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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B279116  
(Los Angeles County  
Super. Ct. No. DK10305)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

J.T.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Steff R. Padilla, Commissioner. Modified and affirmed.

Liana Serobian, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Peter Ferrera, Principal Deputy  
County Counsel, for Plaintiff and Respondent.

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In this juvenile dependency case, defendant and appellant J.T. (mother) challenges the juvenile court's jurisdictional findings and dispositional orders. In particular, mother argues substantial evidence does not support the juvenile court's jurisdictional findings over her three children. Mother also claims that, at the disposition hearing, instead of continuing its jurisdiction over the case, the juvenile court should have terminated jurisdiction and issued a family law order or refused jurisdiction and ordered informal supervision of the family. As discussed below, we conclude substantial evidence supports the juvenile court's assertion of dependency jurisdiction under Welfare and Institutions Code section 300, subdivision (a) with respect to mother's oldest child, and subdivision (b) with respect to all three children.<sup>1</sup> We also find no error in the juvenile court's dispositional orders.

### **BACKGROUND**

Mother has three children: her older son M.M., her younger son M.G., and her daughter J.G. (daughter). At the time this case began, M.M. was 14 years old, M.G. was 10 years old, and daughter was 7 years old. All three children lived with

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<sup>1</sup> Subsequent undesignated statutory references are to the Welfare and Institutions Code.

mother, who was married to but not living with B.T. (stepfather). M.M.'s father was stationed in Japan with the United States military and had not seen M.M. in seven years. M.G. and daughter's father lived relatively close to mother.

**1. Events Preceding Section 300 Petition**

On March 6, 2015, the Los Angeles County Department of Children and Family Services (Department) received a Child Protection Hotline report with respect to the children. According to the reporting party, M.G. said he had stacked chairs at home the night before in order to climb to the roof, but the chairs fell and either he or the chairs (it was unclear which) fell and broke a window. According to the reporting party, M.G. also said he and M.M. had been in a fight, after which M.G. punched a hole in the wall. M.G. also reportedly stated M.M. was the disciplinarian when mother was not home and the children were alone, which was often because mother worked evenings. That same day, a Department social worker visited the children's home, but no one was there.

A few days later, the social worker again tried unsuccessfully to contact the family at home. However, the social worker was able to speak with M.M. at school. M.M. told the social worker he cared for his younger siblings when mother was at work, usually for about 30 minutes in the afternoon. He confirmed M.G. recently had stacked chairs and fallen, but was not hurt. M.M. explained the falling chairs—not M.G.—broke the window. M.M. also told the social worker mother and stepfather engaged in physical altercations, with stepfather holding mother down or punching her and, as a result, sometimes M.M. called the police. He denied he or his younger siblings were hit.

Later that day, after the social worker had met with M.M., mother called the social worker and told her to stay away from her children and their home.

About one month later, on April 9, 2015, the social worker received a report that daughter had been admitted to the hospital with a broken arm after having been left alone without adult supervision.

The next month, in early May 2015, M.M. was admitted to a psychiatric hospital on a 72-hour hold. Mother brought M.M. to the hospital after finding posts on his Facebook account indicating he wanted to harm stepfather and believed mother was a bad mother. The social worker spoke with M.M. in the hospital. M.M. told the social worker mother often called him derogatory names, “smack[ed] him all over his body and slap[ped] him around,” and sometimes hit him with a belt on his buttocks. M.M. denied having any marks on his body after mother hit him, but he felt belittled and degraded. He also said mother punished him in other ways, such as by making him clean for long periods of time, putting all his belongings in the garage, saying he does not deserve anything, and not allowing him to have snacks. M.M. told the social worker that, the time mother put all of his belongings in the garage, he retaliated by exploding paintballs in his bedroom so that his room was covered in paint and, on another occasion, he called mother a “fucken whore” and she called the police. M.M. also said mother and stepfather had been in “numerous” confrontations. M.M. reported he did not feel safe at home because “mother always finds a way to punish him” but treated the two younger children well.

The next day, the social worker spoke with maternal grandmother and a maternal aunt. Maternal grandmother said

mother was a “horrible mother” and “terrible with [M.M.]” She reported mother humiliated M.M. by hitting him with a belt on his buttocks in front of other people. Similarly, the maternal aunt reported mother was “very abusive to [M.M.]” The aunt was afraid for M.M.’s safety in mother’s care. She said mother hit M.M. on his face and body when she was frustrated and called him names. The maternal aunt also reported M.M. called her almost every other day, crying, because of arguments he has with mother. Both maternal grandmother and the maternal aunt said mother did not mistreat the two younger children.

A few days later, the social worker met with M.G. and daughter at school. Although M.G. was hesitant to speak, he confirmed mother was not home when he fell while stacking chairs. When asked about physical abuse and domestic violence at home, M.G. covered his head with his shirt, said he did not want to talk about it, and began to cry. M.G. was able to tell the social worker, however, he has seen mother and stepfather fight. Daughter refused to speak with the social worker, saying mother told her not to speak with the social worker.

The social worker also interviewed a person who had known the family for several years, but wished to remain anonymous. That person reported stepfather was a “negative vibe” that mother brought around the children. The person also stated mother and stepfather were “always getting into physical altercations,” some of which the children witnessed. She also told the social worker that, when stepfather is in the home, the children are noticeably “on edge,” act out more, and are more aggressive both at school and in their neighborhood. The person also said mother often leaves the children home alone for long periods of time and verbally abuses M.M. in front of other people.

In mid-May 2015, the social worker spoke by phone with M.M.'s father, who was in Japan. M.M.'s father told the social worker he had not seen M.M. in seven years because mother sought to end his relationship with M.M. He said he was interested in having M.M. in his care and would request custody of him.

On May 12, 2015, on the Department's application, the superior court issued a removal order authorizing the Department to detain M.M. from mother. The Department subsequently placed M.M. in a foster home.

The social worker reported mother was uncooperative and combative during the social worker's investigation. Mother would not allow the social worker to assess the family home or to speak with the children. The social worker believed mother had unstable and fairly quickly shifting moods. Finally, after M.M. had been detained and a few days before the detention hearing, the social worker was able to speak with mother. Mother stated M.M. was a rebellious teenager, the allegations were false, and the Department was wasting its time. She expressed frustration with the Department and noted M.M. had not been to school or therapy sessions since he had been placed in foster care a few days earlier.

## **2. Section 300 Petition and Detention Hearing**

On May 18, 2015, the Department filed a petition under section 300, subdivisions (a), (b), (c), and (j) on behalf of the children.

The a-1, b-1 and j-1 counts were the same. They alleged mother previously had abused M.M. by striking him on his face and body with her hands and striking him on his buttocks with a belt. Counts a-1, b-1 and j-1 further alleged mother's abusive

conduct toward M.M. was excessive, caused M.M. unreasonable pain and suffering, caused him to be afraid of mother, created a detrimental home environment, and placed all three children at risk of serious physical harm.

Counts a-2 and b-2 both alleged mother and stepfather had a history of engaging in domestic violence in the presence of the children. Counts a-2 and b-2 further alleged mother failed to protect the children from the domestic violence because she allowed stepfather to reside in their home and have unlimited access to the children. As a result of the violence and mother's failure to protect, the counts alleged the children were at risk of serious physical harm.

The b-3 count alleged mother previously had left the children alone without adult supervision, which resulted in daughter breaking her arm and M.G. falling through a window. The b-3 count alleged mother's failure to provide adult supervision endangered the children and placed them at risk of serious physical harm.

The petition included one count under subdivision (c), which alleged mother emotionally abused M.M. by demeaning him, calling him derogatory names, withholding food from him, physically abusing him, engaging in domestic violence in his presence, and, after placing all his belongings in the garage, telling him he was not deserving of anything. The subdivision (c) count further alleged M.M. had been involuntarily hospitalized, had suicidal ideation, was scared of mother, and was at substantial risk of serious emotional damage.

At the detention hearing held the same day, the juvenile court ordered the two younger children released to mother, but ordered M.M. detained and placed in shelter care. Mother and

the father of M.G. and daughter were given Department-monitored visits with their children and family reunification services and family maintenance services. The court also ordered a mental health assessment and counseling for M.M., and that none of the children have contact with stepfather. M.M.'s father was given unmonitored visits, including overnight visits, with M.M.

**3. Events After Detention but Before Adjudication**

**a. The Department receives a new referral.**

In June 2015, the Department received a new referral for the family. The reporting party stated that approximately three months earlier, M.M. witnessed stepfather assault mother. During the incident, M.M. intervened to protect mother, prompting stepfather to grab M.M. by his shirt and call him a "little shit." The reporting party also stated M.M. had witnessed domestic violence between mother and M.G. and daughter's father, who reportedly also twisted M.M.'s arm and hit him with a belt. Finally, it was reported that, the year before, after a fight with stepfather, mother tried to hurt herself. She drank alcohol and walked down the street while holding a knife and saying she wanted to kill herself.

**b. M.M. is released to his father.**

At a June 2015 progress hearing, and over the Department's objection, the juvenile court ordered M.M. released to his father. M.M. was released to his paternal grandmother, who was ordered to transport M.M. to Japan. By August 2015, M.M. was living with his father in Japan.

**c. The Department files a contested 385 petition.**

In August 2015, the juvenile court provisionally granted the Department's section 385 petition and request to remove the



two younger children from mother's care. The two younger children were placed with their father. The Department claimed mother had been uncooperative and, as a result, the Department had been unable to meet with and assess the well-being of the two younger children, who had remained in mother's care pending adjudication. The juvenile court held multiple hearings on the section 385 petition and heard testimony from mother and a Department social worker. In October 2015, over the Department's objection, the court ordered the two younger children back to mother's care. The court also admonished mother to cooperate with the Department, ordered the Department to make unannounced home visits, and ordered the children have no contact with stepfather.

#### **4. Department Investigation**

The jurisdiction and disposition hearing was not held until October 26, 2016. During the more than 17 months between the filing of the petition and its adjudication, the Department continued its investigation into the allegations of the petition, including interviewing family members and friends. We summarize those interviews below.

##### **a. M.M.**

Almost immediately after the detention hearing, M.M. began visiting with his father, who had returned to the United States for these proceedings. M.M.'s visits with his father went well.

In June 2015, before M.M. left for Japan, a psychiatric social worker began a mental health assessment of M.M. She stated that, although M.M. denied homicidal or suicidal thoughts at the time, he did report "emotional and physical abuse by mother and her boyfriend." Although M.M. was friendly and

cooperative, the social worker believed M.M. would benefit from mental health services. She reported M.M. appeared highly intelligent, possessed interests that were not typical of a child his age, and displayed some behaviors and patterns of thinking that seemed “odd” and “different.” The social worker stated M.M. “appear[ed] to have unresolved feelings of anger surrounding a possible history of physical and emotional abuse.”

Once in Japan with his father, M.M. began therapy services. In August 2015, after approximately seven therapy sessions, his therapist reported M.M. was adjusting well and felt safe in his father’s home. The therapist also stated M.M. “has clearly been traumatized by his past history of abuse, neglect, and chaos while in the custody of his birth mother’s highly dysfunctional situation.”

In October 2015, M.M.’s father reported M.M. was resisting rules and on a recent night had been brought home by the military police. M.M.’s father stated M.M. had been having online conversations with maternal grandmother about the pending case. According to M.M.’s father, maternal grandmother was inappropriately influencing M.M. to say or do things that could result in M.M. being placed in her care, or emancipated. M.M. told his father not only that he had “manipulated” the court and mother into sending him to Japan, but also that he was working with his attorney to be emancipated. M.M.’s father doubted the attorney gave that advice. He worried maternal grandmother was trying to sabotage M.M.’s progress in Japan. Maternal grandmother denied any wrongdoing and worried M.M.’s father was trying to cut her out of M.M.’s life.

In November 2015, M.M. confirmed to a Department social worker he was interested in emancipating when the dependency

case closed, but generally he reported he “was good.” Within one month, however, both M.M. and his father reported their relationship had improved, and M.M. said he no longer was considering emancipation. And by May 2016, M.M. no longer attended therapy sessions because he reported “he was happy and did not need it anymore.” M.M. and his father no longer were arguing. M.M.’s father reported similar positive improvements with M.M. In July, M.M. and his father both reported M.M. was doing well. He was in summer school and had a few summer jobs.

**b. M.G. and Daughter**

M.G. denied physical abuse or domestic violence in the home. He said mother disciplined them by making them do “standards” or spending a time-out in their room. He said when they are “very bad, we get the belt.” But he said the belt does not leave any marks and “doesn’t even hurt us.” M.G. said M.M. got in trouble a lot. M.G. also reported sometimes he and his siblings were left alone, but not often. He explained that, when the window broke, they were not home alone because M.M. was baby-sitting. M.G. said he was climbing up two chairs he had stacked on top of a wheelbarrow when one of the chairs fell and broke a window. M.M. called mother, who was home in five minutes, and no one was hurt.

Daughter also denied domestic violence at home. Daughter explained she broke her arm on the first day of spring break when she was swinging in a gazebo. She said she “went too far and I fell on my arm and broke my shoulder.” She also said M.M. was baby-sitting when M.G. stacked chairs on top of a wheelbarrow and broke a window. Daughter said mother disciplined M.M. by making him pull weeds or taking his phone

away. She said M.M. was hit with a belt “a long time ago because he ran away,” but not hard. She also said mother hit M.M. on the face because he had been mean and did not listen when mother asked him to stop.

School records showed M.G. had some behavior problems and displayed aggressive behaviors toward other children.

In January 2016, after visiting M.G. and daughter at home, a Department social worker reported the two younger children were doing well, denied contact with stepfather, and showed no signs of physical abuse. Later that month, M.G. fell off his scooter and broke his arm while visiting with his father. By March 2016, M.G.’s cast was off, the children appeared to be doing well, there were no signs of abuse, and the children had no contact with stepfather. However, mother would not permit the Department social worker to interview the two children privately. The Department social worker made a similarly positive report in April 2016, although, again, mother would not allow the social worker to interview the children privately and mother would not allow the social worker to ask the children whether they had contact with stepfather.

Finally, in July 2016, two Department social workers were able to interview the children separately and privately at Department offices. M.G. missed stepfather and said he never hurt them. He said M.M. made that up that so he could get out of the house. M.G. showed no signs of abuse and said, when they were younger, mother used to spank them but she no longer did. Similarly, daughter reported no abuse or domestic violence. She also said mother used to spank them, but no longer did.

**c. Mother**

A couple weeks after the detention hearing, and on the last day of school, mother allowed stepfather to sign M.G. and daughter out of school and to have lunch with them, which violated the juvenile court's order of no contact with stepfather. A Department social worker spoke with mother and explained to her that the juvenile court had prohibited the children from having contact with stepfather. Mother indicated she was not aware of that, had no such court order, and did not believe she had violated any order. She believed, because the hearing had been continued, there were no orders and she expressed confusion with the process.

As to discipline, mother stated the children do standards, which is writing Bible verses while thinking about their behavior and how they could do better. She explained it took "a lot" for the children "to get the belt" and, when they do, she quickly "swat[s]" them "and it's done." She could not remember the last time she used a belt to discipline her children.

Mother discussed M.M.'s difficult behavior. She reported trying to get M.M. to see a counselor and had bought him a journal. She said sometimes M.M. called her a whore, and explained that the first time he said that to her, she "popped him," but later apologized for hitting him. She also explained she had taken his phone away because he was failing some of his school courses. Mother also spoke with a police officer about M.M.'s behavior after M.M. ran away from home and stated he wanted to go to juvenile hall. The officer told mother she should show M.M. what juvenile hall was like by giving him a mattress and one shower a week. Soon after that, mother found the notes that resulted in M.M.'s involuntary hospitalization, and M.M.

vandalized the house. Mother made M.M. clean the house, but he was unable to fix a dog gate he had broken. She said M.M. had “googled what to say to authorities to be taken away.” The police told her she had two options, she could take M.M. to the hospital or the police could arrest him.

Mother denied domestic violence. She stated she and stepfather were in counseling because he had cheated on her. She said when stepfather moved out, M.M. became her protector. She also explained that 10 years earlier M.M. had tried to protect her when she was in a physical argument with M.G. and daughter’s father.

Mother stated she paid M.M. to watch the younger children over spring break and that is when daughter broke her arm. Mother explained the children are usually alone with M.M. for approximately one-half hour each afternoon before she gets home from work.

In March 2016, mother spoke with a Department social worker and indicated her frustration with the Department’s handling of the case. She no longer wanted to speak with the social workers and said they should contact her attorney instead. She also said she, and not the court, sent M.M. to Japan because she wanted him out of foster care. Although mother allowed the Department social worker to speak with her two younger children in March and April 2016, mother would not allow the social worker to interview the children privately and, in April 2016, would not allow the social worker to ask questions related to stepfather. In May 2016, mother told the social worker she would no longer allow the social worker into her home and future contact with the two younger children would take place outside the home. By that time, Mother also had not enrolled in any

Department-recommended programs. She refused to do so unless ordered by the court and, for six months, she returned each monthly program referral letter the social worker sent to her. In August 2016, a Department social worker reported mother continued to refuse to allow the Department access to the two younger children.

**d. M.M.'s Father**

In May 2015, M.M.'s father returned to the United States to attend the detention hearing. Almost immediately, he and M.M. had visits, which were reported to go well. The Department reported M.M.'s father was cooperative and amply demonstrated his desire to regain custody of, and his ability to care for, M.M. M.M.'s father was a paraprofessional with the United States Army, where he worked with social workers, psychologists and psychiatrists to diagnose and treat service men, including those who had experienced domestic violence. He explained, "Unfortunately, I work with the same situations my son experienced."

On July 26, 2015, M.M.'s father brought M.M. to Japan to live with him, his wife, and their young daughter. A few days after M.M. moved to Japan, a Department social worker spoke with M.M.'s father, who reported M.M. was adjusting well. The father said both M.M. and the maternal grandmother told him mother slapped M.M. in the face when he did something she did not like and that mother's relationship with stepfather was very unhealthy and involved domestic violence. M.M.'s father believed M.M.'s social skills were somewhat delayed and said M.M. would receive therapy in Japan.

**e. M.G. and Daughter's Father**

M.G. and daughter's father reported he spends every other weekend (Friday through Sunday) with M.G. and daughter. He said he has a good and trusting relationship with them and they talk openly with him. He was not aware of any physical abuse or domestic violence in mother's home. He believed his children would tell him or indicate if there were any such abuse or violence. He thought M.M. was making up the allegations because he wanted to get out of the house and be with his father. M.G. and daughter's father said M.M. had always missed his own father.

**f. Stepfather**

Stepfather reported he and mother had been together for almost three years. He said he had lived in mother's home with mother and her three children for a few months, but no longer lived there. He explained he saw mother about once a week for date nights and counseling. He said they attended counseling to improve their relationship. Stepfather denied any domestic violence.

Stepfather believed mother was a positive role model for her children and was an involved and loving parent and wife. He said mother disciplined the children by taking things away from them, grounding them, having them write standards, and doing extra chores at home. He knew she believed in spankings, but he had never seen her spank the children. He said he had never seen mother hit M.M. or emotionally abuse him. He had heard at one point mother put all of M.M.'s belongings in the garage. But stepfather explained mother took those steps on the advice of sheriff's deputies who had responded to the home when M.M. disrespected mother and the household. Stepfather was unsure



whether mother left the children without adult supervision, but he knew she had baby-sitters for them.

**g. Maternal Grandmother**

Maternal grandmother believed mother mistreated her children, especially M.M. It was clear maternal grandmother cared deeply for M.M. She reported M.M. had no father figure in his life and she was happy if he was finally happy to be with his father in Japan. Maternal grandmother explained M.M. not only baby-sat the two younger children, but he also washed the dishes, cleaned the house, and made dinner. She said “[M.M.] was grown up before he was a kid” and “was the father of the house.”

Maternal grandmother reported mother engaged in physical altercations with both stepfather and M.G. and daughter’s father, whom maternal grandmother clearly did not like. She said M.M. tried to protect mother from stepfather when they fought. Maternal grandmother also stated stepfather mistreated M.M. and blamed things on him. She did not believe the children should be removed from mother’s care, but she believed mother and stepfather both needed counseling.

**h. Maternal Aunt**

In November 2015, after M.M. had been in Japan with his father for a few months, a Department social worker spoke with a maternal aunt who had been in contact with M.M. The aunt said M.M. asked her to help him hire an attorney who could help him leave Japan. The aunt reported M.M. told her his father verbally and emotionally abused him and did not show him love. The aunt believed M.M.’s father over-analyzed M.M.

**i. Pastor**

Mother’s former church pastor said he had been to the family’s home many times. He stated mother and stepfather

engaged in verbal and physical altercations, were both “volatile,” and mother would take her feelings out on the children, especially M.M. The pastor said one time mother threatened to harm herself. He also reported mother and M.M. used to get into physical fights, and mother would always blame M.M. The pastor also stated the two younger children walked home from school before M.M. and, at times, mother left the younger children home alone. Although the pastor was not aware of abusive physical discipline, he believed the family was in trouble and was “not doing much to help their situation.”

#### **5. Jurisdiction and Disposition Hearing**

On October 26, 2016, more than 17 months after the petition was filed and after multiple continuances, the juvenile court held the jurisdiction and disposition hearing. At the hearing, the juvenile court sustained counts a-1 (as amended), b-2, b-3, and j-1, and dismissed the remaining counts. The court amended the a-1 count so that instead of stating mother “physically abused” M.M., the count stated mother “used inappropriate physical discipline” for M.M. The court also struck the sentences indicating mother hit M.M. on his buttocks with a belt, M.M. was afraid of mother, and M.M. refused to return home because of physical abuse.

The juvenile court declared the children dependents of the court and moved to the disposition portion of the hearing. As to M.M., the juvenile court ordered sole legal and physical custody of M.M. to his father, and granted mother monitored visits with M.M. The court terminated jurisdiction as to M.M. The juvenile court ordered M.G. and daughter to remain with mother and ordered the Department to make unannounced visits. The court

also ordered mother to participate in both counseling and a domestic violence support group.

## **6. Appeal and Termination of Jurisdiction**

On November 16, 2016, mother appealed the juvenile court's jurisdictional findings.

While this appeal was pending, we granted the Department's motion to take judicial notice of the juvenile court's April 26, 2017 minute order indicating it had terminated its jurisdiction over the two younger children. We also denied the Department's concurrent motion to dismiss the appeal as moot.

### **DISCUSSION**

Mother argues there was insufficient evidence to support the juvenile court's jurisdictional findings against her and, at the least, the juvenile court should have terminated its jurisdiction over the entire case at the disposition hearing. As discussed below, although we conclude there was insufficient evidence to support the a-1 count with respect to the two younger children, we conclude substantial evidence supports the juvenile court's finding of jurisdiction under subdivision (a) with respect to M.M. and under subdivision (b) with respect to all three children. We also find no error in the juvenile court's dispositional orders.

#### **1. Standard of Review**

We review the juvenile court's findings and orders to determine whether they are supported by substantial evidence. (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119.) We will affirm if there is reasonable, credible evidence of solid value to support the court's findings. (*Ibid.*) “ ‘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.” ’ ’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “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.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

## **2. Count a-1: Serious Physical Harm**

The juvenile court declared the children dependents of the court under section 300, subdivision (a). Subdivision (a) provides the juvenile court may declare a child a dependent of the court 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.” Subdivision (a) further provides the “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. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.” (§ 300, subd. (a).) The juvenile 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.)

Mother argues substantial evidence does not support the jurisdictional finding as to M.M. under subdivision (a). We disagree and conclude substantial evidence supports a finding that M.M. was at risk of serious physical harm within the meaning of subdivision (a). As noted above, the juvenile court

may consider the manner in which a parent inflicted less serious injury, a history of inflicting injury, a combination of both, and “other actions” taken by the parent. (§ 300, subd. (a).) In addition, the court need not wait until a child is seriously abused or injured before declaring jurisdiction over the child. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

Here, multiple people reported mother inappropriately and excessively physically disciplined M.M. Although early in the investigation, M.M. said mother did not hit him or his siblings, he later repeatedly stated mother did hit him. For example, he told a Department social worker mother “smacks him all over his body and slaps him around.” He also told his father mother slapped him in the face when she did not like what he did. Both a Department social worker and M.M.’s therapist in Japan reported M.M. had experienced, or at the least said he had experienced, physical abuse by mother. His therapist in Japan stated M.M. had “clearly been traumatized by his past history of abuse, neglect, and chaos while in the custody of his birth mother’s highly dysfunctional situation.” In addition, maternal grandmother and a maternal aunt reported mother hit M.M., and the aunt was afraid for M.M.’s safety in mother’s care.

Although others—including mother, stepfather, and the two younger children—denied mother physically abused or excessively physically disciplined M.M., and mother claims maternal grandmother should not be trusted, we do not reweigh the evidence or make credibility findings. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773; *In re Matthew S.*, *supra*, 201 Cal.App.3d at p. 321.) Rather, we “ ‘ “merely determine if there are sufficient facts to support the findings of the trial court.” ’ ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773; *In re Matthew S.*, *supra*, 201

Cal.App.3d at p. 321.) Here, we conclude there are sufficient facts to support the juvenile court's jurisdictional finding under subdivision (a) with respect to M.M.

Mother also claims that because M.M. was living in Japan with his father at the time of the adjudication, he was not at substantial risk of suffering serious physical injury. We are not persuaded. M.M. was in Japan because of these dependency proceedings. Had the juvenile court not asserted its jurisdiction and made its dispositional orders with respect to M.M., his parents could have returned him to his mother's care without protective measures in place, thus placing him at substantial risk of future injury.

Despite our conclusion that the juvenile court properly asserted dependency jurisdiction under subdivision (a) with respect to M.M., we conclude substantial evidence did not support a finding that the two younger children were at risk of serious physical injury as a result of mother's inappropriate and excessive physical discipline of M.M. To the contrary, there was no evidence mother ever inappropriately or excessively disciplined the younger children. In fact, M.M., his maternal grandmother, and a maternal aunt—all of whom reported mother inappropriately and excessively disciplined M.M.—stated mother treated the two younger children well and never hurt them. And the two younger children consistently denied mother ever hurt them. Although the record reveals mother infrequently disciplined the younger children by spanking them on their buttocks with a belt, the children stated those spankings did not hurt and left no marks. Subdivision (a) explicitly precludes dependency jurisdiction on the basis of such discipline. (See *In re D.M.* (2015) 242 Cal.App.4th 634, 637–638, 640.) Other than

those infrequent spankings, there was no evidence mother physically disciplined or harmed the younger children or put them at risk of such harm. As such, we conclude it was improper for the juvenile court to declare jurisdiction over the two younger children based on count a-1.

### **3. Count b-2: Failure to Protect**

The juvenile court also declared the children dependents of the court under section 300, subdivision (b). In relevant part, subdivision (b) provides the juvenile court may declare a child a dependent of the court 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.” Here, the court found both that mother failed to protect the children from domestic violence in the home (count b-2) and failed to provide adequate adult supervision for the children (count b-3).

We conclude substantial evidence supports the juvenile court’s finding of jurisdiction based on mother’s failure to protect the children from domestic violence (count b-2). Multiple people—including M.M., maternal grandmother, and mother’s former pastor—reported mother had a history of domestic violence with stepfather. It was also reported the altercations took place in the presence of the children, and sometimes M.M. intervened or called police to stop the fighting. “[D]omestic 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. Such neglect *causes* the risk.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194, disapproved on other grounds in *In re R.T.* (2017) 3 Cal.5th 622, 628.) On the other hand, mother and stepfather and at times the two younger children denied domestic violence. The younger children also stated they missed stepfather. As noted previously, however, we do not reweigh the evidence or make credibility findings. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773; *In re Matthew S.*, *supra*, 201 Cal.App.3d at p. 321.)

Moreover, at the time of the jurisdiction hearing, it was unclear whether or how much access stepfather had to the two younger children. For a time it appeared stepfather no longer lived in mother’s home and the younger children had no contact with him. But, for approximately six months prior to adjudication, mother refused to allow the Department social worker to ask the children about stepfather and no longer allowed the social worker into her home. Thus, in light of the multiple reports of domestic violence and mother’s refusal to cooperate fully with the Department prior to adjudication, we conclude substantial evidence supports the juvenile court’s ruling on count b-2.

Because we conclude the juvenile court properly exercised its jurisdiction based on counts a-1 (as to M.M.) and b-2 (as to all three children), we need not and do not consider whether substantial evidence also supported jurisdiction based on counts b-3 or j-1. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)



**4. Substantial evidence supports the juvenile court's dispositional orders and continuation of jurisdiction with respect to the two younger children.**

Mother argues the juvenile court should have either terminated its jurisdiction at disposition and issued a family law order under section 362.4, which permits the juvenile court to issue custody and visitation orders upon termination of dependency jurisdiction, or not exercised jurisdiction at all and instead ordered informal Department supervision under section 360, subdivision (b).

As an initial matter, Mother did not ask the juvenile court to terminate its jurisdiction at the disposition hearing or to order informal supervision of the family. Thus, because she failed to make these arguments below, Mother has waived them on appeal. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558.) Even if Mother had not waived the arguments, however, we would conclude the juvenile court did not abuse its discretion and its dispositional orders were supported by substantial evidence. At the time of the disposition hearing, the court had before it recent reports indicating mother was not fully cooperating with the Department. It was reasonable for the juvenile court to be cautious and wait until its next hearing before terminating jurisdiction with respect to the two younger children, thus enabling the court to ensure mother was compliant and the children were safe. Accordingly, we conclude the juvenile court did not abuse its discretion and substantial evidence supports its dispositional orders with respect to the two younger children.

### **DISPOSITION**

The October 26, 2016 jurisdictional findings are modified to strike the two younger children's names from the last sentence of count a-1. The October 26, 2016 findings, as modified, and orders are affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.