further alleged "[M]other repeatedly made allegation[s] of sexual abuse of the child by [Father] and subjected [K.W.] to a forensic interview and multiple interviews by Law Enforcement and DCFS" regarding Mother's unsubstantiated allegations, which "places [K.W.] at substantial risk of suffering serious emotional damage . . . ."[6]

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[5] Undesignated statutory references that follow are to the Welfare and Institutions Code.

[6] When Woods learned K.W. had been removed from Mother, she confessed to being "shocked" and believed her "concerns were strong enough that [she] felt the only recourse [she] had was to get releases signed and actually speak to those DCFS had interviewed myself to see what they had to say about [Mother]

B. Jurisdiction

At the initial juvenile court detention hearing in May 2016, the court ordered K.W. detained from Mother and released to Father's custody. Mother was granted unmonitored visits and the court set the matter for a jurisdictional hearing. In preparation for that hearing, DCFS again interviewed the family and others involved in the case.

Father maintained Mother suffered from mental health issues and made the sexual abuse allegations to obtain a more favorable custody determination in the ongoing divorce proceedings. Father also said that staff at K.W.'s school reported K.W.'s behavior had improved and he was having fewer emotional "meltdowns" now that K.W. was living with Father.

Mother denied having any mental health issues. Midway through a four hour interview with the investigating social worker, Mother claimed K.W. was still telling her about new allegations of sexual abuse. Specifically, Mother told the social worker that K.W. talked about a game that Father and his friends (including another police officer) would play: K.W. would stand naked on a step-stool, Father's friends would take turns

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and [K.W.]." Woods thereafter interviewed Dr. Lopez, therapist Meinster, and the principal at K.W.'s preschool. From her own investigating, Woods formed the opinion that "[a]t the very least, [Father] appears to be teaching his 4 1/2 year old son how to masturbate with him" and concluded there was "NO EVIDENCE that [Woods has] heard or personally experienced to deny [M]other ANY parental rights"—adding "[h]ow anyone can reach that conclusion based on the evidence is beyond me and a miscarriage of justice."

pushing K.W. off, and whoever pushed K.W. off the stool would take K.W. to bed and lick him. Incredulous, the investigating social worker questioned Mother as to whether she believed Father had actually engaged in such a game, particularly when dependency proceedings remained ongoing. Mother responded she was "just telling you what [K.W.] said" and added, "I have to believe my child."

K.W. told DCFS that "life is changing . . . for the worse." When asked what that meant, K.W. said "that means life is different" but he did not elaborate. K.W. responded "oh yes" when specifically asked if everything was okay for him at Father's house. K.W. confirmed he felt safe with both Mother and Father, and when asked whether anyone was hurting him, K.W. said "nope."

DCFS also contacted K.W.'s new therapist, Dr. Adrienne Meier, who had been seeing K.W. for therapy sessions weekly beginning in June 2016 (after K.W. had been placed in Father's custody). Dr. Meier believed K.W. exhibited a little aggression when playing, and overall she found him rambunctious but well-behaved. Dr. Meier reported she was still building a rapport with K.W. but she saw no signs of sexual abuse and K.W. had not reported being abused by anyone.

DCFS's jurisdiction report recommended "visits between [Mother] and [K.W.] become monitored post haste," in part because "she continues to involve him in . . . outrageous allegations of sexual abuse by [Father] that are becoming increasingly bizarre." DCFS explained: "[M]other's alleged coaching of [K.W.] as to sexual abuse by [Father] is going unchecked during her visits, which poses a threat to [Father] AND [K.W]. If the child hears often enough that his father is a

'bad man' and 'abuses you' by [Mother], he may develop a false memory of abuse based solely on [Mother's] insistence that it occurred. Long-term, this 'memory' could be the destruction of [K.W.'s] self-esteem, his bond with [F]ather, his trust in both parents, and cause untold distress to him."

At an interim hearing, the juvenile court ordered subsequent visits with Mother must be monitored. The court also admonished Mother "not to use mandated reporters as conduits for new child abuse allegations" and to "discuss directly with the DCFS social worker assigned to th[e] case" any child abuse.

Mother's first monitored visit occurred at DCFS's offices in early August 2016. A few weeks later, Mother sent a DCFS social worker an email with another allegation of abuse. The email alleged that during the monitored visit the night before, K.W. became spontaneously frightened at a memory and began to put his arms in the air while stating Father "hurted him" and "exploded me." The email also indicated that the visit monitor could confirm Mother was not coaching K.W. The DCFS social worker "consulted at length" with the monitor, however, and the monitor stated no such incident had occurred.

In December 2016, the parties appeared in court for the contested jurisdictional hearing. At the hearing, Mother argued she had acted appropriately by reporting what K.W. was telling her and maintained her conduct could not amount to the level of emotional abuse sufficient to support jurisdiction. Mother called several witnesses and testified herself.

During Mother's testimony, she stated K.W. first showed her hand motions (inserting his finger into his cupped other hand) in April 2016 and, when asked what he was doing, K.W. said Father had showed him how to do this, that Father did it

really hard, then he explodes, and then stuff comes out. At that time, Mother called her friend, then her attorney, and then DCFS; when questioned further about this sequence by the court, she said she actually called DCFS first but dropped the call when her friend called her back and DCFS had her on hold.[7] Mother said that she believed Father continued to abuse K.W. after he was ordered detained, though K.W. had not reported any abuse in the past month prior to the jurisdictional hearing.

Dr. Lopez testified Mother brought K.W. to him with complaints of sexual abuse. Dr. Lopez testified that during his interview of K.W., K.W. told him "he did exercises with his dad and then pointed down at his private area," and said "he put his pee-pee in his mouth." Mother was in the room during this interview. Dr. Lopez reported the incident to DCFS.

The principal at K.W.'s school, Kristin Perez (Perez), testified she would speak to K.W. in her office, generally due to some behavioral issues in the classroom. Perez testified that in April 2016, K.W. said to her, "Did you know that if you do this, your body explodes." Perez demonstrated the motion on the stand, putting a finger into a cupped hand. Perez asked K.W., "[D]o you mean just with your fingers? He said, no, other part. I said other part? He pointed to his genitals." On cross-examination by DCFS's lawyer, Perez testified that she had heard sexual abuse allegations from Mother a few days prior to K.W.'s statement.

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[7] Mother's testimony, as revised or clarified, diverged from what she said during her recorded forensic interview, namely, that she spoke to her friend first, her attorney second, and DCFS after that.

The juvenile court sustained the petition as alleged. The court stated the issue was "whether or not [Mother's] behavior was appropriate, given the disclosures by her son[,] if she acted appropriately." The court found Mother did not act appropriately "at some point," explaining the statements that had been attributed to K.W. "are rather mature for somebody of that age" and the allegations of sexual abuse had "just [gotten] to be bigger and bigger and bigger."[8] The court believed Mother may have coached K.W. "because of the kind of stylized statements and there are some statements in [DCFS's] documents that when [K.W.] is . . . asked after a statement, he can't justify anything he says, other [than] that his dad is mean, but no real reason why his dad is mean . . . ." The court further noted Perez testified K.W. was doing better after being placed in Father's care, which, in combination with evidence that monitored contact with Mother allowed K.W. to address some of his aggression and trauma, was "a sign to the court that [the count alleged in the petition] was true . . . ."

Having found jurisdiction over K.W. was warranted, the court set the matter for a contested disposition hearing.

C. Disposition

DCFS continued to monitor the family while awaiting the disposition hearing.

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[8] The court noted Mother's conduct might have been appropriate if "this was an incident and [Mother] called the police and investigated and was told there's no problem . . . ." the court found it problematic that Mother instead called a friend, and then called her attorney, instead of first calling DCFS.

In a January 2017 report, DCFS recommended jurisdiction be terminated with a family law order granting father sole legal and physical custody of K.W. with only monitored visitation for Mother once a month (based on Dr. Meier's report of K.W.'s recent regression due to more frequent contacts with Mother). Prior to the disposition hearing, the juvenile court limited Mother's monitored visits to once every other week.

In a March 2017 report, DCFS noted an incident that had occurred during one of Mother's monitored visits. The monitor reported that when he turned his attention to speak with someone at the visiting room door, he observed Mother whispering into K.W.'s ear. When the monitor sat down again, K.W. made the finger-in-fist gesture and said "my dad told me to do this. He said to keep it a secret." The monitor noted K.W. said this in a playful tone.

The disposition hearing occurred over the course of four days later in March and April 2017. Mother testified K.W. was afraid of Father because Father will spank him if he tells Mother anything. She believed that Father was sexually molesting K.W. based on things K.W. had told her. Mother had been attending therapy, where she discussed how to cope with the distress she was dealing with, but she testified she rarely spoke about K.W. during the therapy sessions.

Mother also acknowledged that she had an unauthorized visit with K.W. a couple of weeks prior to the hearing. She stated she happened to be driving down the street when she saw K.W. on the sidewalk. She got out of her car because he was crying. K.W. begged Mother to take him home and she told him she was doing everything she could to get him home someday. Mother

knew she was violating a court order but did so because if she kept driving, K.W. would think she did not care about him.

Holly Silva (Silva), K.W.'s babysitter, testified to the same unauthorized visit between K.W. and Mother. Silva and K.W. were out walking when they encountered Mother. The incident lasted between 15 and 25 minutes. Silva testified she had to stop the conversation between K.W. and Mother when Mother said "the court needs to know that people are lying so they don't believe the lies." Silva was aware of the court-ordered limits on Mother's visitation, but allowed the visit because "[K.W.], for the last couple of days, up to that day, had really begun to express just the pain from not having his mom and he had even shown [Silva] a picture of her that morning, like I miss her so much."

The investigating social worker testified that psychiatry records that Father had retrieved and given to DCFS indicated that both parents had come in for services in 2014 after K.W.'s preschool informed them that he was having behavioral and emotional problems. The social worker agreed that custody was not the primary cause of the conflict for K.W. and Mother. The social worker further testified she learned from Dr. Meier that there was a possible correlation between visits with Mother on the one hand, and K.W. "kind of decompensating over the last couple of months" on the other. The social worker believed Mother had made no significant progress in accepting services that would help address any mental health issues and DCFS believed that further minimizing the contact between Mother and K.W. would motivate her to get mental health treatment.

E. Brown (Brown), executive director of the preschool K.W. attended until two weeks before the hearing, testified K.W.'s behavior was "heightened" before and after he saw his mother,

but she also acknowledged his baseline was heightened behavior. Brown further testified that K.W. appeared to be stressed on a regular basis and unable to cope effectively throughout the day. William Rojas, the monitor for a visit between Mother and K.W., testified he heard K.W. tell Mother that "Daddy told me that you forgot about me," to which Mother replied, "I would never forget about you."

In arguing the matter, K.W.'s attorney, Father, and DCFS all advocated for termination of jurisdiction with custody of K.W. awarded to Father. Mother argued that the case should remain open and that the court should consider more frequent visitation to assist mother and K.W. in interacting in a positive and supportive manner.

The juvenile court declared K.W. to be a dependent of the court under section 300, subdivision (c). The court further found—without elaboration on the record—that there was a substantial danger if K.W. were returned home and there were no reasonable means he may be protected without removing him from Mother's physical custody.

The court rejected the recommendation to close the case with a custody order to Father. The court believed such an order was not in K.W.'s best interest because K.W. was completely bonded to his mother and the suspension of visits would be traumatic. The court also indicated it was concerned that without court supervision, Father might "cut out [Mother]" and deprive her of visits with K.W. The juvenile court accordingly ordered that K.W. should remain placed with Father, Mother should participate in family reunification and family enhancement services, and Father should participate in family maintenance services. Both parents were directed to enroll in

and complete parenting classes, participate in individual counseling, participate in conjoint counseling with K.W. when their respective therapists believed it was appropriate, and complete a "parents beyond conflict" program. Mother was also ordered to undergo a psychiatric evaluation.

II. DISCUSSION

Section 300, subdivision (c) "requires a showing that [the child] 'is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others' and that either the parent is causing the emotional damage or the parent is not capable of providing appropriate mental health treatment." (*In re K.S.* (2016) 244 Cal.App.4th 327, 337.) Contrary to Mother's protestations, there is substantial evidence K.W. is such a child. Prior cases have held jurisdiction under section 300, subdivision (c) can be appropriate where a parent persists in leveling unsubstantiated sexual abuse accusations against the other parent, and that is the situation here.

Mother also challenges, on both procedural and substantive grounds, the disposition order removing K.W. from her custody. Her procedural challenge asserts the court erred in failing to state on the record facts supporting its finding that DCFS had made reasonable efforts to avoid the need to remove K.W., but this contention is forfeited because Mother did not object to the absence of such a factual recitation during the disposition hearing. Substantively, Mother claims there is no substantial evidence on which the juvenile court could have relied to make its reasonable efforts finding, but we see the record differently.

Mother appeared to make little progress during the dependency proceedings in curbing her impulse to relate allegations Father was sexually abusing K.W.—even when those allegations were incredible on their face—and to fully comply with juvenile court orders. Under the circumstances, the juvenile court could reasonably conclude removal of K.W. was required even as the court rejected the harsher remedy of termination of jurisdiction with a custody award to Father—which was what K.W.'s attorney, DCFS, and Father all recommended.

A. Substantial Evidence Supports the Jurisdiction Findings

"'In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them.'" (*R.T.*, *supra*, 3 Cal.5th at p. 633.) "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate]." (*I.J.*, *supra*, 56 Cal.4th at p. 773, internal quotation marks and citations omitted.)

Mother makes three arguments in favor of reversal of the jurisdictional findings. She argues there was no ongoing custody dispute in which K.W. could have been enmeshed, contrary to the allegations in the petition. She contends she cannot be said to have caused K.W. to suffer severe emotional damage or a risk of the same because "there was evidence that [K.W.] suffered from some extreme emotional disturbances . . . [that] significantly pre-

dated [Mother's] allegations of abuse and therefore could not have been caused by [Mother's] reporting." And she asserts [Mother's] conduct was not "offending" because she "acted appropriately and protectively" by only once reporting abuse herself (the initial DCFS referral) and thereafter simply relating K.W.'s own accounts of abuse. The first two of these arguments are easily dismissed and the third fails in light of the applicable standard of review and precedent that holds repeated, unsubstantiated charges of sexual abuse can properly give rise to a risk of emotional harm justifying juvenile court jurisdiction.

1. The existence of a custody dispute was not dispositive

The truth or falsity of whether K.W. had become enmeshed in his parents' custody dispute is immaterial to the truth or falsity of whether he faced a substantial risk of suffering serious emotional damage. It is, at most, a possible motive of sorts for the alleged damage, not itself the basis for the damage. The basis for the claim of emotional damage was as DCFS further alleged, namely, that "[M]other repeatedly made allegation[s] of sexual abuse of the child by [Father] and subjected [K.W.] to a forensic interview and multiple interviews by Law Enforcement and DCFS" regarding Mother's unsubstantiated allegations, which "place[d] [K.W.] at substantial risk of suffering serious emotional damage . . . ." As we shall soon discuss, there was substantial evidence on which the juvenile court could rely to find Mother had done just that. Moreover, even if it were the case that there must be evidence supporting DCFS's allegation that a custody dispute with Father was the reason why Mother made the sexual abuse allegations, it is undisputed those allegations

arose while the divorce proceedings were pending and Mother and Father's relationship had been quite vitriolic in the past. We must draw all reasonable inferences in favor of the juvenile court's findings (*R.T.*, *supra*, 3 Cal.5th at p. 633), and the allegation that Mother made the accusations of abuse to gain leverage in the marriage dissolution proceedings is a reasonable one on this record.

2. Mother's pre-existing condition argument is meritless

Mother cites evidence in the record indicating K.W. was known to sometimes exhibit aggressive behavior in school before Mother began alleging to others that Father was sexually abusing K.W. She believes her accusations therefore cannot be said to have caused K.W. serious emotional damage. The argument is meritless for two reasons. First, it depends entirely on understanding section 300, subdivision (c) to authorize jurisdiction only when a child has actually suffered serious emotional damage. But that, of course, is not what the statute says; it authorizes jurisdiction in that circumstance and also where a child "is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others." Here, there was ample evidence of withdrawal in various instances by K.W. that would permit a finding of a risk of emotional damage. Second, the argument unjustifiably assumes Mother's abuse accusations—which were not infrequently made in K.W.'s presence—could not have contributed to his aggressive behavior by making the behavior worse or by prolonging behaviors that might have otherwise lessened or ceased. Indeed, there is

substantial evidence the opposite was true: Dr. Meier and personnel at K.W.'s schools described observable improvements in his behavior when he was placed in Father's custody and when K.W.'s visitation with Mother was limited.

3. Substantial evidence indicates Mother's repeated discussion of sexual abuse risked emotionally damaging K.W.

Persuasive authority holds that a parent's allegations of unsubstantiated sexual abuse can be sufficient to warrant jurisdiction under section 300, subdivision (c). (*In re Christopher C.* (2010) 182 Cal.App.4th 73 (*Christopher C.*); see also *In re Matthew S.* (1991) 41 Cal.App.4th 1311, 1320 [jurisdiction warranted to address risk of emotional damage when 13-year-old son was well-adjusted and did not feel threatened by his mother but the mother was living under delusions that her son's penis had been mutilated while she was in South America].) *Christopher C.*, in particular, involved a custody dispute "'resulting in cross allegations of sexual abuse, physical abuse, [and] "coaching" [of the children to make false allegations].'" (*Christopher C.*, *supra*, at p. 81.) Due to the parents' accusations, the children were subject to frequent examination where they were questioned about subjects they did not want to discuss and the coaching caused the children to be unable to distinguish reality from fiction. (*Id.* at p. 84.) This evidence led the *Christopher C.* court to conclude the parents had "turned a blind eye to the substantial risk of emotional damage to the children that their conduct . . . spawned," thereby justifying juvenile court jurisdiction. (*Id.* at p. 85.)

Here, K.W. was repeatedly made to answer questions concerning sexual abuse by his father during a forensic examination and numerous interviews—all deriving from Mother's instigation. He was seen by at least three therapists, and Mother herself indicated that, on one occasion, K.W. was questioned so extensively that he began to "shut down." Like the *Christopher C.* parents, Mother continued to press the claims of abuse—at times in K.W.'s presence—without awareness of the obvious risk of harm that could come from repeatedly subjecting her child to hearing such matters. Her continuing allegations of abuse and her influence on K.W. (whether witting or not) was such that the juvenile court ordered Mother's visits be monitored. The conduct then continued thereafter, including an instance in which Mother alleged K.W. disclosed abuse during a monitored visit when the monitor denied witnessing any such disclosure. Even if Mother's conduct is not as egregious as the parents' conduct in *Christopher C.*, it still qualifies as substantial evidence supporting the juvenile court's jurisdiction findings.

Mother argues, however, that this case is unlike *Christopher C.* because she "acted reasonably and protectively when she, on ONE occasion, reported possible inappropriate behavior by Father to DCFS and law enforcement, which resulted in an investigation." This is a myopic view of the record. While Mother called the child abuse hotline herself, the juvenile court appropriately recognized she appeared to use others who have a mandatory duty to report abuse (e.g., therapist Meinster and Dr. Lopez) as proxies for leveling her own allegations. And regardless, there were several instances in which Mother herself repeated abuse accusations in K.W.'s presence or interrogated him on her own in an effort to get him to disclose claimed abuse.

These actions, even if not rising to the level of a formal report of abuse, still present precisely the risk of harm DCFS identified—that K.W. "may develop a false memory of abuse based solely on [Mother's] insistence that it occurred," which "could be the destruction of [K.W.'s] self-esteem, his bond with [F]ather, his trust in both parents, and cause untold distress to him." The juvenile court appropriately found jurisdiction was warranted to protect against this risk.

B. Reversal of the Disposition Order Is Not Warranted Due to Alleged Procedural or Substantive Error

Mother challenges the juvenile court's disposition order on procedural and substantive grounds. Procedurally, she contends (1) DCFS's reports failed to discuss the reasonable efforts made to prevent or eliminate K.W.'s removal from her custody, as required by the California Rules of Court, and (2) the juvenile court failed to state on the record facts supporting its finding that reasonable efforts had been made to prevent or to eliminate the need to remove K.W. from Mother, as required by statute. Substantively, she argues there is no substantial evidence in the record that could justify the court's removal order. Neither argument is persuasive: The procedural argument is forfeited because Mother did not object during the disposition hearing and the substantive argument does not comport with our review of the record.

1. Mother's challenge to the absence of a factual statement supporting the court's reasonable efforts finding is forfeited

Section 361, subdivision (c)(1) governs a juvenile court's decision on whether to remove a child from the custody of his or her parents. Removal is justified only where a juvenile court finds, 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." (§ 361, subd. (c)(1).) "A removal order is proper if it is based on proof of: (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163 [focus of the statute is on averting harm to the child].)

Subdivision (e) of section 361 states that a juvenile court "shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home" and "shall state the facts on which the decision to remove the minor is based." (§ 361, subd. (e).) The evidence a juvenile court considers in making its removal determination includes a "social study" (i.e., a report) prepared by DCFS, which must, by rule, include a "discussion of the reasonable efforts made to prevent or eliminate removal and a recommended plan for reuniting the child with the family, including a plan for visitation." (Cal. Rules of Court, rule 5.690(a)(1)(B)(i).)

Mother asserts the disposition order removing K.W. should be reversed both because DCFS did not comply with Rule 5.690 and because the juvenile court did not comply with section 361's requirement to state the facts on which a child removal order is based. Our view, however, is that only a violation of the statutory requirement can be grounds for reversal. That is so because the Rule 5.690 requirement has limited independent impact; it exists to facilitate the court findings required by statute. (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 809 ["To aid the court in determining whether 'reasonable means' exist for protecting the children, short of removing them from their home, the California Rules of Court require DCFS to submit a social study" including a discussion of the reasonable efforts made to prevent removal] (*Ashly F.*).) In a scenario where a juvenile court relies on its ongoing familiarity with the facts of a case (from filings by the parties or in-court proceedings) and provides a statement of its reasons for removing a minor, we are hard pressed to see how reversal would be warranted even if the level of detail in a DCFS social study report leaves something to be desired.

Thus, we focus instead on Mother's argument that the juvenile court failed to state the facts on which it relied to remove K.W., as required by section 361, subdivision (e). At the disposition hearing, the court found reasonable services had been provided but did not state the facts on which its finding was based. Mother did not object.

Well-settled precedent holds a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been made in the trial court but was not. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; accord, *In re Alexandria P.* (2014) 228

Cal.App.4th 1322, 1346.) "Otherwise, opposing parties and trial courts would be deprived of opportunities to correct alleged errors, and parties and appellate courts would be required to deplete costly resources 'to address purported errors which could have been rectified in the trial court had an objection been made.'" (*In re S.C.* (2006) 138 Cal.App.4th 396, 406.) "The forfeiture doctrine has been applied in dependency proceedings in a wide variety of contexts, including cases involving failures to obtain various statutorily required reports [citation]; failure to object to the adequacy of an adoption assessment [citations]; failure to request an alternative placement [citation]; and failure to require expert testimony and to make the required findings using the beyond-a-reasonable-doubt standard as mandated by ICWA [citation]." (*In re G.C.* (2013) 216 Cal.App.4th 1391, 1398-1391.) Mother having failed to raise a contemporaneous objection, the forfeiture doctrine applies to her procedural error claim here.

2. Substantial evidence supports the juvenile court's decision to order K.W. removed

In addition to faulting the juvenile court for failing to state the basis for its removal order, Mother contends there is no substantial evidence in the record on which the juvenile court could have relied to make such an order. To the contrary, our review of the record leaves us convinced that substantial evidence supports the court's finding that reasonable efforts had been made but no alternative short of removing K.W. from Mother's custody would suffice to protect him from a substantial danger to his emotional well-being.

We review a challenge to the disposition order here for substantial evidence. (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 80.) Although a juvenile court must find that removal of a child from his or her parent is supported by clear and convincing evidence (see, e.g., *In re Abram L.* (2013) 219 Cal.App.4th 452, 461), that standard "is for the edification and guidance of the trial court and [is] not a standard for appellate review." (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880 (*Sheila S.*), citing *Crail v. Blakely* (1973) 8 Cal.3d 744, 750.) "[O]n appeal from a judgment 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.' (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 365, p. 415.)" (*Sheila S.*, *supra*, at p. 881; accord, *In re F.S.* (2016) 243 Cal.App.4th 799, 812.)

The juvenile court's jurisdiction finding, which we have upheld, is prima facie evidence K.W. could not safely remain in the home. (§ 361, subd. (c)(1); *In re T.V.* (2013) 217 Cal.App.4th 126, 135.) The record indicates that the conduct which led the juvenile court to conclude that jurisdiction was proper continued up to the time of the disposition hearing, thus indicating both that Mother was having difficulty letting go of the idea that Father was abusing K.W. and that the danger of serious emotional harm persisted. Among other examples, the deterioration in K.W.'s behavior correlated with a more frequent visitation schedule with Mother and a monitor witnessed K.W. making the finger-in-fist gesture after Mother whispered to him during a visit, which of course suggested Mother may be coaching K.W. In addition, Mother knowingly engaged in an unauthorized

visit with K.W., and K.W.'s babysitter had to intervene when Mother began discussing the ongoing dependency proceedings with her son. Moreover, Mother was participating in counseling as ordered, but the investigating social worker believed Mother had made no significant progress in accepting services that would help address any mental health issues and even Mother conceded she "rarely" discussed K.W. during the counseling sessions. These facts are substantial evidence supporting the removal order.[9]

[9] Mother cites *Ashly F.*, *supra*, 225 Cal.App.4th 803 to support her argument seeking reversal of the disposition order. But that case is factually inapposite. There, the mother, who had admitted she had struck her daughter with an extension cord, enrolled in parenting classes, was remorseful over her actions, and temporarily removed herself from the home prior to the disposition hearing. (*Id.* at pp. 806, 808.) Here, by contrast, Mother had taken few if any affirmative steps to change the circumstances that justified juvenile court jurisdiction. In the time between the jurisdiction and disposition hearings, Mother did not recognize how her conduct was inappropriate and did not substantially change her posture as to whether there had been abuse.

DISPOSITION

The juvenile court's jurisdictional findings and disposition order are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIM, J.*

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