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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.D. et al., Persons
Coming Under the Juvenile
Court Law.

B293767

(Los Angeles County
Super. Ct. No.
17CCJP02490
17CCJP02490C
17CCJP02490D)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and
Respondent,

v.

H.D.,

Defendant and
Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Kim Nguyen, Judge. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

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

INTRODUCTION

H.D. (father) appeals from jurisdictional and dispositional orders made pursuant to Welfare and Institutions Code¹ section 300 removing his young sons, J. and H., from his custody. Father claims there is insufficient evidence to support a finding of a substantial risk of harm to his sons based on allegations that he sexually abused his stepdaughters. We disagree and affirm.

FACTS AND PROCEDURAL BACKGROUND

A. *Initial Detention and Section 300 Petition*

Father and R.C. (mother) have two sons, J. (born in 2011) and H. (born in 2013). Mother also has four daughters from a prior relationship with Andres M. (Andres): minors G. (born in 2002) and M. (born in 2008), and adults Y. and L.²

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in November 2017. At the time, J. (age six), H. (age four), G. (age 14), and M. (age nine) were living with mother. Mother and father had separated and mother was in another relationship. DCFS received a referral that M. had reported at school that mother's boyfriend (boyfriend) hit J. and H. and locked them in

¹All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

²G., M., Y., and L. are not subjects of the appeal. Mother and Andres are not parties.

the closet. M. also stated that mother was aware of the mistreatment and did not do anything to stop it.

A DCFS children's social worker (CSW) interviewed mother on November 22, 2017. Mother denied the allegations involving her and boyfriend. She stated that her relationship with father ended about two years prior, but he continued to contact and visit J. and H. regularly.

In an interview on November 22, 2017, H. said mother would hit him with her hand or a sandal if he was not listening. J. said he had been hit by mother and boyfriend on about 10 to 12 occasions. He also stated that boyfriend placed him and H. in the closet, tied to a chair, as a "time out." Their adult half sisters, L. and Y., each reported that the children had told them of the physical abuse by mother and boyfriend. L. and Y. also confirmed reports by the minor children that mother often left them alone overnight, and neglected to provide sufficient food or clean clothing.

A CSW interviewed Y. on December 4, 2017. Y. (then age 18) reported that she had suffered sexual abuse as a minor, but did not want to discuss it further. When asked if the perpetrator was a family member or someone who could continue to pose a threat to Y. or her siblings, Y. responded, "No."

On December 12, 2017, the court ordered that the children be removed from mother and placed with their respective fathers, pending the detention hearing. Because father did not have suitable housing, he agreed to move into mother's apartment temporarily to care for J. and H., while mother moved in with boyfriend, who lived in another apartment in the same building.

DCFS notified father, mother, and Andres on December 12, 2017 that the court had signed the removal order. A few hours

later, Y. texted the CSW that she wanted to talk. Y. told the CSW that father was the perpetrator of the sexual abuse against her when she was a minor and she was informing the CSW because she did not want J. and H. to be released to him. Y. explained that when she was in eighth grade, she and mother were taking a nap at home. Y. awoke to find father's hand in her pants and her hand in father's pants. Y. pretended to be asleep. She told mother about it a few days later and mother confronted father, who denied it. Y. stated that mother told her she must have dreamed or imagined the incident and did nothing further.

Y. told the CSW that the abuse began again when she was in tenth grade, but this time she did not tell mother immediately. Y. stated that father fondled her over and under her clothing "too many times to keep count." According to Y., father would pretend to scratch her back and then fondle her breasts, and would also fondle her vaginal area over and under her clothing. Y. was unsure whether there was digital penetration on one occasion. She told mother about a year later and mother again confronted father. According to Y., father admitted the abuse and moved out of the home for a week or two. When he returned, the abuse stopped, but Y. avoided being alone with father and locked herself in the closet to sleep. Y. stated that mother and father ultimately separated for other reasons.

After DCFS learned of the sexual abuse allegations made by Y. against father, it interviewed the rest of the family the same day, December 12, 2017. Mother told DCFS that Y. reported this to her when Y. began having panic attacks in college. According to mother, Y. stated that father touched her thigh on one occasion while she was sleeping. Mother claimed she did not know any other details of the incident. Father was

not living with mother at the time of Y.'s report, but mother stated she confronted father, who did not deny it. Mother told DCFS that the incident was never reported to law enforcement because Y. did not want to do so. Mother stated she was not aware of any other allegations regarding father and J. and H. had never reported any concerns.

H. reported that he was not aware of any sexual abuse by father and he was comfortable with father. J. also denied any sexual abuse and stated he had no concerns about father.

A CSW also met with M., who said she knew about Y. being touched by father. M. learned this information by overhearing mother asking G. about it. M. denied being touched inappropriately by father. G. reported that Y. told her about the abuse about a year ago. G. denied that father had ever touched her inappropriately, and said she had never heard of any sexual abuse of J. or H.

A CSW also met with Andres regarding the allegations by Y. Andres said that Y. disclosed the sexual abuse to him about five months prior, but he did not disclose the allegations to DCFS because "this was something [Y.] had to disclose herself," and he had been focused on the wellbeing of his daughters, G. and M., and not J. and H. According to Andres, Y. told him that father "tried to overstep his boundary with her." Andres said he confronted mother, who he believed knew about the abuse long before he did, but mother would not give him any details. Andres was not aware of any inappropriate behavior by father toward any of the other children.

Father told the CSW that he was aware Y. accused him of having touched her inappropriately on two occasions and that Y. first told mother about these allegations about three years ago,

when father was still living with mother. In the first instance, father said that Y. claimed he had touched her butt, but father actually touched Y.'s hip to push her away because father, mother, and Y. were all lying on a bed and it was too crowded. Father denied touching Y. inappropriately; instead, he said that Y. would wear really short shorts, sit on his lap, and ask him to scratch her back. Father stated that he continued to live in the home for about a year after Y. told mother of these allegations, and that he and mother eventually separated for other reasons. Father denied touching any of the children inappropriately. The CSW told father that because his own children had not reported sexual abuse concerns, DCFS decided to release J. and H. to him as previously agreed, but it would inform the court of Y.'s allegations.

In the December 14, 2017 detention report, DCFS noted that Y. had alleged she was sexually abused by father, J. and H. denied any sexual abuse and there was no police report or prior DCFS referral regarding sexual abuse. Further, J. and H. "appear to be comfortable in father's care" and there were no specific concerns of abuse or neglect as to those children. Thus, DCFS recommended continued detention of the children from mother and placement of J. and H. with father.

On December 14, 2017, DCFS filed a dependency petition naming J., H., G., and M., under section 300, subdivisions (a), (b)(1), and (j).³ The petition alleged physical abuse of all four

³Section 300 states, in relevant part, "A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [(a)](a) The child has suffered, or there is a substantial risk that the child will suffer, serious

children by mother and boyfriend, neglect and failure to supervise by mother, and failure to protect by father and Andres M. The petition did not contain any allegations regarding sexual abuse.

At the detention hearing on December 15, 2017, the court found a prima facie case for detaining J., H., G., and M. pursuant to section 300. The court ordered the children to remain released to their respective fathers. There was no mention of the sexual abuse allegations during the hearing.

B. *Adjudication*

DCFS filed the jurisdiction/disposition report on February 21, 2018. In interviews detailed therein, mother and boyfriend denied hitting the children and denied the other allegations. DCFS also reported that mother and father had enrolled in counseling and parenting classes.

The court held the adjudication hearing on February 21, 2018. The court found jurisdiction over G., M., J., and H., pursuant to section 300, subdivision (b), sustaining the petition as to the allegations in counts b-1 through b-7 as amended that mother and boyfriend used “inappropriate physical discipline” toward the children and mother left the children alone without adult supervision on multiple occasions. The court dismissed the (a) and (j) counts, and dismissed the allegations as to father that he knew of the physical abuse and failed to protect J. and H. The

physical harm inflicted nonaccidentally upon the child by the child’s parent. . . . (b)(1) The 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 . . . to adequately supervise or protect the child. . . . (j) The child’s sibling has been abused or neglected . . . and there is a substantial risk that the child will be abused or neglected. . . .”

court further found it was reasonable and necessary to remove the children from mother, and ordered J. and H. to remain in father's custody, with monitored visitation for mother. There was no discussion of the sexual abuse allegations at the hearing.

C. *Section 342 Subsequent Petition*

Although M. and G. initially denied any sexual abuse, in subsequent interviews with DCFS they disclosed that they, too, had been abused by father. In an interview on May 30, 2018, a CSW asked M. if anyone had ever touched her inappropriately. She stated that father used to take M. and G. to his brother's house while his brother was at work. She stated that, on one occasion, when she was seven or eight years old, "I was laying down in the bed and I felt something weird in my butt so when I woke up I saw he was touching my butt with his hand." M. stated it was a one-time incident.

In an interview the same day, G. told the CSW of an incident when she was in the fourth or fifth grade. She stated that she and father were in the living room together, "it was dark, and everyone was asleep...and he touched my breast." G. stated it was a one-time incident and denied reporting it to anyone because "we were financially stable because of [father] at that time." G. stated that she and M. had disclosed the abuse to their older sister, Y., a week earlier, and Y. had decided to file a police report.

On June 8, 2018, the CSW spoke with the investigating detective from the Los Angeles Police Department (LAPD), who stated that he planned to arrest father on charges related to the allegations of abuse by M., G., and Y. The CSW told the detective that she would need to be informed of the arrest date so that she

could remove J. and H. from father's custody and find suitable placement.

LAPD officers arrested father on June 29, 2018. The same day, J. and H. were detained from father and placed on an "extended visit" with mother pending the detention hearing. G. and M. remained living with Andres.

DCFS filed a subsequent petition under section 342 on July 3, 2018, alleging jurisdiction over G., M., J. and H. pursuant to section 300, subdivisions (b), (d),⁴ and (j). In counts b-1, d-1, and j-1, the petition as amended alleged that father had sexually abused G. when she was nine or ten by fondling her breasts and that father had been arrested for sexual abuse. In counts b-2, d-2, and j-2, the petition alleged that father had sexually abused M. when she was seven or eight by fondling her buttocks.

In the detention report filed July 3, 2018, DCFS reported that mother was in full compliance with her court-ordered services, including completion of parenting classes and eight therapy sessions. DCFS liberalized mother's visitation to unmonitored visits and then to overnight visits with J. and H. on June 8, 2018. Mother reported that the visits were going well. Mother stated she understood that the children could have no contact with boyfriend. DCFS recommended that J. and H. be released to mother.

⁴Section 300, subdivision (d) provides jurisdiction over a child where "[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse."

At the detention hearing on July 5, 2018, the court found a prima facie case to detain J. and H. from father, ordering the children to remain on an extended visit with mother. Counsel for DCFS informed the court that mother continued to live with boyfriend, but that he had not been present since J. and H. began their extended visit with mother. She cautioned mother that DCFS would remove the children from her if she violated the court's no-contact order between boyfriend and the children.

DCFS filed a status review report on July 27, 2018, in preparation for a section 364 review hearing scheduled on the original petition. DCFS reported that J. and H. were in the care of father until his arrest on June 29, 2018. Father "ensured the children's medical, dental, and educational needs were met in a timely manner." He also maintained stable housing and employment and complied with court orders, including cooperating with mother's visitation. Upon father's arrest, the children were placed with mother with a safety plan in place; they reported no "problematic situations." Mother was in full compliance with the court's orders and was reported to be "nurturing, caring, and actively involved" during her visits with the children. DCFS reported that mother had demonstrated insight into the department's concerns and appeared well-bonded to the children. DCFS assessed the risk level as "moderate" to J. and H. if they stayed with mother and recommended the court order the boys to remain in mother's care.

D. *LAPD Reports*

DCFS provided to the court information from the LAPD's investigation of father, including the police report and forensic interview transcripts of the children. Y. reported her sexual abuse to the LAPD on February 14 and June 1, 2018. According

to the investigation report, she stated that father molested her from 2011 to 2015, including forcing her to touch his erect penis with her hand, rubbing her breasts under her shirt with his hand, and rubbing and squeezing her vagina and buttocks under her clothing.

LAPD officers conducted a forensic interview of G. on May 25, 2018. G. described the incident in which father touched her breast, when she was in fifth grade. She stated that the whole family was in the living room sleeping on two couches and father reached under her shirt and rubbed her breast. In a second interview with LAPD on June 4, 2018, G. stated that when she was ten years old, father reached under her shirt and training bra and grabbed her left breast, rubbing and caressing it. This incident occurred in the living room with the entire family, where everyone had fallen asleep. Father stopped when mother started to move. G. stated that she did not tell anyone at the time.

In her forensic interview, M. said that father took them to his old house, and “the kids were watching TV and I fell asleep.” When she woke up, father’s hand was on her buttock. In a second interview on June 4, 2018, M. stated that she was eight years old at the time of the incident. Father picked her and her brothers up from school and took them to a residence where he used to live. J. and H. were outside playing and M. fell asleep on a bed. When she awoke, she felt someone rubbing her bottom, and saw that father’s hand was rubbing her skin, under her underwear. He quickly removed his hand when she began to move. M. stated she did not feel comfortable telling mother.

LAPD detectives also met with Y. on June 11, 2018 and arranged for her to make a pretext phone call to father. According to the LAPD report, during the call, father admitted to

sexually touching Y. but denied touching M. and G. Father apologized to Y. for touching her.

E. *Adjudication of Section 342 Petition*

DCFS filed a jurisdiction/disposition report on August 7, 2018 detailing additional interviews with the children. On July 27, 2018, G. (then age 15) told the CSW that father “touched me once, on my breast. He grabbed me and rubbed me. It was not fast. It took a while.” G. provided the additional details that the incident occurred in the afternoon on the living room couch when she was ten or 11 years old. Mother, Y., L., M., H., and J. “were there too,” but were taking a nap. G. stated she was “shocked” and did not tell anyone, because she wanted to forget about it and move past it. She never saw father touch anyone else.

DCFS did not interview M. (then age 10) at the request of LAPD, who stated that she had been interviewed multiple times and appeared to be traumatized from repeated interviews. The investigating detective stated that M. appeared credible and he would provide a copy of the forensic interview.

DCFS interviewed J. (then age seven) on July 27, 2018. J. stated he did not see father touching anyone and he had never been touched. He did not know why father was in jail. DCFS also attempted to interview H. (then age five), but the child was distracted and could not be interviewed.

DCFS interviewed father in custody on August 1, 2018. He stated that he had not touched Y.’s private parts, but admitted that he “touched her breast, one time,” when she was 15 years old. Father stated that Y. would sit on him when she was 12 or 13 years old. He denied doing anything to G. or M. and suggested that the girls’ father, Andres, was “behind all of this.”

On August 1, 2018, Y. told DCFS that she found out about the abuse of G. and M. two months ago. She stated that she told mother that father had touched her when she was 13 years old, but mother “brushed it off.” Y. stated that the sexual abuse continued for two and a half years, with father touching her breasts and buttocks while pretending to scratch her back.

DCFS reported that mother fully complied with the case plan, was receptive to services, and made significant progress toward meeting her goals. However, because of the sexual abuse allegations disclosed by G. and M., DCFS recommended ordering mother to participate in a sexual abuse awareness class. With that addition, DCFS recommended that J. and H. be placed with mother.

However, DCFS filed a last-minute information on October 25, 2018 with a change in recommendation. DCFS stated that although mother was in full compliance with the case plan, she continued to deny the allegations related to the original sustained petition and continued her relationship with boyfriend. DCFS also suggested that, given the allegations made by Y., mother should have known that the other children were at risk of abuse by father. Therefore, DCFS recommended that J. and H. be placed in another suitable placement until mother could “improve her overall parenting skills and increase her awareness as to the effects that such physical and sexual abuse have on an entire family.” DCFS also recommended that the court deny reunification services for father.

At the adjudication hearing on October 30, 2018, counsel for J. and H. asked the court to sustain the petition as alleged, based on the consistent allegations made by Y., G., and M., father’s admission to touching Y. inappropriately when she was a

minor, and the girls' young ages at the time of the abuse. Under these circumstances, counsel contended that J. and H. were at risk. Counsel for DCFS also urged the court to sustain the petition in its entirety. She argued that J. and H. were also at risk, given father's parental relationship with G. and M. at the time of their abuse and his violation of that trust. She also noted that G. said the boys were present on one of the occasions. Father's counsel argued that the petition should be dismissed, as the minors' statements were not credible. Further, he argued that there was insufficient evidence to support the allegations in the (j) counts as to J. and H., as there was no evidence that the boys were abused by father or ever witnessed any of the alleged abuse.

The court found that the statements by G. and M. were clear, detailed, consistent, and therefore credible, and were further corroborated by the allegations of abuse by Y. Turning to the risk to J. and H., the court found it "quite clear that the (j) count[s are] sustained by preponderance. Not only were both [G.] and [M.] prepubescent at the time of the abuse, they were living in the same household as [father]. He had a fatherly role with regards to them. And the sexual abuse, at least on one occasion, occurred in the presence of at least [H.]." Thus, the court concluded that J. and H. were at "similar risk of sexual abuse." Accordingly, the court sustained the petition.

Turning to disposition, counsel for DCFS argued that none of the children should be released to mother, based on her continued denial of the physical abuse in the prior sustained petition, her continued relationship with boyfriend, and her failure to believe and protect Y. upon learning of the sexual abuse. DCFS recommended that the court terminate jurisdiction

as to G. and M., with physical custody to Andres. Although DCFS previously recommended that J. and H. be placed with mother, counsel for DCFS stated that the “department now recognizes mother has not made the sufficient progress . . . necessary to ensure [J.] and [H.] remain safe in the care and custody of mother.”

Counsel for the children requested that J. and H. be placed with mother, noting there was no evidence mother had violated any court orders, and the boys had been staying with mother since father was detained with no concerns. She also requested reunification services for father, as “the children were residing with the father and they were very bonded to him, and they very much would like to reunify with him.”

The court terminated jurisdiction as to G. and M., with physical custody to Andres and overnight, unmonitored visitation for mother. As for J. and H., the court noted it did “share concerns regarding . . . some minimization on the part of the mother,” but that the children had been staying with mother without incident. The court found by clear and convincing evidence that there was a substantial risk of detriment to the safety of J. and H. for them to remain in father’s care, removed them from father, and placed them with mother. The court did grant father’s request for enhancement services, allowing telephonic monitored contact while father was incarcerated.

Father timely appealed.

DISCUSSION

Father argues substantial evidence does not support the assertion of jurisdiction over J. and H. We disagree.

A. *Standard of Review*

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.’ [Citation.] “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. [Citations.] “[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].””” (In re I.J. (2013) 56 Cal.4th 766, 773.)

B. *The Jurisdictional Order*

The juvenile court exercised its jurisdiction over J. and H. under section 300, subdivisions (b)(1), (d), and (j). “The legislatively declared purpose of these provisions ‘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*.’ (§ 300.2, italics added.) ‘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.’” (In re I.J., *supra*, 56 Cal.4th at p. 773.) “The purpose of dependency

proceedings is to prevent risk, not ignore it.” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.)

When, as is the case here, “a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) We turn first to subdivision (j).

“Subdivision (j) applies if (1) the child’s sibling has been abused or neglected as defined in specified other subdivisions and (2) there is a substantial risk that the child will be abused or neglected as defined in those subdivisions. (§ 300, subd. (j).)” (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.) For the purposes of this appeal, father does not challenge the court’s findings that he sexually abused G. or M. Nor does he contest the allegations of abuse made by Y. Thus, only the second requirement under subdivision (j) is at issue.

“[S]ubdivision (j) includes a list of factors for the court to consider: ‘The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.’ (§ 300, subd. (j).)” (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.) Subdivision (j) “thus allows the court to take into consideration factors that

might not be determinative if the court were adjudicating a petition filed directly under one of those subdivisions. [¶] The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.” (*Ibid.*)

Our Supreme Court has recognized that “the more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300. If the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.” (*In re I.J., supra*, 56 Cal.4th at p. 778.)

We must determine whether, under the totality of the circumstances, substantial evidence supports the court’s finding that father’s sexual abuse of his stepdaughters, G., M., and Y., creates a substantial risk of harm to his sons, J. and H. Father asserts that his abuse of G. and M. was relatively minor and that there was no evidence to suggest that J. or H. were present during those incidents. He also notes that there is no evidence that he ever physically or sexually abused J. or H. or that they were aware of the abuse of their half sisters. Father also points out that the boys are his biological children while the girls are

not. In addition, for the six months between the initial petition (when J. and H. were removed from mother and placed with father) and father's arrest, father cared for J. and H. without incident or concern.

While there is no evidence that J. or H. had been harmed or abused while in father's care, we conclude that substantial evidence supports the court's finding that the boys were at a substantial risk of harm. Both G. and M. were prepubescent at the time of the abuse—G. was nine or ten and M. was seven or eight. In addition, Y. alleged that father abused her starting when she was 12 years old and continuing for four years. At the time of the jurisdictional hearing, J. was seven years old and H. was five. Thus, the boys were at or approaching the age at which father initiated the abuse of their half sisters. (See *In re P.A.* (2006) 144 Cal.App.4th 1339, 1347 ["where, as here, a child has been sexually abused, any younger sibling who is approaching the age at which the child was abused, may be found to be at risk of sexual abuse"].)

Further, the abuse occurred while father lived with and assumed a parental role over the girls. As our Supreme Court has stated, "sexual or other serious physical abuse of a child by an adult constitutes a fundamental betrayal of the appropriate relationship between the generations. . . . When a parent abuses his or her own child, . . . the parent also abandons and contravenes the parental role. Such misparenting is among the specific compelling circumstances which may justify state intervention, including an interruption of parental custody." (*In re I.J.*, *supra*, 56 Cal.4th at p. 778, quoting *In re Kieshia E.* (1993) 6 Cal.4th 68, 76–77.) Both Y. and G. detailed abuse occurring in the family home, while the incident with M. took place at the

home of father's brother. We reject father's assertion that there was insufficient evidence to conclude that any of the abuse occurred while J. or H. were present. G. stated that when father touched her inappropriately, everyone in the family was asleep on couches nearby, including J. and H. Similarly, M. reported that J. and H. were present at the house when father abused her, but were outside playing. The juvenile court could consider this evidence in making its finding of a substantial risk of abuse to all of the children. (See *id.* at p. 778 [noting "the violation of trust shown by sexually abusing one child while the other children were living in the same home and could easily have learned of or even interrupted the abuse"].)

Our sister court reached the same conclusion under similar facts in *In re P.A.*, *supra*, 144 Cal.App.4th 1339, a case cited favorably by the Supreme Court in *In re I.J.*, *supra*, 56 Cal.4th at pp. 775–776. There, the mother, father, and their three children shared the single bedroom in their apartment. The nine-year-old daughter slept on the top of the children's bunk bed, and her two younger brothers shared the bottom bunk. (*In re P.A.*, *supra*, 144 Cal.App.4th at p. 1342.) The daughter reported that on two consecutive nights, after she had gone to sleep, her father stood over her and rubbed her vaginal area. (*Ibid.*) There was no evidence that the father had sexually abused his sons or that the boys were aware of the abuse of their sister. (*Id.* at pp. 1342–1343.) The court upheld the assertion of jurisdiction over the boys, based on the lower court's finding that the boys were at risk of harm because they were approaching the age at which father had begun to abuse his daughter and father had access to the boys because he routinely awoke during the night to cover them. (*Id.* at p. 1345.)

Father contends the sexual abuse here was “non-egregious” compared to the conduct at issue in *In re I.J.*, *supra*, 56 Cal.4th 766. There, the court described the father’s behavior as “aberrant in the extreme,” as he sexually abused his daughter over a three-year period, including digital penetration, oral copulation, and rape. (*Id.* at pp. 771, 778.) Based on that conduct, the court upheld jurisdiction as to the father’s three sons. (*Id.* at p. 779.)

While father’s conduct here is not as extreme, this does not mean the risk to his sons “is nonexistent or so insubstantial that the juvenile court may not take steps to protect the sons from that risk.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 780.) Father’s sexual abuse of his three young stepdaughters, often while they were sleeping, constitutes aberrant sexual behavior and a violation of their trust. Although father focuses on the single incidents alleged by G. and M., we note that Y. also detailed ongoing abuse over a period of several years, which resulted in her locking herself in the closet to sleep and severe anxiety and panic attacks as an adult. Such conduct “constitutes a fundamental betrayal” of father’s relationship with the children (*id.* at p. 778), and was an appropriate basis for the court’s finding that father’s conduct put all of his minor children at risk.

Father also argues that the fact that DCFS did not remove J. and H. from his care until the day of his arrest suggests that the department did not truly believe the boys were at risk. He cites no authority for this proposition. DCFS’s decision not to seek immediate removal of J. and H. upon learning of the sexual abuse allegations, made in the course of an ongoing investigation into those allegations as well as the prior allegations against mother, does not undermine the court’s ultimate determination

that the children were at risk of harm and therefore subject to its jurisdiction.

Considering the totality of the circumstances, we conclude substantial evidence supports the juvenile court's exercise of jurisdiction over J. and H. under subdivision (j).⁵

C. *The Dispositional Order*

Father does not separately challenge the juvenile court's dispositional order, apart from his arguments regarding the court's exercise of jurisdiction over J. and H. As discussed above, the court's jurisdictional order was supported by substantial evidence. We therefore affirm the dispositional order as well.

DISPOSITION

The order of the juvenile court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.

⁵ Therefore, we need not consider father's arguments regarding subdivisions (b) and (d).