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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re C.S., a Person Coming Under the  
Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

M.W.,

Defendant and Appellant.

A128810

(Contra Costa County  
Super. Ct. No. J1000016)

M.W. (Mother) appeals from the juvenile court’s jurisdictional and dispositional orders removing her ten-year-old daughter, C.S., from her care, awarding legal and physical custody of C.S. to C.S.’s father (Father), and dismissing the dependency. She contends: (1) there was no substantial evidence supporting the jurisdictional findings; (2) the juvenile court violated her rights to due process and equal protection or abused its discretion by ordering her to pay the costs of professionally supervised visitation; and (3) the juvenile court should not have dismissed the dependency. We reject the contentions and affirm the orders.

**FACTUAL AND PROCEDURAL BACKGROUND**

On January 6, 2010, the Contra Costa Children and Family Bureau (the Bureau) filed a dependency petition alleging Mother placed C.S. at risk of serious physical harm on December 31, 2009, when she “struck the child repeatedly with a metal broomstick handle,

followed by a bat, leaving multiple bruises about the child's arms, forearms, face, legs and outer thighs," and "burned the child's tongue with a burning incense stick." Father was listed in the petition as the presumed father. The juvenile court detained C.S., authorized the Bureau to release C.S. to Father temporarily, and found visitation between C.S. and Mother would be detrimental to C.S.

According to a January 6, 2010, detention/jurisdiction report, C.S. was in an emergency foster home. Police officers interviewed C.S. on January 1, 2010, and took photographs of her "various bruises, some classified as 'defensive bruises' on her arms, forearms and face." C.S. was consistent in stating that Mother hit her after she learned that C.S. took \$10 from Mother. A social worker contacted both parents on January 4, 2010. Mother said "she had nothing to state" and also refused to verify her address. Father said he and Mother were married from 2000 to 2005 and that he was initially awarded custody of C.S., with visitation rights to Mother. Mother often missed visits or returned C.S. to Father or another relative "unexpectedly." In December 2008, Mother picked C.S. up from school claiming it was her visitation weekend, filed a request for a change in custody, did not allow Father to see C.S., and did not give him her address. Father attempted to "change the order back" but gave up after he lost his job and "things [were] not going well."

Mother called the social worker on January 5, 2010. She said she did not hit C.S. and that her adult son may have hit her because he "is greatly bothered when [C.S.] gets into his things." Mother said "she originally had . . . custody, which [Father] changed on her, which she then changed back." When the social worker told Mother that Father was being considered for placement, Mother said she did not agree with the placement because there were prior referrals alleging mistreatment of C.S. by Father. The social worker provided Mother with the foster mother's contact information and instructed her not to discuss the case with C.S.

The social worker visited C.S. at her foster home on January 5, 2010. C.S. "st[ood] by her original statements of her mom hitting her with a broomstick on New Year's eve." She had some "minor marks," including one in between her eyes, a possible fading

handprint on her left cheek, and several marks on her arms and thighs. C.S. said that after her parents separated, she initially lived with Father and visited Mother every other weekend, staying with her for up to a week when there was a long school break. Mother “got custody of her” in December 2008 and did not allow her to see Father. C.S. was “very clear” she wanted to see Father and preferred to live with him. She said, “Because my mom is really ill [and] in the hospital a lot. I’d rather just be with my dad if she can’t take care of me.” The day after the social worker visited C.S., the foster mother called the social worker to report that she ended a phone call between Mother and C.S. because Mother tried to “get [C.S.] to tell the judge and [the social worker] that she was beaten by [three] boys, and that is where the marks came from.”

C.S.’s aunt (Mother’s sister) called the social worker to see if “her niece was okay.” The aunt said that Father is a good parent and that “[t]hings were going well” when C.S. was in his care, but that Mother “found a way around the prior order, taking [C.S.] and hiding [her] from [Father].” The aunt felt Mother was not trustworthy and would “attempt to manipulate” the social worker. The aunt also reported that her nephew (Mother’s son) said he saw Mother beat C.S. and “possibly even push[] her down some stairs.”

There were 17 prior child welfare referrals as to Mother dating from March 2001 through June 2006. 13 of the referrals dealt with “physical abuse, caretaker absence, and issues of general neglect” relating to Mother’s now adult children. Of the 13 referrals, two were “inconclusive,” seven were “evaluated out,” and four were “substantiated” for physical abuse and caretaker absence. A case was opened and services were offered but Mother refused to accept the children back into her home and apparently did not reunify with them. There were four other referrals from March 2006 to June 2006 that related to C.S. Three of the referrals dealt with issues of physical abuse “wrapped around a custody dispute” and were “evaluated out.” The other referral, which alleged general neglect and physical abuse, was “inconclusive.” Father stated during the investigation of that referral that he spanked C.S.

At a jurisdictional hearing held on February 3 and 8, 2010, the social worker testified she met with C.S. on January 5, 2010, at the foster home, after receiving a call

from the foster mother that C.S. told the foster mother that “what happened wasn’t true. So the child was backtracking on her statement.” C.S. told the social worker that Mother hit her with a metal broomstick and slapped her with an open hand on December 31, 2009, after C.S. took some money from Mother’s purse and gave it to someone to buy some food for her. The social worker observed that C.S. had a mark on her eye, an impression of what could be a handprint on her cheek, and various marks on her forearm and thighs. All of the marks looked “fresh” and the marks on her face looked like they were “recently healing.” C.S. confirmed the marks were “from the night of December 31st.” C.S. “was very clear that she had not said to the foster [mother] that it did not happen.” The social worker testified that no one from the Bureau took C.S. to see a doctor and that the marks did not require stitches.

The foster mother testified she monitored phone calls between Mother and C.S. while C.S. was in her care. She terminated one of the calls because Mother asked C.S. questions about Father, which she was not supposed to do. She terminated another phone call because Mother told C.S. that C.S. “had to help” Mother, who was in “a lot of trouble.” During that call, Mother told C.S. to “lie to the social worker . . . that the police officer threatened her and made her say that she got beat by her” and that C.S. should “lie and say that three boys beat her up and put scars on her.” The foster mother further testified that “a couple of days” after C.S. was placed with her, and after receiving the phone call from Mother asking her to lie, C.S. told the foster mother that Mother did not “whoop her” and that she “only said that so she could go live with [Father].” When the foster mother and the social worker followed up with C.S. as to whether she lied about Mother hitting her, C.S. said she did not lie. C.S. said she loved both of her parents but wanted to live with Father. The foster mother further testified that when C.S. first came to live with her, she did not see any marks on her but that she did not check for marks anywhere except on C.S.’s back. She checked C.S.’s back for marks because when it was time for a bath, C.S. said “she wanted her scars to heal[,] that the water would burn her back.” The foster mother saw a mark under C.S.’s eye but C.S. said it was a birthmark. Later, C.S. told the social worker that it was a scar.

C.S. testified she was living with Father. She had been living with him for about a month. On December 31, 2009, when Mother picked her up from her grandmother's house, she said C.S. was "in trouble" and that Mother was "thinking about taking her to juvenile hall." Mother said this because C.S. had taken \$20, but C.S. felt she had permission to take the money. As soon as they got home, Mother starting hitting C.S. in the stomach, face, arms and legs with a metal broomstick and a plastic bat and put burning incense on her tongue. Mother hit C.S. with the broomstick more than 20 times and also hit C.S.'s cheek with her hands. C.S. had a blister on her tongue that lasted about a week. A police officer took photographs of her tongue, arms, legs and face. Later, Mother told C.S. to lie about what happened that day. C.S. further testified that Mother hit her with a metal broomstick "[a]lmost every day" and would "get mad" when she said she wanted to live with Father. C.S. did not tell anyone other than her grandmother that Mother hit her, and no one protected her. She testified she wanted to live with Father because the doctor said Mother "can't have me because she's too sick and she had to stay in the hospital." She also preferred to live with Father because Mother disciplined her differently than Father did. C.S. testified she was not afraid at Father's house.

Police officer Bee Xiong testified that on January 1, 2010, he went to C.S.'s grandmother's apartment in response to a call from Father requesting a welfare check on C.S. When he arrived at the grandmother's house, the grandmother said C.S. "deserved what she got because she stole some money from her mother's purse." C.S. said Mother hit her with two broomstick handles and a bat. Xiong noticed "superficial cuts on her face and her face appeared swollen." There was a circular white burn mark on her tongue and multiple scars or injuries on her arm. The swelling and bruising appeared to be "no more than a day old." C.S. told Xiong that her palm had been burnt but he did not see any indications of a burn mark on her palm. C.S. also complained of pain in her back. The photographs Xiong took of injuries to C.S.'s face, tongue, arms and thigh were admitted into evidence. Later, Xiong spoke to Mother, who said C.S. was injured when she "got into a fight with the neighborhood kids."

Mother testified she picked C.S. up from her maternal grandmother's apartment at about 10:45 p.m. on December 31, 2009. Mother did not notice any injuries on C.S. when she picked her up "because it was late at night" and Mother was tired and not feeling well. They went to Denny's to pick up some food, then arrived home at about 12:20 a.m. When they got home, she "prepared [C.S.] something to eat." Mother denied burning C.S.'s tongue with incense, striking her, using a broom on her, or whipping her. She testified that when C.S. went upstairs to take a shower, she slipped and missed a stair. Mother asked C.S. if she was okay, and C.S. responded she was. Mother then "fixed her something to eat" and C.S. "nibbled on it." Later, Mother began to feel ill. She went to the hospital with C.S., then sent C.S. to her grandmother's apartment. While at the hospital with C.S., Mother noticed there were injuries on C.S.'s face that were the same injuries Mother sustained when she was bitten by spiders. Mother further testified that when she spoke to C.S. on the phone while C.S. was in foster care, she asked C.S. why she told the police that Mother hit her. C.S. started to cry and said she had lied. Mother told C.S. she needed to tell the truth, which was that boys "jump[ed] on her." Mother testified that during the day on December 31, 2009, C.S. had called to tell her "she got jumped" by some boys.

The juvenile court found C.S. was "more than credible, that her injuries are consistent with her story, and that the mother was lying on the witness stand." The court noted Mother gave three different stories as to how C.S. was injured—that she fell down the stairs, that other children "beat her up," and that the marks were caused by spiders. The court also stated Mother's testimony that she went to Denny's, a restaurant, then went home and "fixed her something to eat" "ma[de] no sense." The court stated it had looked at all of the photographs and that they showed "very deep cuts, scratches, bruises, looks like a black eye on her left eye, . . . the burning on the tongue, which is a very bizarre way to discipline someone and sounds kind of [torturous] to me. And then you've got scratch marks and kind of deep, deep scratch marks where you can see . . . at her ankle, . . . a big gouge out of her skin, and you can see the red blood in the center." The court sustained the petition. Noting that prior orders did not allow visitation between Mother and C.S., the court stated it was not going to change those orders at that time. Mother's counsel stated,

“It’s my understanding the child wants to see her mother.” The court responded that children and domestic violence victims love their abusers but that the court has to “look at the better interests of children.” The court stated, “I don’t think [visitation would be] good right now, but I will be willing to change that after we see a dispo[sition] report.” Minor’s counsel added that C.S. was willing to visit Mother but was “very clear” the visits “must be supervised.”

After several continuances of the disposition hearing, a disposition report was filed June 9, 2010. According to the report, C.S. was still living with Father. The social worker had applied for victim of crime and mental health services for C.S. C.S. was adjusting to sharing Father’s attention with his fiancé and her two daughters. She and Father had a loving relationship and it was apparent Father was nurturing and attentive to C.S.’s needs. C.S. was happy to be back in Father’s care and said she loves him “a lot and [doesn’t] want to live with anyone else.” She said she felt safe in Father’s home and that she was sent to her room or had privileges taken away when she was disobedient. She was “slowly adjusting to school.” Father believed C.S. had not attended school regularly while she was with Mother. Her third grade teacher reported her reading level was at the first grade or beginning of second grade level. She had missed 14 days of school and was late 13 times since she was enrolled on January 20, 2010. Father was willing to work with the school to improve C.S.’s attendance. C.S. had not visited with Mother and did not express a desire to do so when asked by the social worker. She appeared distressed and frightened when her mother was mentioned. Father expressed concern about Mother’s “potential for taking [C.S.] and not returning her,” and asked the Bureau for assistance in obtaining sole legal and physical custody of C.S. in order to protect C.S. Mother had not shown any interest in receiving services and had not responded to the social worker’s letters or phone calls regarding visitation or any other issues relating to C.S. The Bureau recommended that C.S. be returned to Father’s custody and that the dependency be dismissed.

Mother did not appear at the disposition hearing of June 9, 2010. The juvenile court awarded sole legal and physical custody of C.S. to Father and dismissed the dependency.

## DISCUSSION

### *Substantial evidence*

Mother contends there was no substantial evidence supporting the jurisdictional finding that C.S. was at “current risk of harm.” We disagree.

When a party challenges an order on the grounds of insufficient evidence, the appellate court must review the entire record for substantial evidence to support the juvenile court’s findings. (*In re A.M.* (2010) 187 Cal.App.4th 1380, 1387.) The appellate court must view the record in the light most favorable to the juvenile court’s order, drawing every reasonable inference and resolving all conflicts in favor of the prevailing party. (*In re Misako R.* (1992) 2 Cal.App.4th 538, 545.)

C.S. testified that Mother hit her numerous times with a metal broomstick and a plastic bat, slapped her in the face and burned her tongue with a burning incense stick. C.S. sustained injuries to her face, arms and legs and had a blister on her tongue that lasted about a week. C.S. testified Mother hit her “[a]lmost every day” and that no one, including her grandmother, protected her. The juvenile court observed that the photographs taken by police the day after the incident showed serious injuries, including “very deep cuts, scratches, bruises, [a possible black eye], . . . the burning on the tongue, . . . scratch marks and kind of deep, deep scratch marks where you can see . . . at her ankle, . . . a big gouge out of her skin, and you can see the red blood in the center.” A social worker who visited C.S. five days after the incident still saw “fresh” marks on C.S.’s eye, forearm and thighs, and an impression of what could be a handprint on her cheek. There was ample evidence supporting the juvenile court’s finding that C.S. was at substantial risk of serious harm.

Mother asserts the injuries were not sufficiently serious because they did not require medical treatment. She cites no authority for the position that a child must suffer injuries requiring medical treatment before a finding can be made that the child is at risk of harm. Mother also asserts there was no credible evidence that she struck C.S. She points out, as one example, that C.S. “recanted” by telling the foster mother that she had lied about Mother hitting her so that she could live with Father. C.S., however, was consistent in stating to numerous individuals including the social worker and police, as well as testifying



in court, that Mother hit her after C.S. took some money from her. Although there was evidence that she changed her story once, she did so only after she received a phone call from Mother asking her to lie about the incident because Mother was in “a lot of trouble.” We will not disturb the juvenile court’s finding that C.S. was “more than credible, that her injuries are consistent with her story, and that the mother was lying on the witness stand.” (See *In re A.M.*, *supra*, 187 Cal.App.4th at p. 1387 [credibility determinations are for the juvenile court].)

Mother also asserts “[t]his was an isolated incident, not likely to recur.” However, there were 17 prior child welfare referrals as to Mother dating from March 2001 through June 2006, many of them involving physical abuse of Mother’s now adult children and four of them involving C.S. Throughout the proceedings, Mother expressed no interest in utilizing any services and continued to deny she abused her daughter. C.S. testified that Mother hit her “[a]lmost every day” and there was no one to protect her. In fact, the evidence showed that C.S.’s grandmother, who C.S. had told about the abuse, was supportive of physical discipline, as she believed C.S. “deserved what she got because she stole some money from her mother’s purse.” Besides removing C.S. from Mother’s home, there were no intervening factors to protect her from being beaten by Mother again.

#### ***Supervised visitation costs***

Mother contends the juvenile court violated her rights to due process and equal protection or abused its discretion by ordering her to pay the costs of professionally supervised visitation. We disagree.

At the dispositional hearing, the juvenile court ordered that visits between Mother and C.S. be supervised by a “professional agency in the county in which [F]ather resides.” Mother’s counsel stated, “Just for the record, I have no information about my client’s income source, but I do know that she qualifies for the Legal Aide lawyer, as does the father, but he is employed. So I request that the Court not make the mother be solely responsible for the supervisor fee.” Father’s counsel stated, “I would object. My experience [is that] all these professional agencies . . . make their fees according to the person’s income.” The court stated, “if mom is not even going to be paying dad child

support—and I am thinking that’s probably the case, that she is not paying him child support—it should stay this way. If she is, then perhaps she could seek some re[dress] about that. [¶] Going on the information I know right now, I would doubt that she is. And it seems fair, since the father would be bearing the financial burden of raising the child all by himself.” Mother’s counsel objected that it was in C.S.’s best interest to have contact with Mother. Minor’s counsel stated, “Like [Father’s counsel] said, most of these agencies operate on a sliding fee scale. If mother has no income, mother might not have to pay the fee.” The court ordered that Mother’s visits be “supervised by a professional agency arranged for by mother at her sole expense.”

Mother’s constitutional arguments are based on her claim that “[f]orcing an indigent parent to bear the cost of supervised visits impermissibly interfere[s] with the parent-child relationship” and treats people differently based on their financial status. As evidence she was indigent, she points to the fact that she was represented by court-appointed counsel below.<sup>1</sup> Although, as noted, Mother’s counsel stated that both parents had qualified for appointed counsel, she also stated she had “no information about [Mother’s] income source.” She presented no evidence of the costs of supervision and did not disagree with Father’s counsel statement that “all professional agencies . . . make their fees according to the person’s income,” or with minor’s counsel’s statement that Mother might not be required to pay anything if she had no income. On the record before us, Mother has not shown she lacks the means to pay for supervised visitation or that the juvenile court’s order requiring her to do so effectively terminates her relationship with her daughter.

We also do not agree that the juvenile court abused its discretion in ordering Mother to pay the costs of supervised visitation. To the extent she asserts “the government”

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<sup>1</sup> Mother filed a request for this court to take judicial of her application for appointment of counsel *on appeal*, which purportedly shows she is indigent. We deny the request. We review the correctness of a judgment as of the time of its rendition upon a record of matters that were before the trial court for its consideration. (*In re James V.* (1979) 90 Cal.App.3d 300, 304.) It is undisputed the application was not presented to the juvenile court. Moreover, there is nothing indicating Mother’s financial status did not change between the date of the disposition hearing and the date of her application for appointment of counsel on appeal.

should have paid the costs, we note that none of the cases or statutes to which she cites supports her position that a juvenile court terminating its jurisdiction has the authority to order a public entity to pay for the costs of such supervision. Accordingly, either Mother or Father had to bear that cost. The juvenile court found it was appropriate to order Mother to do so because Father would be bearing the cost of raising C.S. We see no abuse of discretion in that choice, especially where its effect is to require the principal beneficiary of the visitation order to bear the cost of the supervision necessitated by her own actions.

### ***Dismissal***

Mother contends the juvenile court should not have dismissed the dependency because there was a need for continuing supervision. We disagree.

In deciding whether termination of jurisdiction and dismissal of the dependency is appropriate, the juvenile court considers where there is still a need for supervision. (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1498, disapproved on other grounds by *In re Chantal S.* (1996) 13 Cal.4th 196, 204.) If the juvenile court fails to consider the need for continuing supervision, its order will nevertheless be upheld if a review of the entire record demonstrates that continued supervision is not necessary. (*Id.* at p. 1500; *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1452.) The standard of review is whether there is sufficient evidence to support the juvenile court's determination that there is no need for continued supervision. (*In re Sarah M.*, *supra*, 233 Cal.App.3d at p. 1498.)

By the time the juvenile court dismissed the petition, C.S. had been living with Father for approximately six months without any safety issues or major concerns. C.S. and Father had a loving relationship that had withstood a three year period of separation, and C.S. was happy living with him again. She said she loved him “a lot and [did not] want to live with anyone else.” She felt safe in Father's home and was sent to her room or had privileges taken away when she was disobedient. Although she was behind in school and had attendance issues, Father was willing to work with the school to improve her attendance.

*In re Austin P.* (2004) 118 Cal.App.4th 1124, on which Mother primarily relies, is distinguishable. There, the Court of Appeal affirmed the juvenile court's determination that there was a need for continued supervision, where the father took custody of the child after he was removed from his mother's home. (*Id.* at p. 1128.) There was substantial evidence supporting the juvenile court's determination that continued supervision was necessary because the father knew his son was being abused but had taken no steps to protect him, the father had had sporadic contact with the child for ten years and the child was more bonded to his mother, the child sometimes cried and said he wanted to be with his mother, and the mother was making good progress with her reunification plan. In contrast, here, Father and C.S. maintained a bond through their years of separation and C.S. was happy living with him again. C.S. appeared distressed and frightened with her mother was mentioned. Mother had not shown any interest in receiving services and had not responded to the social worker's letters or phone calls regarding visitation or any other issues relating to C.S. The order terminating jurisdiction and dismissing the dependency was proper.

#### **DISPOSITION**

The jurisdictional and dispositional orders are affirmed.

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McGuiness, P.J.

We concur:

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Pollak, J.

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Siggins, J.