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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B285714

(Los Angeles County
Super. Ct. No. DK21688)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.C.,

Defendant and Appellant.

APPEAL from findings and an order of the Superior Court
of Los Angeles County, Veronica McBeth, Judge. Affirmed.

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

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

K.C. (Mother) appeals the juvenile court’s jurisdiction findings and disposition order concerning her then-ten-year-old twin daughters, J.C. and C.C. The juvenile court credited J.C.’s reports of sexual abuse to a social worker and others— notwithstanding her later insistence that she lied about the abuse—and asserted dependency jurisdiction over both girls. The juvenile court removed the children from Mother’s custody and placed them in the home of their father, E.L. (Father). We consider whether substantial evidence supports the juvenile court’s determinations, which hinge on the court’s decision about which of J.C.’s statements to believe.

I. BACKGROUND

Prior to an investigation by the Los Angeles County Department of Children and Family Services (the Department), J.C. and C.C. lived with their maternal great grandmother, Mother, and Mother’s boyfriend Omar L. (Omar). The Department began its investigation after receiving a referral call alleging, among other things, that Mother and Omar “g[ot] drunk and abuse[d] drugs on a daily basis,” that Omar threatened and physically abused Mother, and that Omar emotionally abused the girls and made Mother hit them.

A. *Initial Investigation*

After speaking with the great grandmother, a Department social worker interviewed J.C. and C.C. at school. J.C. discussed tensions between Mother and the great grandmother, but both girls denied Omar had been violent with them or with Mother. Neither was aware of drug abuse in the home, and both denied anyone had touched them inappropriately. Both said they felt

safe at home, but J.C. said she believed she needed therapy. She did not say why.

After the social worker left the girls' school, their teacher thought they looked "worried." The girls approached the teacher and disclosed Omar "had been touching [J.C.] under her clothing on her private part." The teacher sent J.C. to the principal's office and the principal called the social worker to advise J.C. had admitted she "did not tell [the social worker] everything." The social worker then spoke to J.C. on the phone and J.C. disclosed Omar "touched her on her private part." When asked for specifics, J.C. stated Omar touched the "middle part between her legs" underneath her clothing on three occasions, telling her afterwards "you better not say anything[,] or else."

The social worker contacted the police after J.C. disclosed the sexual abuse by Omar. In an interview with law enforcement officers, J.C. repeated the allegations of sexual abuse by Omar. The social worker subsequently interviewed the girls' teacher at school, and the teacher reported J.C.'s academic performance had "started to go down," and that the girls had earlier been seen crying and "consoling each other." The teacher reported J.C. and C.C. did not want to say why they were sad at that time, but the teacher could tell that something was bothering them.

The social worker asked Mother to have Omar move out while the Department investigated J.C.'s allegations. According to the social worker, Mother did not believe J.C., refused to have Omar move out, and preferred instead that the children be sent to live with Father.

The Department filed a dependency petition in February 2017 that alleged J.C. had been sexually abused by Omar, J.C. and C.C. were at risk of serious physical harm, and Mother had

failed to protect them. At an initial detention hearing, the juvenile court detained the girls from Mother and released them to Father, with monitored visitation by Mother. After the detention hearing, the Department received information that Mother disobeyed the juvenile court's order by picking the girls up from school without a monitor.¹

B. The Ensuing Dependency Proceedings, Including J.C.'s Recantation

The month after the detention hearing, J.C. recanted her allegation that Omar sexually abused her (as well as a separate allegation that Mother hit the great grandmother). While crying during an interview with a Department social worker, J.C. told the social worker she lied about Omar touching her because she wanted Mother and Father to get back together and thought that by making an allegation against Omar, Mother would ask him to move out.

During the same interview with the social worker, however, J.C. also disclosed Mother and Omar had discussed the abuse allegations with J.C. and C.C. When pressed for details about what was discussed, J.C. said "she was confused and thought that she may have had a dream. . . . that [Omar] touched her private parts although she was not sure."

Ten days after the interview with the social worker, J.C. underwent a forensic physical examination and interview. The physical examination yielded no evidence tending either to prove

¹ The Department was unable to reach the school personnel who had observed Mother picking up the girls without a monitor, and the girls denied that Mother was picking them up from school.

or to disprove the sexual abuse allegations. During the forensic interview, J.C. again claimed she lied about the sexual abuse, stating, “I said it because I wanted my mom and daddy to get back together, and it was a lie.” She also said she lied because she thought Omar was going to kill Mother because they go to parties late at night and sometimes scream at each other.

The nurse conducting the forensic interview asked J.C. where she got the idea to tell people Omar had touched her. J.C. indicated that the idea came “[f]rom [her] head.” When the nurse asked J.C. to explain how the idea might have come to be in her head, J.C. said that “sometimes . . . in the night—like, I feel . . . something is, like, grabbing me, but, like, it is not really a person. I feel, like, a shadow or something.” The nurse then asked J.C. to describe the telephone conversation with the social worker when J.C. first alleged that Omar had touched her, and following that, the interview turned to J.C.’s allegations more directly:

“Q. Okay, okay. And then tell me how your mom’s boyfriend touched your private part?

“A. Like, he put his hand inside her [*sic*].

“Q. And then what happened.

“A. And then—I don’t get it. I don’t get it.

“Q. What happened when he put his hand inside?

“A. He touched my private part.

“Q. Okay. And how did he touch it?

“A. By putting his hands in my clothes.

“Q. His hands inside your clothes. Okay. Where inside your clothes?

“A. In my private part.

“Q. And what’s your private part?

“A. My middle part.

[¶] . . . [¶]

“Q. Okay. And tell me what is, um—what is he doing with his hand?

“A. Putting it inside me.

“Q. Okay. And what is he doing?

“A. Touching me.

“Q. Okay. And how is he touching you?

“A. With his fingers.

“Q. With his fingers. Okay. Try to help me understand what he is doing with his fingers.

“A. He is—

“Q. Mm-hmm. What’s that? I didn’t hear you. Tell me what your body is feeling.

“A. It feels—a lie.

“Q. That it was what?

“A. A lie.

“Q. Okay, okay. I don’t understand.

“A. That—that wasn’t true.

“Q. What wasn’t true?

“A. The thing about my mom’s boyfriend touching me.

“Q. Okay. The thing about your mom’s boyfriend touching you. Okay. So tell me about how—how, um, you’re able to tell me that he touched you with his fingers?

“A. I made it up.

“Q. Okay, okay. And tell me where you got the idea of that?

“A. I was thinking of saying it.

“Q. What’s that?

“A. I was thinking to say that.

“Q. You were thinking to say that. Okay, okay. Um, is something—um, are you worried about something?

“A. (Nonverbal response.)

“Q. No?

“A. I’m worried that I wouldn’t get to see my mom again.”

In addition to arranging for the forensic exam and interview, the Department continued to investigate by interviewing the girls’ paternal grandmother, Mother (again), C.C. (again), and Father. The great grandmother did not make herself available to be interviewed again.

The girls’ paternal grandmother believed J.C. without reservation and suggested Mother was responsible for J.C.’s recantation. According to the paternal grandmother, J.C. told her about Omar’s sexual abuse after disclosing the abuse to the social worker. J.C. “was very emotional and crying when she was telling [paternal grandmother] what happened and told her that she was not lying.” J.C. told her paternal grandmother that at least one of the incidents of abuse occurred “when mother was away at her niece’s home” and “everyone was asleep.” The paternal grandmother further revealed that, during one visit with the girls, she overheard C.C. arguing with J.C. and telling her “that she better tell everyone that she was lying or else their mother would go to jail.” When the paternal grandmother asked C.C. why she said this, C.C. “replied that [Mother] told her that if [J.C.] does not recant her story [Mother] will go to jail and they will never see her again.”

In Mother’s interview, she professed to believe J.C. but she also asserted the great grandmother “brainwashed” J.C. and told her to lie about Omar touching her. Mother told the social worker she asked the great grandmother to move out—before the

Department received its referral—because the great grandmother told J.C. and C.C. to tell their teachers (falsely) that Omar hit them. Mother felt the great grandmother was meddling in her personal life and wanted Mother to reconcile with Father. One of the reasons that Mother “found the sexual abuse allegation hard to believe” was that the great grandmother had “told her in the past not to allow the girls to spend too much time with their father because he may rape them.”

Mother also expressed doubts about whether Omar would have had an opportunity to sexually abuse the girls. Mother stated Omar never spent time alone with J.C. and C.C. and Mother emphasized the family lived in close quarters, with the girls and the great grandmother sleeping in the living room and Mother and Omar sharing a separate bedroom. Mother stated she could not believe she would not have noticed if Omar was molesting one of her children.

Father told the Department (as recounted in a jurisdiction report) that “he believes his daughter but would not be surprised if [the great grandmother] had something to do with [J.C.] making this allegation. He stated that [the great grandmother] told mother in the past not to let the girls visit with him too often because he may sexually abuse them.” Father also explained that the great grandmother had previously attempted to meddle in Mother’s relationship with Omar by stealing a jar of money Mother was saving for a birthday party and blaming Omar.

C. Adjudication

The court held a jurisdiction and disposition hearing in June 2017. J.C. testified (in chambers) at the request of Mother’s attorney. J.C. said she had lied about Omar touching her vagina

(and about Mother hitting the great grandmother on one occasion). J.C. said she lied “because [the great grandmother] said that she was going to go to another state if Omar didn’t leave the house” and “[b]ecause [she] wanted, like, if Omar left, maybe [her] mom and dad will get back together.”

The court struck the allegations in the petition regarding fighting between Mother and the great grandmother but sustained allegations relating to sexual abuse under Welfare and Institutions Code section 300, subdivisions (b)(1), (d), and (j).² The court briefly explained its reasons: “I read the transcript, obviously, of the forensic. But the reports that were given earlier to the school, I just don’t believe somebody manipulated a little girl to make those reports at school. I believe them to be true.”

The juvenile court further found that “continuance [of J.C. and C.C.] in the home of [Mother] is contrary to the children’s welfare and there’s no reasonable means that the children may be protected without . . . removal.” The court ordered the girls placed with Father, and Mother was ordered to participate in a developmentally appropriate parenting class, sex abuse awareness counseling, and individual counseling to address case issues.³ Father was ordered to “make the children available [to Mother] for even unannounced [monitored] home visits,” and the Department was given discretion to liberalize Mother’s visitation rights.

² Undesignated statutory references that follow are to the Welfare and Institutions Code.

³ Father was also ordered to attend sexual abuse awareness training.

II. DISCUSSION

The standard of appellate review drives the disposition of Mother’s appeal. The juvenile court had to decide whether to believe J.C.’s out-of-court disclosures of Omar’s abuse to a Department social worker, J.C.’s teacher at school, law enforcement personnel, and her paternal grandmother; or to instead believe no abuse occurred because J.C. did not mention it when first interviewed by the social worker and because she later recanted her allegations during the forensic interview and her testimony in court. The governing substantial evidence standard of review requires deference to the determination made by the juvenile court, owing to that court’s better position to make credibility judgments. And we hold there is substantial evidence supporting the juvenile court’s rulings—the court was not required to make an express finding on the record as to those of J.C.’s statements it did not believe (a statement of what the court *did* believe suffices) and removal of J.C. and C.C. from Mother’s physical custody was warranted by the credited evidence of abuse as well as Mother’s skepticism regarding J.C.’s allegations.

A. *The Juvenile Court’s Jurisdiction Findings Do Not Warrant Reversal*

1. *The substantial evidence standard*

“In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them.” (*In re R.T.* (2017) 3 Cal.5th 622, 633.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [T]he [appellate] court must review the whole record in the light most favorable to the judgment

below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” (*In re I.J.* (2013) 56 Cal.4th 766, 773, internal quotation marks and citations omitted.) “[W]e draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order and affirm the order even if there is other evidence supporting a contrary finding.” (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*Ibid.*)

2. *The juvenile court was not obligated to make
express adverse credibility findings on the
record*

The juvenile court found J.C. and C.C. are children described by section 300, subdivisions (b)(1), (d), and (j). Subdivision (d) applies when a “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,^[4] 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

⁴ Penal Code section 11165.1, subdivisions (b)(3) and (b)(4) define sexual assault to include, among other things, “[i]ntrusion by one person into the genitals . . . of another person” and “[t]he intentional touching of the genitals or intimate parts . . . of a child . . . for purposes of sexual arousal or gratification”

reasonably should have known that the child was in danger of sexual abuse.”⁵

Mother contends the court failed to weigh J.C.’s sexual abuse allegations against her recantations because it did not expressly find that the recantations were not credible. Although the court made an express finding that nobody “manipulated” J.C. to accuse Omar of touching her, Mother is concerned there is no similar finding that J.C. did not invent the allegations on her own.

Easily deduced from the juvenile court’s finding that J.C.’s allegations of sexual abuse were “true” is the logically necessary converse, namely, that the court disbelieved her subsequent recantations and all proffered explanations for why she had purportedly lied. There is no support in the case law for Mother’s argument that the juvenile court was required to enumerate all of J.C.’s statements that it did not believe. To the contrary, “[w]e must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence” (*In re Gary F.* (2014) 226 Cal.App.4th 1076, 1080) and we proceed on the understanding (absent persuasive indications

⁵ Subdivision (b)(1) applies when a 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” Subdivision (j) applies when a “child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.”

to the contrary, of which there are none) that the juvenile court considered all the evidence before it. (Evid. Code, § 664 [“It is presumed that official duty has been regularly performed”]; see also *Gee v. Greyhound Lines, Inc.* (2016) 6 Cal.App.5th 477, 492 [“we defer to the trial court’s implied finding of credibility”]; *Tin Tin Corp. v. Pacific Rim Park, LLC* (2009) 170 Cal.App.4th 1220, 1226 [giving deference to “court’s implicit finding” that witness was credible].)

Further, even if Mother were right on the law, she is still wrong on the facts: the record does establish the court was aware of and considered the possibility that J.C. independently fabricated the sexual assault allegations. The juvenile court stated on the record that it had reviewed the transcript of J.C.’s forensic interview during which she claimed the allegations came “[f]rom [her] head,” but the court chose to believe the allegations of abuse instead.

3. *Substantial evidence supports the juvenile court’s decision to believe J.C.’s sexual abuse allegations*

Mother argues J.C.’s allegations do not amount to substantial evidence because Omar had no opportunity to abuse J.C., she used terminology not expected from a child of her age, she had motive to fabricate, the allegations were not spontaneous or repeated, and her “sad and confused” mental state made her unreliable.⁶ Each of these proffered reasons is unconvincing under the governing substantial evidence standard.

⁶ Other than the opportunity to abuse argument, Mother’s analysis is based on factors relevant to assessing whether the hearsay statements of a child witness in a sexual abuse case are

Although Mother believes Omar had no opportunity to sexually abuse J.C. given the close quarters in which the family lived, J.C. told her paternal grandmother that Omar touched her at least one time when Mother was away and others were asleep. That scenario is not impossible or inherently improbable. (See *People v. Jones* (2013) 57 Cal.4th 899, 963 [“[U]nless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction”].) As support for her argument, however, Mother cites *In re Sheila B.* (1993) 19 Cal.App.4th 187 (*Sheila B.*), a case where the Court of Appeal affirmed the dismissal of a dependency petition based on recanted sexual abuse allegations because, among other reasons, the alleged perpetrator lacked opportunity to abuse the child. (*Id.* at p. 200.) But *Sheila B.* is different from this case in a key respect: there the juvenile court opted *not* to believe the allegations of abuse and the Court of Appeal decided substantial evidence supported *that* determination. (*Ibid.* [affirming dismissal of the petition where there was no “indisputable evidence of abuse”].) We confront the opposite scenario—a juvenile court that credited J.C.’s allegations—and the substantial evidence standard that compelled affirmance in *Sheila B.* likewise compels affirmance of the juvenile court’s findings here.

As to Mother’s argument about J.C.’s use of the terms “inappropriately” and “private parts,” which she believes mirrors language the social worker used in their prior conversation, we

inherently reliable. (See *In re Lucero L.* (2000) 22 Cal.4th 1227, 1239.) Mother suggests that these factors are “helpful” for purposes of our analysis, but does not contend that J.C.’s out-of-court statements were improperly admitted.

are not persuaded that this terminology is necessarily beyond the parlance of a ten-year-old. Indeed, the record indicates that J.C. was consistent in her use of the terms “private part” and “middle part.” J.C. repeatedly used the term “private part” in her forensic interview more than a month after the telephone conversation with the social worker. When asked about her conversation with the social worker, J.C. told the nurse that “I told [the social worker] . . . [t]hat my mom’s boyfriend touched me and then—and then she told [*sic*] me where, and I said in my private part.” The nurse asked J.C. to define the term “private part” after she used it two more times, and J.C. indicated that “I don’t really—I don’t really use, like, a word. I just call it middle part.”⁷ There is no basis to conclude J.C.’s diction was evidence of mendacity.

Mother’s next assertion, that J.C. was motivated to lie about Omar touching her because she believed Mother was in danger and removing Omar from the home would cause the great grandmother and Father to return, is also unavailing for two related reasons. First, there is evidence upon which the juvenile court could reasonably conclude J.C.’s sexual assault allegations did not come from the great grandmother. There was no allegation of sexual abuse in what Mother believes was the great grandmother’s initial referral to the Department and J.C. denied Omar ever hit them or Mother (despite Mother’s claim that the great grandmother coached the girls to say this). Second, there is

⁷ Mother also argues, more generally, that “the idea of sexual abuse was . . . not new to [J.C.]” because both Mother and Father reported to the social worker that the great grandmother had told Mother that Father might rape the girls. However, Mother cites no portion of the record to establish J.C. was aware of the great grandmother’s comments about Father.

also evidence in the record that J.C. was motivated to falsely recant her allegations. In addition to Omar's threat, the girls' paternal grandmother reported that she observed C.C. pressuring J.C. to recant because Mother told them she would go to jail and the girls would never see her again. The evidence could reasonably cause the juvenile court to discount J.C.'s later disclosures of a motive to fabricate as themselves fabricated in response to pressure from Omar and Mother.

It is true, as Mother contends, that J.C.'s disclosures were not spontaneous in the sense that she did not allege sexual abuse until after the social worker first inquired. But "[t]he fact that a statement is made in response to questioning . . . does not ipso facto deprive the statement of spontaneity." (*People v. Stanphill* (2009) 170 Cal.App.4th 61, 75.) J.C. proactively disclosed the sexual abuse after the social worker concluded their interview and left the school. J.C. also repeated the same allegations to multiple parties other than the social worker, including her teacher, law enforcement, and her paternal grandmother. The claimed lack of spontaneity or repetition of which Mother complains is therefore no reason to discount the conclusion the juvenile court drew on the facts.

Finally, J.C.'s "sad and confused" mental state supports the credibility of her abuse allegations at least as much as it does her recantations. The fact that she told the social worker she might need therapy *before* disclosing the sexual abuse cannot be taken to indicate "remorse about lying" as Mother argues. The girls' teacher's statements that J.C.'s grades were in decline and that the girls were "sad, crying and were seen consoling each other" suggest J.C. was in some distress before the Department intervened. J.C.'s "frequent[]" and "emotional" requests to move

in with her paternal grandmother indicate that she was specifically troubled by some aspect of her home life. Moreover, the juvenile court could infer J.C.'s willingness—even after recanting—to entertain questions about Omar's abuse before again recanting and expressing concern about being kept from Mother likewise reflected the strain of having to falsely recant.

Substantial evidence supports the juvenile court's finding that the sexual abuse allegations were true.

B. Substantial Evidence Supports the Removal Order

“A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent's past conduct as well as present circumstances. [Citation.] [¶] Before the court issues a removal order, it must find the child's welfare requires removal because of a substantial danger, or risk of danger, to the child's physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. [Citations.] There must be clear and convincing evidence that removal is the only way to protect the child. [Citation.]” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.)

Although a juvenile court must find that removal of a child from his or her parent is supported by clear and convincing evidence, that standard “is for the edification and guidance of the trial court and [is] not a standard for appellate review.” (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880 (*Sheila S.*),

citing *Crail v. Blakely* (1973) 8 Cal.3d 744, 750.) We review a challenge to the disposition order for substantial evidence. (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 80.) “[O]n appeal from a judgment required to be based upon clear and convincing evidence, ‘the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.’ (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 365, p. 415.)” (*Sheila S.*, *supra*, at p. 881; accord, *In re F.S.* (2016) 243 Cal.App.4th 799, 811-812.)

Mother contends no substantial evidence supports the juvenile court’s determination that there were no reasonable means by which J.C. and C.C. could be protected without removing them from her custody. Mother emphasizes she never abused the girls, she claims she did not know about Omar abusing J.C., and she posits the juvenile court could have instead ordered Omar to leave the home. Even accepting each of these points for the sake of argument, Mother’s skepticism about J.C.’s allegations, the evidence of her effort to cause J.C. to recant, and Mother’s initial refusal to have Omar leave the home so the girls could remain living with her all suggest she is not equipped to recognize or respond to the conditions giving rise to dependency jurisdiction and would have difficulty complying with an order barring Omar from the home (particularly when there was also some evidence that Mother had already disobeyed the court’s order limiting her to monitored visits). The evidence of these deficiencies and difficulties, combined with the evidence of sexual abuse, is substantial evidence supporting the removal order.

DISPOSITION

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

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.*

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