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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.F.,

a Person Coming Under the
Juvenile Court Law.

B288099

(Los Angeles County
Super. Ct. No. 17CCJP02731A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

WENDY M., et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, Martha A. Matthews, Judge. Affirmed in part, reversed in part, and remanded.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant Wendy M.

John P. McCurley, under appointment by the Court of Appeal, for Defendant and Appellant Mario F.

Mary C. Wickham, County Counsel, Kristine Miles, Acting Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

Wendy M. (mother) and Mario F. (father) are the parents of J.F., who was born in September 2013. The juvenile court found that J.F. was a person described by Welfare and Institutions Code section 300, subdivisions (a) and (b), due to the parents engaging in domestic violence.¹ On appeal, mother and father contend that the juvenile court's jurisdictional findings are not supported by substantial evidence. Father also challenges the juvenile court's order removing J.F. from his custody. We affirm in part, reverse in part, and remand.

FACTUAL AND PROCEDURAL HISTORY

I. Domestic Violence Incident

On December 2, 2017, mother and father argued over fidelity issues. During the argument, father became extremely aggressive and punched mother on her chest and left leg. Mother then called the police. Although mother reportedly sustained

¹ All further statutory references are to the Welfare and Institutions code unless otherwise specified.

bruising to her left leg, she did not require medical attention. J.F. was present and witnessed this domestic violence incident. Police arrested father, but mother declined an emergency protective order. On December 3, 2017, the Los Angeles County Department of Children and Family Services (DCFS) received a referral regarding the incident.²

On December 6, 2017, a Children's Social Worker (CSW) met with J.F. at the family's home. J.F. confirmed that he was present during the domestic violence incident. However, J.F. remained reserved and only provided brief answers to the CSW's questions. J.F. heard his parents argue and saw father hit mother on her leg. J.F. did not know what his parents argued about on that day and could not say how often they argued. J.F. denied having previously witnessed his parents hit each other. J.F. said he was not afraid of father.

The CSW also interviewed mother on December 6, 2017. Mother said father previously had a drinking problem but that he no longer drank. She said they met in 2002 and married in 2004.

² DCFS later obtained the Los Angeles County Sheriff's Department's report from December 2, 2017 incident. According to the report, mother said that she told father to leave the home and he responded by punching her with his fist on her chest and leg area. Mother also provided a written statement reporting J.F. was present when father punched her, father tried to grab J.F., who got scared and cried. Deputies saw bruising on her left leg and mother said there had been approximately four unreported incidents of domestic violence between her and father. According to the report, mother refused medical treatment and declined an emergency protective order. Father was still present when the officers arrived at the home and said that he and mother had only engaged in a verbal argument.

Mother said there was no domestic violence in their relationship until 2017. Mother told the CSW that her first child died a few months after her birth in 2012 due to a congenital condition. During this time, mother discovered father was cheating on her, but she forgave him. However, father constantly accused mother of being unfaithful and mother said she did not work at father's direction. Mother said father went through her phone messages, and social media accounts to " 'catch her in the act.' " Mother denied cheating on father and said she felt like a prisoner in her own home because she did not go out and instead remained at home alone with J.F. until father returned from work.

Mother said their fighting had increased about 15 days ago. When mother told father to leave the home, he refused. Mother told the Dependency Investigator (DI) that she had packed a bag for mother and J.F. and planned to go to a friend's home. Mother said she was trying to prevent a physical fight but denied that she and father had ever engaged in domestic violence. Mother said that when she tried to leave on December 2, 2017, father got between her and J.F. and " 'lightly punched' " her. Father also tried to take J.F. from her. Mother said it did not hurt when father hit her. When the DI told mother that the police saw bruises on her, mother said father did not "straight out punch" her, but instead hit her in an attempt to get their son. According to mother, J.F. said, " 'no papa' " but father would not let go of J.F. Mother said she declined the emergency protective order because she wanted father to still have contact with J.F. Mother said father had a criminal court hearing on December 5, 2017. She believed the criminal court had issued a protective order but said she did not have a copy of it. Mother said she did not want J.F. to be exposed to fighting in the home and that she called the

police because she assumed father would become more physically aggressive.

On December 7, 2017, the CSW spoke with father. Father said he was staying at a hotel. He said the criminal court had issued a restraining order on December 5, 2017, which prohibited him from being within 100 feet of mother or J.F. Father said this was why he had not been answering mother's phone calls. Father also denied having a copy of the restraining order. Father denied punching mother on her chest or leg. He confirmed that he and mother had argued, but said J.F. was in another room at the time. Father said he did not want J.F. to witness their arguments.

II. Section 300 Petition and Detention Hearing

On December 19, 2017, the juvenile court authorized DCFS to remove J.F. from father. On December 26, 2017, DCFS filed a section 300 petition alleging the parents had a history of engaging in physical and verbal altercations in J.F.'s presence and that mother had failed to protect J.F. from father. The petition referenced the December 2, 2017, domestic violence incident and further alleged that father struck mother with a closed fist on her chest and leg.

The juvenile court conducted the detention hearing on December 27, 2017. Father's counsel said father was requesting frequent visits with J.F. Mother's counsel said that the criminal court had issued a three-year restraining order protecting mother from father but that the order did not include J.F. Mother's counsel said that visitation would "have to be worked out separately." The juvenile court detained J.F. from father, released J.F. to mother, and ordered that father be provided with

a minimum of two visits per week. The juvenile court ordered that the visits be monitored by a DCFS-approved monitor and that mother not be the monitor. The juvenile court ordered that mother enforce any criminal protective orders, that father not go to the family home, and that a third party facilitate visitation exchanges. The juvenile court further ordered DCFS to refer mother to services and that mother participate in them.

III. Jurisdiction/Disposition Report

On January 17, 2018, the DI tried to interview J.F. Although mother encouraged J.F. to speak with the DI, he continuously nodded and whispered, “No.” The DI interviewed mother that same day. Mother denied she had failed to protect J.F. Mother said her relationship with father had changed after their daughter died in May 2012. She said she and father used to talk things out, but that after their daughter passed away, she “‘went into [her] own comfort zone.’” Mother told the DI, “‘Nothing happened before the day I called the cops [on December 2, 2017] I told the cops that I had called the cops before, but that was one to two years ago. We were arguing and he tried to hit me. What does that mean? It means he tried. He made the gesture with his fist, but never did it. The police told him to leave at that time. He left for a week and he wanted to come back to work things out. He’s been good.’”

Mother said that father was a jealous person and thought mother did stuff she was not doing because she was always on her phone, which bothered him. She said she would understand this if J.F. and the house were dirty, but she always made sure J.F. was well taken care of and the house was clean. Mother insisted that father did not become physically aggressive with her

and that J.F. was not present, stating, “ ‘We always argue in the kitchen and [J.F.] is either sleeping or in the living room.’ ” Mother said the December 2, 2017 incident had started in October when mother met her family from Central America. Mother said she met distant cousins online and one of them was “sweet talking” her. She and father argued after father found messages between them. Father told her that he did not want her on Facebook or Instagram and asked for all her passwords. Mother told father she wanted her privacy and that they should split up. Father later saw mother talking on the phone to her cousin, which led to the December 2, 2017 argument. Father pushed her, but it was a push designed to simply move her. Mother said she did not want to deal with the situation so she called the police. Mother thought the police would just tell father to leave like they had done the previous year. However, she said they saw red bruises on her chest and knee. Mother said, “I guess when I sat down I hit my leg with his knee. I don’t know if it was intentional, but it didn’t hurt at the time and I didn’t notice it until the cops saw it.” Mother insisted that there had been only two incidents of physical altercations and denied having told law enforcement there had been four prior incidents.

The DI interviewed father on January 17, 2018 as well. Father continued to insist that although he and mother had argued, they did not get into a physical fight and he did not hit her. He further insisted that they never argued in front of J.F. and that they had been in the kitchen and J.F. was in the living room during the December 2, 2017 argument. Father said he could not ask mother why she said he hit her because of the restrictions imposed on them. Father did not know how mother was going to pay the rent, said he wanted to return home, and

asked the DI to help him. Father was adamant that he had never been physically aggressive with mother.

Mother and father wanted to reconcile and father said he planned to do so as soon as he could without violating court orders. DCFS believed that mother's inconsistent statements about father's conduct indicated she was minimizing his behavior. DCFS recommended that the juvenile court sustain the section 300 petition, declare J.F. a dependent of the court, offer mother family maintenance services, and offer father family reunification services.

IV. Jurisdiction/Disposition Hearing

The juvenile court conducted the jurisdiction/disposition hearing on January 29, 2018. The juvenile court admitted the criminal court protective order and DCFS's reports into evidence. The juvenile court admitted letters showing that mother had enrolled in a domestic violence support group for victims and a parenting program. According to the letters, mother had attended one session of each of the programs. The juvenile court also admitted letters showing that father had enrolled in a domestic violence batterers' intervention program and a parenting program.

Father's counsel asked the court to dismiss the allegations in the petition addressing father and argued that the case involved an isolated incident. Father's counsel argued that mother had consistently denied there had been additional incidents and that J.F. reported observing the December 2, 2017 incident only. Father's counsel said the four other instances mother referred to in the police report may have been verbal altercations. Father's counsel contended there was not enough

information in the report to establish a pattern of ongoing domestic violence and argued that the parents had been very appropriate, and had enrolled in programs. Father's counsel asked the court to strike both counts in the section 300 petition, but at the very least, to strike the count pled pursuant to section 300, subdivision (a).

Mother's counsel argued that mother had denied stating there were four incidents of domestic violence and there was no evidence J.F. was at substantial risk of serious nonaccidental harm or that mother had failed to protect J.F. Mother's counsel cited the parents' enrollment in programs, the fact that DCFS had not detained J.F. from mother, and mother's decision to call the police.

J.F.'s counsel asked the court to sustain the section 300 petition as pleaded. J.F.'s counsel cited to mother's statements in the detention report, the evidence that father grabbed J.F. from mother and would not let go of him, and said that J.F. was directly between the parents when they were fighting. J.F.'s counsel argued the risk remained because the case had "classic domestic violence red flags," which included father being extremely controlling, not feeling comfortable with mother getting a job, and not wanting her to be independent. J.F.'s counsel further cited to mother's statement that father went through her phone messages, and social media accounts and constantly accused her of cheating on him. J.F.'s counsel praised the parents for enrolling in programs, but said that until they actually participated in the programs and recognized what was occurring in their relationship, there was nothing to indicate they had resolved their issues. J.F.'s counsel also noted that mother wanted to reconcile with father. J.F.'s counsel believed mother

was downplaying the incident and that father had not accepted any responsibility for his actions. J.F.'s counsel cited mother's desire to have father return home and noted that father's statements contradicted J.F.'s statements.

County counsel joined J.F.'s counsel's position and argued that this case included "power and control" issues present in domestic violence relationships. County counsel cited mother's statement to police that there were four previous incidents of domestic violence and the fact that mother's signed affidavit conflicted with her subsequent statements. County counsel argued mother was minimizing the domestic violence and noted that mother also reported that father had tried to hit her two years before. County counsel cited to the evidence that J.F. was present during the December 2, 2017 incident and asked the juvenile court to sustain the petition as pleaded.

V. The Juvenile Court's Findings

The juvenile court began its findings by stating, "I'm going to sustain the petition. But I'm going to amend the petition. Because I do not believe [DCFS] has shown there was more than one incident of domestic violence." The juvenile court struck "a history of" from the petition and further amended it to state the parents "engaged" in "a violent and verbal and physical altercation" in J.F.'s presence. The court otherwise sustained the petition as pled.

The sustained petition read: a-1, b-1: "The child, [J.F.]'s mother, [W.M.], and father, [M.F.], have engaged in a violent verbal and physical altercation in the presence of the child. On 12/2/2017, the father struck the mother with a closed fist on the mother's chest and leg, resulting in bruising to the mother's leg.

The violent altercation between the mother and the father in the presence of the child [J.F.] resulted in father's arrest for Domestic Battery[, Penal Code section] 243[, subdivision] (e)(1). The mother failed to protect the child in that she allowed the father to reside in the child's home and have unlimited access to the child and the child's home. The father's violent and assaultive behavior, and the mother's failure to protect the child, endangers the child's physical health and safety, creates a detrimental home environment, and places the child at risk of serious physical harm, damage, danger and failure to protect by mother."

The juvenile court said it was sustaining the petition because children are harmed by being exposed to domestic violence regardless of whether they are in the room or at home when it occurs as they are aware of the unhealthy dynamic between the parents. The court further stated, "And as counsel for the child and counsel for [DCFS] have pointed out, even—the physical violence itself may be relatively minor. There may not be broken bones. But some of the other evidence in this petition, evidence of jealousy and controlling and invasive behavior, such as demanding access to social media records, those are indicators of a high degree of future risk. [¶] So I do find that the child is at risk due to domestic violence between the parents."

The juvenile court then addressed the appropriate disposition plan. Father's counsel asked the court to proceed pursuant to section 360, subdivision (b), and said "it would be an appropriate disposition plan, considering that this court also states that it does not believe that there is a history of physical

altercations.”³ Father’s counsel said that the court could order the parents to complete programs to address any concerns the court had regarding J.F.’s safety while in the parents’ care. The court interrupted father’s counsel and stated, “May I stop you for the moment? I want the record to be clear. I did not find that there isn’t a history of violent altercations. I found that the evidence in the petition only shows one violent altercation. [¶] I don’t know if there’s a history of violent altercations or not. [¶] Please continue.”

Father’s counsel asked that J.F. be released to both parents and said father was abiding by the restraining order that prohibited him from contacting mother. Father’s counsel asked that if the court did not proceed pursuant to section 360, subdivision (b), that it not order father to participate in individual counseling because he was already enrolled in parenting and domestic violence classes. Father’s counsel said father would be willing to participate in conjoint therapy with mother.

Mother’s counsel also asked the court to proceed pursuant to section 360, subdivision (b). Mother’s counsel said mother had complied with the criminal protective order and was enrolled in programs. Mother’s counsel also argued against mother having to participate in individual counseling and said that if the juvenile court closed the case with a family law order mother

³ Under section 360, subdivision (b), “[i]f the [juvenile] court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child’s parent or guardian under the supervision of the social worker”

would agree that it should include an order that she and father participate in conjoint therapy before reunification. Mother's counsel further argued that father would also have to complete criminal court orders.

J.F.'s counsel asked the court to remove J.F. from father and order DCFS to provide mother with family maintenance services. County counsel argued against the court proceeding pursuant to section 360, subdivision (b), and asked the court to order family maintenance services for mother and enhancement services for father.

The juvenile court denied the parents' request that it proceed pursuant to section 360, subdivision (b), declared J.F. a dependent of the court, removed J.F. from father's custody, maintained J.F. in mother's custody, ordered mother and father to participate in services, and ordered that father's visits be monitored a minimum of three times a week for three hours in duration.

DISCUSSION

I. Standard of Review

Both mother and father challenge the juvenile court's findings sustaining counts a-1 and b-1 in the section 300 petition. We review the juvenile court's jurisdictional findings and dispositional orders for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We also review a removal order for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

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 record to determine whether any substantial evidence, contradicted or uncontradicted, supports the juvenile court's findings and conclusions, viewing the record in the light most favorable to the court's determinations and drawing all reasonable inferences from the evidence to support the determinations. (*Id.* at pp. 1400-1401.) “ ‘ “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the [juvenile] court.” ’ ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) Thus, the pertinent inquiry is whether substantial evidence supports the contested finding, not whether a contrary finding might have been made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Lastly, the juvenile court's order, “like any other judgment or order of a lower court, is presumed to be correct, and all intendments and presumptions are indulged to support the order on matters as to which the record is silent. [Citation.]” (*Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 88.)

II. Merits

A. Relevant Law

A child falls within the jurisdiction of the juvenile court under section 300, subdivision (a), if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the

parent or guardian that indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).)

A child falls within the jurisdiction of the juvenile court under section 300, subdivision (b)(1), if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left” (§ 300, subd. (b)(1).) In determining whether the child is in present need of the juvenile court’s protection, the court may consider past events. (See, e.g., *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

Section 300, subdivision (b), does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) The provision requires only a “‘substantial risk’” that the child will be abused or neglected. (*Ibid.*) The legislatively declared purpose of the provision “‘is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.’” [Citation.] “The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.” (*Ibid.*, italics omitted.) Therefore, “[a]lthough section 300 generally requires proof the child is subject to the defined risk of harm at the time of the

jurisdiction hearing” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215), “proof of current risk of harm is not required to support the initial exercise of dependency jurisdiction under section 300, subdivision (b), which is satisfied by a showing the child has suffered or there is a substantial risk that the child will suffer, serious physical harm or abuse.” (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261, italics omitted.)

Exposure to domestic violence may support jurisdiction under subdivision (a) or (b) of section 300. (*In re M.M.* (2015) 240 Cal.App.4th 703, 720; *In re R.C.* (2012) 210 Cal.App.4th 930, 941; *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599; *In re E.B.* (2010) 184 Cal.App.4th 568, 575-576; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194, disapproved on other grounds in *In re R.T.*, *supra*, 3 Cal.5th at p. 628.)

With respect to jurisdiction under section 300, subdivision (b)(1), “domestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194 [affirming jurisdictional finding under § 300, subd. (b)(1), where father repeatedly abused mother, once in the presence of the children].) Children can be “put in a position of physical danger from [spousal] violence” because, “for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg.” (*Ibid.*) Indeed, “[b]oth common sense and expert opinion indicate spousal abuse is detrimental to children.” (*In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5; see Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions* (1991) 44 Vand.L.Rev. 1041,

1055-1056 [children of these relationships appear more likely to experience physical harm than children of relationships without abuse and even if not physically harmed, they suffer enormously from simply witnessing the violence between their parents].)

Nevertheless, although domestic abuse may support jurisdiction under section 300, subdivision (b)(1), there must be “evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) “Evidence of past conduct, without more, is insufficient to support a jurisdictional finding under section 300. There must be some reason beyond mere speculation to believe the alleged conduct will recur.” (*In re James R.* (2009) 176 Cal.App.4th 129, 136, disapproved on other grounds in *In re R.T.*, *supra*, 3 Cal.5th at p. 628.)

“ ‘In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent’s current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident. The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances.’ [Citation.] We must have a basis to conclude there is a substantial risk the parent’s

endangering behavior will recur.” (*In re John M.* (2013) 217 Cal.App.4th 410, 418-419, disapproved on other grounds in *In re R.T.*, *supra*, 3 Cal.5th at p. 628.)

However, past violence in a relationship is a good predictor of similar behavior in the future. (*In re T.V.* (2013) 217 Cal.App.4th 126, 133; *In re E.B.*, *supra*, 184 Cal.App.4th at p. 576 [citing studies demonstrating that “ ‘once violence occurs in a relationship, the use of force will reoccur in 63 [percent] of these relationships’ ”].) Furthermore, “denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.” (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044; see *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 [“One cannot correct a problem one fails to acknowledge”]; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025-1026 [in assessing risk, court should consider “parent’s current understanding of and attitude toward the past conduct that endangered a child”].)

B. *Section 300, Subdivision (a)*

Mother and father first challenge the juvenile court’s finding pursuant to section 300, subdivision (a). After reviewing the record, we conclude that substantial evidence supports the juvenile court’s jurisdiction under subdivision (a).

When the police interviewed mother on December 2, 2017, she said that father had punched her on her chest and leg. Officers saw bruising on mother’s left leg. Mother also said there had been approximately four prior, unreported, domestic violence incidents. Mother also signed a statement reporting that father punched her on her chest with his right hand and tried to grab J.F., which caused the child to become scared and cry. When J.F.

was interviewed on December 6, 2017, he said he saw father hit mother on her leg. When mother was interviewed on December 6, 2017, she claimed father had only “ ‘lightly punched’ ” her in an attempt to take J.F. from her. J.F. told father, “ ‘no papa,’ ” but father would not let go of the child. Mother also said that she called the police because she assumed father would become even more physically aggressive. Although mother later minimized the incident, the physical assault by father, involving father punching mother and an attempt to grab J.F. from mother, brings this case within section 300, subdivision (a).

Mother cites two opinions from the Fourth District Court of Appeal—*In re Giovanni F.*, *supra*, 184 Cal.App.4th 594 and *In re M.M.*, *supra*, 240 Cal.App.4th at p. 720—in support of her claim. Mother argues that although these cases concluded that a minor’s exposure to domestic violence may be a sufficient basis for dependency jurisdiction under section 300, subdivision (a), they are factually distinguishable and rely on extreme circumstances not present in this case. We disagree.

In *In re Giovanni F.*, while driving the mother and their infant son, the father punched the mother in the face and strangled her until she lost consciousness. (*In re Giovanni F.*, *supra*, 184 Cal.App.4th at p. 600.) At their destination, when the mother regained consciousness, the mother struggled with the father and the two broke a window with the car seat while the infant was still in it. (*Ibid.*) Concluding that “[t]he child need not have been actually harmed in order for the court to assume jurisdiction,” (*id.* at p. 598), the *Giovanni F.* court found sufficient

evidence to support a finding under section 300, subdivision (a).⁴ (*In re Giovanni F.*, at pp. 600-601.) Exposing a child to domestic violence between his or her parents is sufficient to trigger jurisdiction under this provision if (1) the violence places the child in harm's way, and (2) there is evidence that the violence is ongoing or likely to continue. (*Id.* at pp. 598-599.) This provision does not require that the parents direct their violence at the child because the "[d]omestic violence [itself] is nonaccidental." (*Id.* at p. 600). Furthermore, because this provision reaches situations where there is a "substantial risk" of harm, it does not require a showing that a child was previously harmed by the domestic violence. (*Id.* at p. 598; see *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383 [noting that "the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child"]; see also *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993 [same].)

⁴ *In re Giovanni F.* cited *In re James R.*, *supra*, 176 Cal.App.4th 129 for the proposition that jurisdiction could be found without actual harm to the child. However, *In re James R.* reversed a jurisdictional finding under section 300, subdivision (b), based on the mother's mental illness and substance abuse, as well as the father's inability to protect the children. Thus, *In re James R.* did not actually address the requisite showing under section 300, subdivision (a). (See *In re James R.*, at p. 131.) However, we also note that although many dependency cases based on exposure to domestic violence are filed under section 300, subdivision (b)(1), this does not preclude jurisdiction under section 300, subdivision (a). (See *In re M.M.*, *supra*, 240 Cal.App.4th at p. 720 [affirming § 300, subd. (a), jurisdiction based on domestic abuse exposure].)

Here, as in *In re Giovanni F.*, the physical violence that occurred between mother and father while mother was holding J.F. was serious, and undoubtedly placed J.F. in danger. Indeed, it is clear that the December 2, 2017 incident was a nonaccidental act of domestic violence which placed J.F. in harm's way. Moreover, there is evidence that this pattern of violence is likely to continue because mother and father are still together; mother did not report any of their prior incidents to the police; and both parents appear to be in denial. All three factors constitute evidence of ongoing risk. (See *In re Giovanni F.*, *supra*, 184 Cal.App.4th at p. 601 [parent's denial of domestic violence increases risk]; cf. *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 120 [parent's willingness to report incidents to police reduces risk].) Although *In re Giovanni F.* arguably involved a more forceful example of domestic violence, the case did not purport to set the floor for jurisdiction under section 300, subdivision (a). Therefore, the more egregious facts set out in *In re Giovanni F.* do not undermine our conclusion that substantial evidence supported jurisdiction here.

Contrary to mother's argument on appeal, this case is also analogous to *In re M.M.*, where the domestic violence was not directed at the child, but the parent's altercation subjected the child to the defined risk of harm. (See *In re M.M.*, *supra*, 240 Cal.App.4th at pp. 719-720.) There, the record "show[ed] that minor not only was present during the . . . domestic violence incident between mother and father, but that he was 'at their feet' during most of the incident and that during some of the incident, father was actually holding minor while mother was hitting father and while father was choking mother." (*Id.* at p. 720.) The reviewing court concluded there was sufficient

evidence in the record to support the juvenile court’s finding there was a substantial risk the minor would suffer serious physical harm inflicted nonaccidentally by the mother or father.⁵ (*Id.* at p. 721.)

Mother further contends that *In re Giovanni F.* and *In re M.M.* incorrectly interpreted section 300, subdivision (a), arguing that the statute requires the child or a sibling already have suffered an injury. However, subdivision (a) imposes no such requirement. Rather, subdivision (a) applies if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” (§ 300, subd. (a), italics added; see *In re Marquis H.* (2013) 212 Cal.App.4th 718, 725 [“We do not read [§] 300, subd[.] (a), as prohibiting the exercise of jurisdiction in situations other than those specified in the second sentence of the statute”].) Father also contends that *In re Giovanni F.* and *In*

⁵ Mother contends that *In re M.M.* is distinguishable because she and father have been married for 12 years “with no prior reported incidents.” We disagree. Mother initially admitted to police that there had been at least four prior unreported domestic violence incidents between her and father. She also admitted that father was extremely controlling—a fact that clearly concerned the juvenile court. Indeed, on appeal, mother acknowledges that she “demonstrated some inconsistency in her reporting” during her interviews. Furthermore, in *In re M.M.*, the parents took responsibility for their actions. (See *In re M.M.*, *supra*, 240 Cal.App.4th at p. 708.) Here, father denied any domestic violence took place, while mother later minimized the abuse. Consequently, this case presents an even higher risk that J.F. would suffer serious physical harm inflicted nonaccidentally by mother or father.

re M.M. incorrectly interpreted section 300, subdivision (a), arguing that the Legislature intended for subdivision (a) to apply only to acts that were “targeted at or done with the intent to hurt the child.” However, it was the parent’s intentionally violent conduct in the child’s presence—as well as the lack of concern for the risk his or her conduct posed to the child—which brought the child within section 300, subdivision (a), in *In re Giovanni F.* and *In re M.M.* Therefore, case law interpreting section 300, subdivision (a), has not adopted father’s argument. Nor do we.

Mother and father also cite to *In re Daisy H.*, *supra*, 192 Cal.App.4th 713, in support of their position. We are not persuaded. In *In re Daisy H.*, the prior acts of domestic violence occurred two or seven years before the petition was filed; there was no evidence that the children were exposed to the past violence, and there was no evidence of any ongoing violence between the parents who were separated. (*Id.* at p. 717.) The court concluded this “evidence was insufficient to support a finding that past or present domestic violence between the parents placed the children at a current substantial risk of physical harm.” (*Ibid.*; see also *In re Jesus M.* (2015) 235 Cal.App.4th 104, 113 [no substantial evidence to support domestic violence jurisdiction finding where “the parents had long been separated, the two incidents [the m]other could recall had occurred more than three years earlier, and there was no evidence of current violent behavior”].) Here, the violence was recent and included father punching mother while they struggled over J.F, who described seeing father hit mother. Furthermore, mother and father intended to remain a couple and reunify as soon as possible. Thus, *In re Daisy H.* is readily distinguishable.

Substantial evidence supports the juvenile court's jurisdiction under section 300, subdivision (a).

C. *Section 300, Subdivision (b)(1)*

Mother and father next challenge the juvenile court's finding pursuant to section 300, subdivision (b)(1). We conclude that substantial evidence supports the juvenile court's jurisdiction under subdivision (b)(1) as well.

Father argues that substantial evidence does not support the juvenile court's findings because the court "found there was insufficient evidence of ongoing violence and noted that the violence that did occur 'may be relatively minor.'" Mother joins in father's arguments and further argues that the language alleging she failed to protect the child should have been stricken from count b-1.

As noted above, in order to support a jurisdictional finding under section 300, subdivision (b)(1), "[t]here must be some reason beyond mere speculation to believe the alleged conduct will recur." (*In re James R.*, *supra*, 176 Cal.App.4th at p. 136.) However, past violence in a relationship is a good predictor of similar behavior in the future. (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 133.) Here, there was evidence of past violence that supported the juvenile court's jurisdictional findings, including mother's failure to protect the child. Although mother initially reported father's violent conduct, and J.F. confirmed that it had occurred, mother began minimizing and denying father's past abuse. When combined with mother's admission that she felt isolated and that father was very jealous and controlling, demanding access to all her social media accounts, established

that the domestic abuse was likely to recur.⁶ Although, during the hearing, the juvenile court stated it did not actually know if there was a history of violent altercations between the parents, “it is judicial action, and not judicial reasoning or argument, which is the subject of review.” (*Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 330.) “[I]f the former be correct, we are not concerned with the faults of the latter.” (*Ibid.*) Given that substantial evidence supports the juvenile court’s ultimate finding, the court’s admittedly unclear phrasing during the hearing does not change our determination that substantial evidence supports the juvenile court’s jurisdiction under subdivision (b)(1) as well.

D. *Removal from Father*

Father also challenges the juvenile court’s order removing J.F. from his custody. Under section 361, subdivision (c), “[a] dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence” of specific circumstances cited in the statute. One such circumstance can be found in section 361, subdivision (c)(1), which states in relevant part: “There 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

⁶ Even if take mother’s minimization at face value, and assume father did not previously strike mother several times before, mother’s most recent statement was that father had tried to strike her but did not complete the act.

protected without removing the minor from the minor's parent's or guardian's physical custody." Therefore, "[b]efore the court may order a child physically removed from his or her parents, 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. [Citations.] This is a heightened standard of proof from the required preponderance of evidence standard for taking jurisdiction over a child. [Citations.]" (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 145-146.)

On appeal, our standard of review is the substantial evidence test, "bearing in mind the heightened burden of proof" in the court below. (*In re Hailey T., supra*, 212 Cal.App.4th at p. 146.) "We consider the entire record to determine whether substantial evidence supports the juvenile court's findings." (*Ibid.*) "[W]e do not pass on the credibility of witnesses, resolve conflicts in the evidence or weigh the evidence[; i]nstead, we review the record in the light most favorable to the juvenile court's order to decide whether substantial evidence supports the order." (*Id.* at pp. 146-147.) "The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the [juvenile] court's findings or orders." (*Id.* at p. 147.)

Here, mother has enrolled in a domestic violence victims' support group, while father has enrolled in a domestic violence batterers' intervention program, and both parents have enrolled in a parenting program. Their progress in these programs—as well as J.F.'s general welfare—is subject to continued monitoring by both DCFS and the juvenile court. Thus, there are reasonable means by which J.F.'s physical health can be protected without

removing J.F. from the parent's physical custody. (See § 361, subd. (c)(1).) Under these particular circumstances, as well as the heightened burden of proof below, we cannot say that the juvenile court's removal order was supported by substantial evidence. We thus reverse the order removing J.F. from father.

We also note that during the dispositional hearing, the juvenile court was informed that the criminal court had issued a three-year protective order protecting mother from father, but that the order did not include J.F. The juvenile court then ordered that mother enforce the criminal protective order, that father not go to the family home, and that a third party facilitate visitation exchanges. Given that we reverse the juvenile court's removal order, we also reverse the juvenile court's additional orders precluding father from going to the family home and mandating that a third party assist with any exchanges.⁷

⁷ According to the Los Angeles Superior Court docket, father's criminal case was ultimately dismissed on May 25, 2018. Thus, it is unclear if the protective order previously issued by the criminal court is still in place.

DISPOSITION

We hold that substantial evidence supports the juvenile court's jurisdiction under section 300, subdivisions (a) and (b)(1), and thus affirm the juvenile court's order sustaining counts a-1 and b-1 in the section 300 petition. However, substantial evidence does not support the juvenile court's order removing J.F. from father's custody. Thus, we reverse the court's order as to that determination. We also reverse the court's additional orders that father not go to the family home, and that a third party facilitate visitation exchanges. On remand, the juvenile court should order that J.F. be released to both mother and father and consider whether any other reasonable conditions and services are necessary in light of that order.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

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