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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B234957
(Los Angeles County
Super. Ct. No. CK87029)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JIMMY R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Jacqueline H. Lewis, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Linda J. Vogel, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting Los Angeles County Counsel, James M. Owens, Assistant County Counsel and Peter Ferrera, Senior Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

This is an appeal from Welfare and Institutions¹ Code, section 300 jurisdictional and dispositional orders entered against Jimmy R. (“the father”). This appeal involves orders entered concerning the father’s three biological children, J.R., J.L. and E.R. The juvenile court found the father sexually and physically abused the biological children’s five-year-old, half-sibling, I.L. In addition, the juvenile court found the father physically abused the biological children’s three-year-old half-sibling, A.L. The juvenile court ordered the father’s children removed from his custody. The father challenges the sexual and physical abuse findings as well as the section 361.5, subdivision (e) order denying family reunification services regarding his three biological children. We affirm.

II. PROCEDURAL HISTORY

A. The Initial Petition

On March 16, 2011, the Los Angeles County Department of Children and Family Services (“the department”) filed a section 300 petition on behalf of I.L., A.L., J.R. (two years old), and J.L. (nine-months). E.R. was born three months after the initial petition was filed. Manuela L. is the mother of all the children. Omar L. is the father of I.L. and A.L.

B. The Detention Report And Hearing

The detention report stated the children were placed in foster care following an immediate referral, which was received on March 11, 2011. The referral stated that, on

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

March 10, 2011, I.L. complained that she was experiencing pain in her vaginal area. I.L. complained to the maternal grandmother, E.E. The maternal grandmother looked at the child's genitalia and saw it was red. When I.L. was initially asked if anyone had touched her, she said, "[N]o." The maternal grandmother applied cream to the reddened area. The maternal grandmother continued to monitor I.L. for about 24 hours. The next day I.L. said she was still having pain. The maternal grandmother took I.L. aside. I.L. was asked if anyone had touched her. I.L. responded that the father had been sticking his fingers inside her vagina at night. The father is the mother's live-in boyfriend. I.L. stated that the father would wait until the mother was not at home or when everyone else was asleep. I.L. spoke with an unidentified police officer. I.L. said she did not tell anyone about the molestation because she was frightened of the father.

The maternal grandmother alerted the maternal aunt, Teresa L. about the molestation. I.L. then reiterated the molestation allegations to Teresa. I.L.'s explanation to Teresa and the maternal grandmother was the same. That is, I.L. said the father had been putting his fingers inside her vagina. I.L. said this happened whenever the mother was not at home. Or, he would do this when the mother and everyone else sleeping. I.L. said on two different occasions she woke up and found that the father had pulled down her panties and inserted his finger into her vagina. Teresa immediately telephoned the police. I.L. was given a medical examination and placed in a foster home with her brother, A.L. J. R. and J. L. were placed in two other foster homes.

The mother was interviewed by a social worker, Ricky Brewer. The mother stated she could not understand why her four children were removed from her home. She did not believe that the father would molest, I.L. The mother said I.L. was not telling the truth. The mother said I.L. had a habit of not telling the truth. The mother could not explain why I.L. would accuse the father of the touching. The mother stated she and two-year-old J.R. sleep in the same bed with the father. I.L. and A.L. sleep in the same room on the floor. The mother said that hardly anyone moves around the room after they are bedded down for the night. The mother said she knew whenever the father got out of bed at night. According to the detention report, "Mother stated that she also doubts her

daughter's claims about [the father] touching or hitting her whenever she's out of the home." The mother said she is hardly ever away from the children. When the mother leaves, the children are in either the maternal grandmother's or their aunts' care. The mother had never known the father to abuse, hit or mistreat I.L. or A.L. The mother said that their father, Omar, could be coaching I.L. to say bad things about the father.

The mother was investigated by the department in January 2011 because someone accused the father of hitting I.L. and A.L. The mother said that the maternal grandmother and aunts genuinely disliked the father. The mother denied that the father had abused her. The mother described her relationship with the father as wholesome. The mother's sister, Martha M., spoke to the social worker, Mr. Brewer. Martha had observed the father physically abusing I.L. and A.L. on numerous occasions. Martha brought the abuse to the mother's attention. When confronted by Martha, the mother would dismiss the physical abuse allegations.

Omar spoke with Mr. Brewer. Omar, over the last several months, was concerned about the way the father treats I.L. and A.L. I.L. told Omar on more than one occasion that the father hits her. According to Omar, I.L. said she is frightened of the father. Whenever Omar broached the subject with the mother, she became upset. Omar felt the mother was protecting the father. Omar had been in constant contact with the department since the children were detained. But, he was living in sober living home over the past several months so he was unable to care for the children.

I.L. was physically examined at the Start/Dart Clinic. A registered nurse, Toyetta L. Beukes, spoke to I.L. According to I.L., the father touches her. This occurs when the mother is not around. I.L. also said the father hits her on the buttocks. Ms. Beukes indicated that certain aspects of the examination would be sent to a forensic laboratory for further analysis. Ms. Beukes reported that I.L. was very tired. Notwithstanding her exhaustion, I.L. was able to provide a history of sexual assault during the interview and examination. Ms. Beukes felt strongly that I.L. was telling the truth. And, according to Ms. Beukes, it was uncharacteristic for a child of I.L.'s age to fabricate such a story.

The forensic report quoted I.L. as saying “He was touching me right here,” “on my skin” “with his hand.” I.L. said this as she was pointing to her genitalia. I.L. also told Ms. Beukes, “[H]e did it when my mommy is not here.” I.L. further stated, “I was sleeping he was doing that, on the floor.” I.L. pointed to her buttocks and said the father hit her “back here.” I.L. said the father hit her with his hand or a belt. The forensic report stated there was an abnormal anal-genital exam. There were no acute tears to her hymen. But, I.L. had a bump on her hymen. And, the forensic report states, “[Patient] ha[s] [a]nal tears/abrasions from 10:00 to 2:00 o’clock.” I.L. stated she had genital discomfort or pain. I.L. was also reported to be constipated.

The department had received eight prior referrals regarding the family. One referral from a January 2011 investigation to determine whether the father was abusing the children remained open. Referrals on the following dates were determined to be unfounded: December 2007 and June 2001 for general neglect; September 2004 and October 1999 for at risk, sibling abused; and May 2003 for substantial risk. Two referrals were substantiated on August 2004 for general neglect and September 2000 for emotional abuse.

The detention hearing began on March 16, 2011, and was concluded on March 17, 2011. The juvenile court found Omar was the presumed father of I.L. and A.L. The father was found to be the presumed father of J.R. and J.L. The juvenile court ordered all four children detained from the mother. J.R. and J.L. were detained from the father. I.L. and A.L. were released to Omar pending the next hearing. The juvenile court ordered: a forensic interview of I.L.; a supplemental report to address relative placement; monitored visits for the mother and the father with J.R. and J.L.; and no contact with the father and I.L. and A.L. The department was ordered to provide family reunification services consisting of sexual abuse awareness, parenting and individual counseling.

C. Jurisdiction And Disposition Report

In the April 2011 jurisdiction and disposition report, the department indicated that I.L. and A.L. were living with the paternal grandparents, M. and Carlos L. J. R. and J. L. were living with their paternal grandmother, Elizabeth U.

I.L. completed a forensic interview at Children's Advocacy Center for Child Abuse Assessment and Treatment. The interview was conducted by Susy Flores. The interview was witnessed by a number of parties including a social worker, Daniela Lopez. A digital video disc of the interview, which was reviewed by the juvenile court, is part of the record on appeal. We have watched the digital video disc. Ms. Lopez reported that I.L. was very introverted and soft spoken during the interview. However, I.L. was consistent in stating the father had touched her with his hand while pointing at her vagina. I.L. stated she was sleeping on the floor when the father touched her. This occurred while the mother was sleeping on the bed. Improper touching occurred when the mother and A.L. went to the store. I.L. was given a body chart. She drew circles around the vagina and both breasts of the doll. I.L. said that the father touched her in her breasts with his arms. I.L. said this was because, "[H]e always wants to touch me." Ms. Lopez reported: "The child stated, 'he was touching me like this (the child was holding up 4 fingers and simulating penetration).' The child also stated that the father hit [A.L.] on the 'bootie' with a 'gancho' (hanger). The child stated that [the mother] was cooking in the kitchen then came into the room telling the father to stop and took the 'gancho' from him. The child then went on to say that the father has also touched her with the 'gancho' while pointing at her vagina." I.L. said the father hit her and A.L. with his hand, a belt and a hanger.

During a March 29, 2011 interview, the mother said that she did not know why the children were taken from her. The mother stated: "'No['] I didn't go because my mom didn't tell me to go. Only my mom and my sister went to the police station. . . . The day before [I.L.] had told me that her part was hurt. At, first, I didn't believe that he had done this. I was confused and shocked about what was going on. Now that I see things more

clearly, I believe my daughter and I don't think that she would lie about something like that. I don't care about that person and I don't want any contact with that person. All I care about is my little girl and what she must be going through because of what he did to her."

During a subsequent interview, the mother admitted that she had contact with the father. The dependency investigator describes the mother's stated motivation for meeting with the father, "I had to talk to him and ask him why he would do something like that to my baby." The father denied sexually molesting I.L. According to the father, the mother's family was making I.L. falsely allege that molestation had occurred. The mother then said: "Then I asked her during a visit and she told me that [the father] had not done that to her. I don't know anymore. I am so confused." The mother was admonished not to speak to I.L. about the case. The mother was seen leaving from a department interview in a gold car similar to that driven by the father. The mother denied ever seeing the father hit I.L. and A.L. with belts. She said he sometimes spanked their "butts" or had them stand in the corner. The mother admitted one of the maternal aunts said the father had grabbed A.L. "really hard" by the youngster's arm. But, the mother thought the maternal aunt was lying. The mother thought this because her family hated the father. The mother admitted they would argue but denied that the father ever hit her. However, according to the mother, the arguments arose because the father wanted I.L. and A.L. to go and live permanently with their paternal grandparents.

The mother denied that I.L. complained of pain when the January 2011 physical abuse claim was made. The issue was not raised during the March 2011 doctor's examination for the physical abuse referral. According to the mother, the father left the room when I.L. was being examined. The mother denied that the father spoke to the doctor regarding any examination results. The mother did not know why the father would provide inconsistent or false information in his interview which will be digested in the next paragraph.

The father has convictions for: receiving stolen property; disturbing the peace; possession of a stolen vehicle; vehicle theft; and evading the police. The father denied

touching I.L. or hitting her and A.L. with a belt. The father treated I.L. and A.L. as if they were his own children. According to the father, the mother's family hated him and told I.L. to say the things about him. He argued that things did not make sense. He took I.L. to be examined regarding the January 2011 physical abuse referral. When I.L. was examined by a doctor, sexual abuse was not raised. The father told a dependency investigator, "I told the doctor that she had an infection on her part because she has been complaining about it hurting a few days before." The father said he had told the mother and maternal grandmother but they did nothing. He said, "I even told them to check her because I wasn't going to look down there." The father added, "I never even changed her diaper for that reason, because she is a girl." He said the doctor gave I.L. some cream and "they" put it on the youngster. He stated that if he had touched her someone would have seen it because 20 people lived in the house. According to the father, I.L. would have cried.

The maternal aunt, Teresa, was interviewed by a dependency investigator. The mother had accused Teresa's children of touching I.L. When confronted with the allegation, I.L. looked down and said, "[N]o." I.L. looked around and seemed afraid. The two went into a different room where I.L. said: "[N]o, it's not true they don't touch me; [the father] does but he told me to say they did or else he would hit me. I don't want him to hit me or my mom either." Teresa called the maternal grandmother into the room. There, I.L. repeated that the father had touched her.

Teresa had seen the father grab A.L. Teresa told a dependency investigator, "I did see him grab him by his little arm really hard and shove him." On one occasion, Teresa heard the father say, "[G]et the fuck out of here, you little crybaby!" A.L. came out crying. The mother was in the room but pretended she did not hear anything. When the mother was told that the father was hitting the children, she pretended it was not happening.

The maternal grandmother explained, "[The mother] brought [the child] to me because she had been complaining that her vagina hurt." The maternal grandmother observed that I.L.'s labia was red, irritated and swollen. The maternal grandmother

gave the mother an antibiotic ointment to apply to I.L. Then I.L. was asked if anyone had touched her. I.L. said no. The mother was present. A few days later, the mother brought I.L. back to the maternal grandmother because the youngster was still complaining about lower abdominal pain. I.L. also complained of pain when she urinated. The maternal grandmother told the mother to take I.L. to the doctor. Instead, the mother left with the father and went to the movies. Later that day, Teresa called the maternal grandmother into the room. I.L. said the father had been touching her when the mother was asleep or not at home.

The maternal grandmother did not tell the police that I.L. had claimed Teresa's children touched I.L. This was because I.L. denied it ever occurred. Rather, I.L. said both her parents had told her to say so. And, it was the father that had touched her. I.L. also said both her parents told her to say that the father was not hitting her or A.L. The maternal grandmother stated: "I believe my granddaughter because she is not one of those kids that lies. She always tells the truth when asked to do so, which is what happened here." The maternal grandmother had never seen the father hit the children. However, I.L. had told the maternal grandmother the father hit them. The maternal grandmother stated, "On two or three occasions I went into their room and let [the father] have it because [I.L.] told me that he hit [A.L.] and I hear him crying.

The mother had tried to relinquish her parental rights to Joel to the maternal grandmother by signing a letter. The maternal grandmother was afraid that after being released from custody, the father would try to take J.R. But, Teresa stated that before J.R. was born, the father said he did not want a boy. Rather, the father wanted a girl. The maternal aunt, the mother and the father said that maternal grandmother could have J.R. at birth. After being released from prison, the father made no attempt to take J.R.

A police report was attached to the jurisdiction and disposition report. The police report indicates that I.L. spoke to Teresa, the maternal aunt, about the molestation. The report states, "[I.L.] . . . related that [the father] has been pulling down her underwear and putting his fingers in her vagina." I.L. did not say anything because the father told her he will hit her if anybody found out. When questioned about the father, I.L. stopped smiling

and put her head down. I.L. subsequently stated that the father hits her. I.L. also said the father puts his fingers in her and pointed at her vagina area. I.L. said that it hurt.

D. The Father's Evidentiary Objections

On May 24, 2011, the father filed an objection to introduction of hearsay evidence pursuant to section 355. He objected to statements by the maternal aunts, the maternal grandmother, and Ms. Beukes, the registered nurse. The brief moving papers make no reference to any hearsay declaration of I.L. On June 1, 2011, the department responded to the father's objections by arguing section 355, subdivisions (b) and (c)(1)(C) supported the admissibility of the statements. The department asserted the statements were being offered as corroboration of admissible evidence. And the department argued Teresa and E.E. were available to be cross-examined. And, according to the department, Ms. Beukes statements were admissible as hearsay exceptions under section 355, subdivision (c)(1)(C).

E. The Newborn's Petition

On June 13, 2011, the department filed a section 300 petition on behalf of newborn E.R. The mother and the father were identified as the parents. The petition alleged that E.R. was at risk due to the father's sexual molestation and physical abuse. The detention report stated that the mother had partially complied with court ordered department services. However, the father was non-complaint with court ordered programs. The parents visited the baby together. The parents indicated that they resided together. The social worker argued the misconduct directed at all of the other children placed E.R. at a "high risk" of harm. The juvenile court found the father to be E.R.'s presumed father and ordered her detained from the parents.

F. The Father's Arrest

A July 15, 2011, interim review report relates the dependency investigator, Manuela Lopez, had spoken with an investigator identified only as Detective Rombous. Detective Rombous stated that the father was arrested on June 14, 2011. This occurred after the father submitted to and “failed miserably” a lie detector test. When the father was asked if he had ever under any circumstances touched I.L.’s vagina, he responded that he had forgotten to mention an incident. This occurred when I.L. returned from a visit with Omar. According to the father, the mother then showed him I.L.’s vagina because it appeared irritated and was discharging. The father admitted he touched it to see what was wrong with I.L. After failing the lie detector test, the father stated that on a different occasion he walked into a bedroom. The father saw a male maternal cousin without pants lying on top of the child. The father also stated that the mother was present once when he was talking to I.L. On this occasion, I.L. was told not to allow anyone to touch her private areas. The father pointed at the mother’s vaginal area and then I.L.’s. Apparently while pointing at I.L.’s vaginal area, father said that his finger may have gone inside her vagina.

Detective Rombous spoke to the mother who had come to the police station with the father. Detective Rombous informed of the mother of the father’s statements. The mother denied the father’s claims that she had shown the father I.L.’s vagina after a visit with Omar. The mother also denied that her nephew had ever been observed on top of I.L. The mother appeared to be upset about the father’s arrest. Detective Rombous telephoned the mother the next day. The mother said she had just visited the father in jail. The mother stated, “All I know is that he did not do it.”

G. The Jurisdiction And Disposition Hearing

The juvenile court began adjudication of the section 300 petitions on July 18, 2011. The maternal grandmother and aunt did not appear in response to subpoenas. The

juvenile court ruled that their statements would not serve as the sole basis for jurisdiction. But, the juvenile court ruled Ms. Beukes' statements as a health practitioner were admissible pursuant to section 355, subdivision (c)(1)(C). The juvenile court also admitted into evidence the department's reports and the digital video disc containing I.L.'s interview.

The father called I.L. to testify. In chambers, the juvenile court and counsel attempted to establish if I.L. knew the difference between the truth and a lie. The juvenile court subsequently stated I.L. "got more right than wrong" but also seemed confused. The juvenile court recessed to review portions of the forensic interview to further assess I.L.'s qualifications to testify. When the proceedings reconvened, the juvenile court noted the forensic interviewer went over very little about the difference between the truth and a lie. The juvenile court indicated that in chambers I.L. did not consistently know the difference between the truth and a lie. The matter was trailed to the next day for a review of all the documents. I.L.'s appearance was waived.

The juvenile court ruled I.L.'s statements were admissible under section 355.1 and standards set forth by *In re Cindy L.* (1997) 17 Cal.4th 15, 31-36. The juvenile court found there was nothing in the case to indicate that I.L. made the statements as a result of fraud, deceit or undue influence. And the juvenile court found the time, contact and circumstances of I.L.'s statement provided sufficient indicia of reliability. The juvenile court stated: "Over time, [I.L.] told two forensic interviewers about what had happened to her. She told the police. She told the nurse at the scan evaluation. She told the maternal aunt, maternal grandmother. She told the social worker; and those statements were pretty consistent especially for a five-year-old in regards to what happened to her." The juvenile court further pointed out that it had not stricken the maternal grandmother's statements but would not consider them as the sole basis of the jurisdictional finding. Those statements consisted of I.L.'s complaint to the mother and maternal grandmother about vaginal pain. I.L. was asked if anyone had touched her. I.L. responded that the father had touched her. And, the juvenile court ruled the forensic examination corroborated sexual abuse.

The juvenile court also explained that review of the forensic interview showed I.L. consistently answered questions. The juvenile court stated: “I would note that to a young child—and I watched carefully in looking at the forensic interview, when asked where [the father] touched her, what she kept doing was pointing to her genital area. She never was able to come up with a word, vagina, et cetera. And the reality is the vagina and anus are close enough together that to a young child the genital area is close enough.” The juvenile court pointed out the father made statements to the police that his finger may have gone into the child’s vagina after he failed the polygraph test. And, the mother had denied the father’s statement that he had assisted her in looking at I.L.

After counsel argued, the juvenile court sustained the petition under section 300, subdivisions (b), (d) and (j). The juvenile court on its own motion amended the petition to delete the word “vagina” and add the word “anus.” In sustaining the petition, the juvenile court pointed out that the forensic examination report showed I.L. had anal tears and abrasions. As sustained, the petition alleged that, on prior occasions: the father sexually abused I.L. by pulling down the child’s pants and digitally penetrating her anus causing her pain; the mother failed to protect the I.L. by refusing to believe the child’s disclosure of the father’s sexual; the mother’s failure to protect I.L. and the father’s sexual abuse placed the other children at risk of harm; the father had excessively and physically abused I.L. and A.L. causing them unreasonable pain and suffering; the father physically abused the children, by striking their bodies, scratching their faces and striking their buttocks with belts; the mother knew of the physical abuse and failed to protect them; the children’s physical health, safety and well-being were endangered; and their abuse created a detrimental home environment for all the children.

The juvenile court ordered all five children removed from the mother’s custody. I.L. and A.L. were placed in Omar’s home. The juvenile court terminated jurisdiction over I.L. and A.L. granting sole physical and legal custody to Omar. J.R., J.L., and E.R. were removed from the father’s custody. They were placed in the home of the paternal grandmother. The mother was given family reunification services for J.R., J.L. and E.R. The mother was ordered to attend sex abuse awareness and individual counseling. The

counseling was to address sexual abuse and child protection issues. The father was denied reunification services pursuant to section 361.5, subdivision (e)² due to his incarceration. The juvenile court found the sustained allegations and the young ages of the children it would be detrimental to them to reunify them with the father. And, the juvenile court ruled because the children were very young, there was no indication of any real bond with the father.

III. DISCUSSION

A. Evidence to Support Sexual Abuse

The father argues there was insufficient evidence to support the juvenile court's determination of sexual abuse. The juvenile court's jurisdictional and dispositional findings are reviewed for substantial evidence. (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438; *In re P.A.* (2006) 144 Cal.App.4th 1339, 1344; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1644.) According to the father, substantial evidence does not support the finding because they were predicated on I.L.'s unreliable hearsay statements. Section 355 sets forth admissibility standards for hearsay evidence at the jurisdictional

² Section 361.5, subdivision (e)(1) states in part, "If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, the likelihood of the parent's discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors."

hearing.³ Section 355 allows hearsay evidence at a jurisdictional hearing. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1280; *In re B.D.* (2007) 156 Cal.App.4th 975, 983-984.) However, if a parent makes an objection, the juvenile court must determine if an exception applies or whether the evidence is corroborated. (§ 355; *In re Lucerco L.* (2000) 22 Cal.4th 1227, 1243-1245.)

3 Section 355 provides in part: “(a) At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence. Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300. Objections that could have been made to evidence introduced shall be deemed to have been made by any parent or guardian who is present at the hearing and unrepresented by counsel, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of the right to counsel. Objections that could have been made to evidence introduced shall be deemed to have been made by any unrepresented child. [¶] (b) A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d). . . . [¶] (c)(1) If any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions: [¶] (A) The hearsay evidence would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay. [¶] (B) The hearsay declarant is a minor under the age of 12 years who is the subject of the jurisdictional hearing. However, the hearsay statement of a minor under the age of 12 years shall not be admissible if the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. [¶] (C) The hearsay declarant is a peace officer as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, a health practitioner described in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7 of the Penal Code, a social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code, or a teacher who holds a credential pursuant to Chapter 2 (commencing with Section 44200) of Part 24 of Division 3 of Title 2 of the Education Code. For the purpose of this subdivision, evidence in a declaration is admissible only to the extent that it would otherwise be admissible under this section or if the declarant were present and testifying in court.”

The applicable exception here is section 355, subdivision (c)(1)(B), which applies to statements of a child under 12 years of age, who does not qualify as a witness. (See *In re Lucero L.*, *supra*, 22 Cal.4th at pp. 1242-1243.) Section 355, subdivision (c)(1)(B) provides a hearsay statement is admissible unless the objecting party establishes it is unreliable because it was the product of fraud, deceit, or undue influence. This is the only statutory limitation affecting the statement's admissibility under section 355. (*In re Lucero L.*, *supra*, 22 Cal.4th at pp. 1242-1243.) And, the juvenile court found that there was no evidence to show that I.L.'s statements were the product of fraud, deceit, or undue influence. The statements could properly be admitted under section 355, subdivision (c)(1)(B).

Even though the statements were admissible, the question remains whether they were sufficient to satisfy the jurisdictional finding. This is because an objection does not render the hearsay statement inadmissible. (§ 355; *In re B.D.*, *supra*, 156 Cal.App.4th at pp. 983-984.) Rather, the effect of the objection is that an uncorroborated hearsay statement cannot be the sole evidence used to support a jurisdictional finding. (*In re Lucero L.*, *supra*, 22 Cal.4th at pp. 1244-1245; *In re B.D.*, *supra*, 156 Cal.App.4th at p. 983.) Corroborated evidence in this context is that which supports a logical and reasonable inference that the abuse described in the hearsay statement occurred. (*In re Cindy L.*, *supra*, 17 Cal.4th at p. 35; *In re B.D.*, *supra*, 156 Cal.App.4th at 984.)

Our Supreme Court has held: "Except in those instances recognized by statute where the reliability of hearsay is established, 'hearsay evidence alone is 'insufficient to satisfy the requirement of due process of law, and mere uncorroborated hearsay does not constitute substantial evidence. [Citation.]'" (*In re Lucero L.*, *supra*, 22 Cal.4th at pp. 1244-1245.) In that regard, our Supreme Court has held that due process imposes an additional requirement for cases where the child cannot qualify to testify to differentiate between truth and falsehood and the statements are the exclusive evidence. (*In re Lucero L.*, *supra*, 22 Cal.4th at pp. 1247-1248.) Our Supreme Court explained: "[S]ection 355 notwithstanding, the out-of-court statements of a child who is subject to a jurisdictional hearing and who is disqualified as a witness because of the lack of capacity to distinguish

between trust and falsehood at the time of testifying may not be relied on exclusively unless the court finds that ‘the time, content and circumstances of the statement provide sufficient indicia of reliability.’ [Citation.]” (*In re Lucero L.*, *supra*, 22 Cal.4th at pp. 1247-1248.) Our Supreme Court then gave a relevant but not exhaustive list of factors to be considered in the inherent reliability determination. (*Id.* at pp. 1238-1239.) Those factors include: spontaneity and consistent repetition; the declarant’s mental state; terminology not expected of children of a similar age; and lack of any motive to fabricate. (*In re Lucero L.*, *supra*, 22 Cal.4th at pp. 1238-1239; see *Idaho v. Wright* (1990) 497 U.S. 805, 821-822; *In re Cindy L.*, *supra*, 17 Cal.4th at pp. 29-30.)

Here, the father claims the hearsay statements of I.L. were insufficient to support the jurisdictional findings against him under these corroboration standards. But, the four inherent reliability factors are satisfied in this case. First, I.L. consistently stated to a number of people that the father placed his fingers inside her on different occasions. In each instance she pointed to her vaginal area. She made the statements to the maternal grandmother and aunt, the police, Ms. Beukes, the nurse, and the forensic interviewer. I.L. also consistently told people that the sexual abuse occurred while she was sleeping on the floor or when her mother was not present. I.L. told Ms. Beukes, “I was sleeping he was doing that, on the floor.”

Second, I.L. accused the father of sexual abuse even though she feared retribution. I.L. said he threatened to hit her if she told anyone. I.L. spoke to Teresa, the maternal aunt about the threat. I.L. said she did not want to be hit. I.L. also did not want the father to hit the mother. I.L. talked to several people about the father striking the mother. I.L. was afraid of the father because he hits the mother. I.L. also told the police the father hurt the mother. I.L. stopped smiling and put her head down when the police asked her about the father.

Third, I.L. described events and made comments which a five-year-old would typically not do. Ms. Beukes stated it was uncharacteristic for a child of I.L.’s age to fabricate sexual abuse allegations. During the forensic interview, I.L. can be seen demonstrating the father’s gestures. I.L. also pointed to her private areas in describing

the father's conduct. I.L. circled areas on her body which she said he touched. None of these things are typical things for a five-year-old child to say or do.

Fourth, while the father claimed the maternal relatives and Omar fabricated the story, there was no evidence that I.L. had any motive to fabricate the accusation. Rather, I.L. seemed genuinely afraid of the father. Indeed, when questioned by the maternal relatives, I.L. seemed to be reluctant to make any accusations against the father. There was no motive for the child to fabricate the evidence. Thus, the juvenile court did not err in sustaining the sexual abuse findings against the father based on I.L.'s statements.

More importantly, after failing the polygraph test, the father admitted that he had touched I.L.'s vagina. He claimed he touched I.L. by accident after the mother told him the youngster was complaining of pain. The mother denied this ever happened. The mother also denied the father had been in an examination room or had discussed I.L.'s vaginal irritation with a doctor. And, after failing the polygraph test, the father told the police maternal cousin had perpetrated sexual acts against I.L. The father then told the police that his finger might have gone inside I.L.'s vaginal area as he was explaining that she should not allow anyone to touch her. The mother denied that the father's versions of these incidents. The section 300 findings of sexual abuse are supported by substantial evidence.

B. The Anal Touching Finding

The juvenile court found the children were described by sections 300, subdivisions (d) (sexual abuse as defined by Penal Code, section 11165.1) and (j) (the sibling of a child abused as defined in section 300, subdivision (d)). Penal Code section 11165.1, subdivision (a) defines sexual abuse as a "sexual assault" such as a lewd and lascivious act upon a child within the meaning of Penal Code section 288. Penal Code section 11165.1, subdivision (b) states in part: "As used in this article, 'sexual abuse' means sexual assault . . . as defined by the following: [¶] . . . (3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for

this purpose, except that, it does not include acts performed for a valid medical purpose. [¶] (4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification. . . .”

The father claims the jurisdictional findings must be set aside because the juvenile court found he had touched I.L.’s anus. This is because the department did not allege that he had touched I.L.’s anus. The problem with this reasoning is that the juvenile court relied on the forensic examination report, which showed that I.L.’s suffered from anal tears. The child repeatedly said the father put his fingers inside her. The father also admitted touching I.L.’s vagina. This is sexual abuse within the meaning of section 300, subdivision (d) and Penal Code section 11165.1, subdivision (b)(3) and (4). And, sexually aberrant conduct on one child places siblings of the victim at substantial risk of sexual abuse if left in the home. (See *In re P.A.*, *supra*, 144 Cal.App.4th at p. 1347; *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1414; *In re Karen R.* (2001) 95 Cal.App.4th 84, 90-91.) Thus, there is substantial evidence the father sexually abused I.L. placing her younger siblings at substantial risk of sexual abuse within the meaning of section 300, subdivision (j).

C. Physical Abuse Evidence

The father’s claim of insufficient evidence of physical abuse lacks merit. At the time the children were detained, the department had an open January 2011 referral for physical abuse of I.L. and A.L. by the father. The mother and father did not want I.L. and A.L. to live with them. Martha, the maternal aunt, had seen the father physically abusing I.L. and A.L. on numerous occasions. Martha told the mother about the abuse but it was ignored. Maternal relatives described incidents where A.L. would exit a room in tears. This occurred after Teresa said she saw the father grab A.L.’s “little arm really hard” and shove the youngster. A.L. confirmed the abuse occurred. I.L. complained to Omar that the father was hitting her. I.L. told Omar she was afraid of the father. I.L. told

the police that the father hit her. I.L. said the father hit them with a hanger. I.L. described an incident where A.L. came out of room crying and the mother was in the kitchen. The mother then took a hanger from the father. I.L. spoke to Ms. Beukes about the abuse. I.L. said the father hit her on the buttocks with a belt and touched her with a hanger. This constitutes substantial evidence to support the finding the father physically abused I.L. and A.L.

D. Denial of Reunification Services

The father asserts there was no substantial evidence to support the order of lack of detriment by the denial of family reunification services for his three children. The juvenile court denied reunification services to the incarcerated father finding clear and convincing evidence of lack of determinant pursuant to section 361.5, subdivision (e)(1). As noted, section 361.5, subdivision (e)(1) provides in part: “If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child’s attitude toward the implementation of family reunification services, the likelihood of the parent’s discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors Reunification services are subject to the applicable time limitations imposed in subdivision (a).” Because all of the father’s three biological children were younger than 3 years old, reunification services are limited to 6 months from disposition but no longer than 12 months. (§ 361.5, subd. (a)(1)(B).) The order denying reunification services is reviewed for substantial evidence. (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 196; *R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.)

Substantial evidence supports the denial of reunification services. The finding of lack of detriment was based on: the age of the children; the lack of bonding; the length of a conviction; and the sexual abuse of I.L., a very young child. On the date of initial removal J.R. (age 2) and J.L. (9 months old) were both under the age of three. And, E.R. was a newborn when she was removed from the parents' custody. According to the maternal aunt, Teresa, the father did not even want J.L. to be born. This was because the father wanted a girl. The mother went so far as to give the maternal grandmother a signed, handwritten letter, which purported to relinquish parental rights of J.L. The mother explained she did this because the maternal grandmother bonded with J.L. and cared for him after his birth. The mother also feared that the father, who was incarcerated at the time, might, upon release, try to take J.L. from her. Maternal relatives stated that, when J.L. was born, the father said the maternal grandmother could have custody of the youngster. When released from prison, the father made no attempts to regain custody of J.L. The father was incarcerated during the early months of J.L.'s life. The father was not around during a portion of two-year-old J.L.'s life. Thus, there was no evidence of a bond with the boys. Similarly, there could not have been much or any bond with E.R. because the father was incarcerated within two weeks of her birth. The incarceration resulted from charges for sexually abusing the children's five-year-old half-sibling, I.L. As the juvenile court correctly pointed out, those charges could lead to a lengthy sentence if the father was convicted. Under the circumstances, the determination the children would not suffer detriment from denying the father reunification services is supported by substantial evidence.

IV. DISPOSITION

The orders under review are affirmed in all respects.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

ARMSTRONG, J.

MOSK, J.