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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re K.A. et al., Persons Coming Under the Juvenile Court Law.	B227997
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.R. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. CK82253)

APPEAL from orders of the Superior Court of Los Angeles County, Zeke Zeidler, Judge. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant L.R.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant J.R.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

L.R. and J.R. appeal from jurisdictional and dispositional orders of the juvenile court. L.R. challenges the sufficiency of the evidence to support jurisdictional findings as to her daughter K.A. and her son I.R. J.R. challenges the sufficiency of the evidence to support the jurisdictional finding as to his son I.R. and contends that the dispositional order as to the child also must be reversed. He also challenges orders made on rehearing by the juvenile court after the Department of Children and Family Services (Department) sought rehearing of the dispositional order made by the referee. He argues that the rehearing was not held within the timeframe mandated by the California Rules of Court and therefore must be reversed.

We find no basis for reversal and affirm.

FACTUAL AND PROCEDURAL SUMMARY

L.R. is the mother of K.A., born in 1994, and I.R., born in 2005. J.R. is the father of I.R. K.A.'s father is not a party to these appeals. L.R. met J.R. in 2000 and moved in with him less than a year later. K.A. did not move into J.R.'s house at that time, remaining with maternal relatives. Mother and J.R. married in 2002. K.A. sometimes lived with them, at other times she lived with a maternal aunt. At some point, K.A. told her aunt that J.R. had pinched her chest, leaving a mark. She remained with the aunt and visited mother and J.R. on weekends. In 2004, mother insisted that K.A. move back to live with her and J.R. K.A. told the maternal aunt that previously J.R. had poured rubbing alcohol on her vagina and penetrated her vagina digitally. She also complained about vaginal bleeding. An abuse referral was generated and a medical examination conducted, but the results were inconclusive and the case was closed by Department. K.A. continued to live with her aunt.

K.A. returned to the home of mother and J.R. in 2007. About a year later, J.R. began raping her and continued to force her to have sexual intercourse for three years, a total of 10 to 15 occasions. K.A. returned to the home of her aunt in 2010 after the last occurrence and revealed the abuse to her aunt. She said she did not disclose the sexual

abuse earlier because she was ashamed and afraid her mother would not believe her. She feared I.R. would be taken from the home, as J.R. had threatened.

In May 2010, Department received a child abuse hotline referral alleging K.A. had been sexually abused by J.R. and that I.R. was at risk based on the abuse of his half-sibling. The social worker informed mother that K.A. reported being sexually abused by J.R. for several years and did not want to return home. Mother responded that the family had been through this type of allegation before and that the 2004 medical examination of K.A. was inconclusive. Mother said she was not saying that the new abuse had not happened, but said the maternal relatives did not like J.R. and would "come up with anything" to make him look bad. Mother believed that K.A. was resisting the strict rules she and J.R. imposed and wanted the freedom of living with the maternal aunt. Mother said there had been an incident the previous week when K.A. got into trouble and was scolded by her and J.R. about school. K.A. left the parental home and went to the maternal aunt's, refusing to go back. K.A. told the social worker that J.R. began sexually abusing her when she was 7 years old, had hit her with a meat pounder, and had pinched her. He had been having sex with her since she started high school. The attacks occurred in her room after mother left for work at 2:00 a.m.

J.R. denied molesting K.A., said he and mother were strict with her, and that the maternal relatives had never liked him. He believed that the maternal relatives were urging K.A. to fabricate the sexual abuse claim to break up his marriage.

I.R., 4 years old, was physically examined and there were no marks or bruises on his body. He denied being touched on his "private" parts by anyone or having suffered physical discipline.

Department filed a petition pursuant to Welfare and Institutions Code[1] section 300, subdivisions (a) (physical abuse of both children causing serious physical harm), (b) (failure to protect K.A., which placed both minors at risk and physical abuse),

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[1] Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

(d) (sexual abuse of K.A. which put both children at risk), and (j) (abuse of sibling). K.A. was detained and placed with her maternal aunt, while I.R. was permitted to remain with mother. J.R. was granted monitored visits with I.R. and mother was allowed to act as monitor. J.R. was to have no contact with K.A. Mother was allowed monitored visits but was ordered not to discuss the case outside of a court-approved, therapeutic setting.

K.A. was evaluated by a mental health assessor who found the child suffered from depression, nightmares, and inconsolable crying as a result of the sexual abuse. Immediate treatment was recommended. The mental health assessor's report noted that mother was "'unsupportive'" and had failed to protect the child. A physical examination of K.A. was abnormal, revealing a thinning of the hymen, likely the result of penetration. The examination indicated K.A. had had sex, and she denied sexual activity with anyone other than J.R.

A contested adjudication and disposition hearing was conducted over three days. K.A. testified in chambers on motion of her counsel under section 350.2, subdivisions (b)(1) and (2). Her emotional testimony detailed extensive sexual abuse by J.R. J.R. testified, and denied abusing K.A. He believed the maternal relatives had coached K.A. to fabricate the abuse allegations. Mother denied knowledge of the sexual abuse.

Counsel for both children urged the juvenile court to sustain the petition. Counsel for mother and J.R. argued that only the testimony of K.A. supported the allegations of abuse and that there was no evidence I.R. had been abused or privy to any abuse. Mother's counsel argued there was no evidence that mother knew or should have known of the abuse because K.A. had not disclosed the recent abuse and the 2004 report was not substantiated.

The juvenile court referee who presided over the hearing took the matter under submission, invited supplemental argument, and ordered and reviewed the transcript of testimony by K.A. at the hearing. It ruled: "The bottom line is the court believes [K.A.]. Her testimony was more than compelling. In fact, it wasn't even close. I believe what she said about the sexual abuse that you have perpetrated against her. . . . It's by a preponderance of the evidence. In fact, I don't even think it was close. What she said

rang true and was more than persuasive and consistent with the facts." The referee also found that mother knew or should have known about the sexual abuse and failed to take appropriate action to protect K.A. The court modified the petition and found K.A. is a minor described by section 300, subdivision (b) and (d). As to I.R., the court dismissed the allegation that J.R. had physically abused K.A. and I.R (§ 300, subd. (a)). The court found that I.R. is not a child as described by section 300, subdivisions (b) or (d). The court found he was a child as described by section 300, subdivision (j) as amended.

The disposition order was that both minors be declared dependents of the court, K.A. under section 300, subdivisions (b) and (d), and I.R. under section 300, subdivision (j) only. K.A. was removed from mother's custody, but I.R. was released to the custody of both mother and J.R. This permitted J.R. to return home. Mother and J.R. were ordered to participate in parent education and individual counseling to address case issues, including sexual abuse awareness. K.A. and mother were ordered to participate in conjoint counseling when deemed appropriate by K.A.'s therapist. Monitored visits were ordered for mother with K.A., and J.R. was ordered to have no contact with K.A. The court stayed the home of parent order as to I.R.

Department filed an application for rehearing of the disposition orders. It argued there was insufficient evidence to support the order placing I.R. at home with parents, which allowed J.R. to return to the family home, and the order for mother and J.R. to have individual counseling to address sexual abuse awareness. Department took the position that these orders placed I.R. at substantial risk of serious physical harm, sexual abuse, or both by J.R. Instead, Department sought a disposition placing I.R. at home with mother, monitored visits with J.R., and completion by mother and J.R. of a sexual abuse program for offenders and non-offenders respectively. Department argued rehearing was required because I.R. was approaching the age at which J.R. began sexually abusing K.A., J.R. had engaged in aberrant sexual predation and rape of K.A. beginning when she was under 10 years of age, and J.R. acted with disregard of the possibility that I.R. could have observed the sexual abuse of K.A. These circumstances, Department argued, placed I.R. at substantial risk of sexual abuse, citing *In re Andy G.* (2010) 183 Cal.App.4th 1405.

Department asserted that mother was unable to protect I.R. in light of her refusal to believe J.R. had sexually abused K.A. In light of the court's findings that J.R. sexually abused K.A., the appropriate action was to order that he be enrolled in and complete a sexual abuse program for offenders. It also contended mother should be ordered to complete a sexual abuse program for non-offenders.

The petition for rehearing was granted by operation of law and a contested rehearing was set for October 29, 2010. The court considered all the evidence from the adjudication and disposition hearing and the jurisdiction, detention and police reports. J.R. testified about his parenting and sexual abuse counseling sessions. He denied sexually abusing K.A. and said that he had told the therapist no sexual abuse occurred. The parties stipulated that K.A. had changed her position regarding risk to I.R. and if called to testify, would say that she believed he would be at risk if allowed to remain in the home with J.R.

Counsel for I.R. asked the court to order the child released to the care of his mother but detained from J.R. She argued that mother had missed numerous red flags that K.A. was being sexually abused, and, she took the position that I.R. was at risk of similar harm. The court modified the previous disposition orders and findings. It found by clear and convincing evidence that there would be a substantial danger to I.R.'s physical and mental health if he were placed in the care of J.R. Care, custody and control of I.R. was taken from J.R. and he was placed in home of mother under the supervision of Department. Mother's disposition case plan was modified to require completion of a sex abuse program for non-offenders. J.R.'s case plan was modified to require individual counseling to address case issues, a Department approved therapist, and participation in a sex abuse program for perpetrators. J.R. was ordered to have monitored visitation in a neutral setting with the proviso that mother was not to serve as monitor.

Mother and J.R. appeal from the jurisdiction and disposition orders. J.R. also appeals from the rehearing order.

DISCUSSION

I

Mother and father challenge the sufficiency of the evidence supporting the jurisdiction order as to K.A. and I.R.

"'The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.' (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) 'Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300' at the jurisdiction hearing. (§ 355, subd. (a).) . . . (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.)" (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.) The substantial evidence standard of review has been applied to both jurisdictional and dispositional findings. (See *In re J.K.*, *supra*, 174 Cal.App.4th at p. 1433; *In re J.N.*, *supra*, 181 Cal.App.4th at p. 1022; *Mariah T.* (2008) 159 Cal.App.4th 428, 441 [appellate court reviews challenge to sufficiency of the evidence supporting finding on disposition order in the light most favorable to the order to determine whether it contains sufficient evidence from which a reasonable trier of fact could make the necessary findings by clear and convincing evidence].) Under this standard, we review the entire record, resolve all conflicts in favor of the respondents, and draw all reasonable inferences in support of the judgment. (*Ibid.*) "We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts." (*In re Maria R.* (2010) 185 Cal.App.4th 48, 57 (*Maria R.*).) In cases in which multiple grounds for dependency jurisdiction are alleged, we may affirm the juvenile court's jurisdictional finding if any one of the alleged statutory bases for jurisdiction is supported by substantial evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) The court in *Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 852 explained that the substantial evidence standard of review is applied when a parent challenges a disposition order on the basis of insufficient evidence, as J.R. and mother do here.

Other courts have reviewed disposition orders for abuse of discretion. (See *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474 [review of disposition order denying parent

reunification services]; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006 [review of disposition order requiring father to submit to drug or alcohol testing].)

As we discuss, we find no basis for reversal of either the jurisdiction or disposition orders under either standard.

II

The referee found that mother knew or should have reasonably known that J.R. was sexually abusing K.A. and that she failed to take action to protect the child. The sexual abuse and failure to protect placed K.A. at substantial risk of serious physical harm. Mother challenges the sufficiency of the evidence that she knew, or reasonably should have known, that J.R. had been sexually abusing K.A. She argues the 2004 dependency case did not put her on notice of possible abuse by J.R. because the results of that investigation were inconclusive. Mother points to the evidence that K.A. never told her of the later abuse, never said she did not want to live with J.R., and never expressed concern about being with him. Mother relies on the evidence that she was never home when J.R. raped K.A. Mother never saw that K.A. was afraid of J.R. or uncomfortable around him. Mother argues that K.A. fabricated the abuse claims because she preferred to live with her aunt who was less strict.

There is some question as to whether J.R. challenges the sufficiency of the evidence to support the jurisdictional finding as to K.A. His opening brief, which recounts discrepancies in the child's testimony about the sexual abuse, does not expressly challenge that finding. Instead it appears to focus on the sufficiency of this evidence to support jurisdiction over I.R. Department took the position in its brief that J.R. was not challenging the evidence as to K.A. In his reply brief, father disagrees, contending that his opening discussion of the inconsistencies in K.A.'s testimony was meant as a challenge to the jurisdictional finding as to her. As we discuss, we affirm the jurisdictional findings as to K.A.

Mother acknowledges that there is a substantial basis for jurisdiction over K.A. even if we reverse the finding that she failed to protect the child from J.R.'s abuse. This

is because the acts of J.R. are sufficient to bring the child within section 300. In *In re Alysha S.* (1996) 51 Cal.App.4th 393, the court held: "[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent. [Citation.]" (*Id*. at p. 397.) Nonetheless, mother urges that we review the court's finding regarding her failure to protect because she could be adversely impacted in future dependency proceedings. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547 [dependency case is not moot where purported error is of such magnitude as to infect the outcome of subsequent proceedings].) Under these circumstances, we agree with mother that it is appropriate to review the jurisdictional finding that she failed to protect K.A.

K.A. gave emotional testimony about J.R.'s sexual abuse which was credited by the juvenile court. Her testimony was supported by the physical examination and the psychological assessment. This substantial evidence supports the finding that J.R. sexually abused K.A and warrants jurisdiction over the child pursuant to section 300, subdivision (d). In essence, J.R. asks us to reweigh the evidence and determine that K.A.'s testimony was not credible. The juvenile court credited K.A.'s testimony. We may not reweigh the evidence or evaluate the credibility of witnesses on appeal. (*Maria R.*, *supra*, 185 Cal.App.4th at p. 57.)

Mother argues she did not know nor should she reasonably have known that K.A. was being sexually abused. She testified that she had no conversation with K.A. about the 2004 sexual abuse allegations. She never told K.A. that she had warned J.R. not to touch her. Mother did not recall K.A. telling her she did not want J.R. to touch her any more. Mother admitted that K.A. lived out of her home for two to three years after the 2004 allegations were made, but said it was because K.A. thought mother and J.R. were too strict and because maternal aunt wanted the child with her. She did not arrange counseling for K.A. after the 2004 allegations because she thought it unnecessary based on her belief that nothing had happened. Mother testified: "She never told me anything.

We never talked about it. It seems like nothing was going on at home." According to mother, K.A. was happy to return home. After the 2004 case was closed, the child visited every weekend but did not express concern about being near J.R. and got along with him. Mother testified that she did nothing to protect K.A. after the 2004 allegations and allowed J.R. to watch K.A. when she worked at night.

Mother said she first learned of the present allegations from her sister (the maternal aunt who was caring for K.A.). K.A. never told mother that J.R. was touching her and never said she was afraid to be with him while mother was at work. Mother never noticed anything odd about the behavior of either K.A. or J.R. Between K.A.'s return home and May 2010, no one told mother that K.A. had reported abuse, sexual abuse, or inappropriate behavior by J.R. I.R., who was 5 years old at the time of the hearing, had never told his mother he had seen K.A. in the bedroom with J.R., or of any other odd behavior between them. According to mother, the rules were much stricter for K.A. at her house than at the aunt's home.

Although visitation had been ordered twice a week between mother and K.A., mother had seen her only twice during the dependency case, one visit was a week before the hearing. She attributed this lack of visitation to a failure of the Department to call her back to arrange visitation. Mother did not believe the allegations that J.R. had physically abused K.A. and had seen no marks caused by such alleged abuse. When asked whether she thought K.A.'s claims of sexual abuse by J.R. could be true, mother said "anything could be possible," but that she did not believe the child. She wanted J.R. to be able to return home.

This is substantial evidence that mother chose not to protect her daughter from possible sexual abuse by J.R. after the 2004 case was closed. Mother took no steps to protect the child and continued to leave her alone with J.R. overnight while she worked. In the face of the physical and psychological evidence supporting K.A.'s testimony about J.R.'s abuse, mother continued to explain away the situation by claiming the child preferred the home of her aunt merely because it was less strict. Mother chose to protect J.R. rather than her daughter. The evidence establishes that either mother knew or should

have known of the resumed sexual abuse. (See *Maria R., supra,* 185 Cal.App.4th at pp. 60-61.) We find no basis for reversal of the jurisdictional findings as to K.A.

III

Mother and J.R. challenge the sufficiency of the evidence supporting the court's ruling that I.R. is a child coming within the meaning of section 300, subdivision (j) and only that subdivision. All other allegations as to I.R. were dismissed. Section 300, subdivision (j) provides for dependency jurisdiction where "The 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*. *The court shall consider the circumstances surrounding the abuse or neglect of the sibling*, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child." (Italics added.)

The court's finding as to I.R. was "[I.R.'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 ([I.R.]) will be abused or neglected, as defined in those subdivisions. This finding is made, by a preponderance of the evidence, in view of the totality of the evidence, whether a specific count was sustained or not, and whether [I.R.] was included in such a sustained count. [See e.g. In re Maria R. (C.A.4th 5/27/10)]"

When asked by counsel for mother to explain its order as to I.R., the court said: "I think that [I.R.] is at a substantial risk of danger of being abused or neglected in one of the subdivisions enumerated in [§ 300, subd.] (j). And I've taken into consideration all the factors that (j) puts in, in making that determination. And I made that determination by a preponderance of the evidence." The court explained that it had dismissed the allegation of physical abuse of K.A. (§ 300, subd. (a)) in furtherance of justice because it thought that the allegations which it sustained under section 300 subdivisions (b) and (d) were "enough" and therefore it did not need to rule on the allegation under subdivision (a). The court acknowledged that it had sustained the petition as to I.R. under section

300, subdivision (j) without also sustaining an allegation as to him under the other counts, citing *Maria R., supra*, 185 Cal.App.4th 48.

Two issues are raised regarding this finding. The first is whether evidence that a sibling was sexually abused is a sufficient basis for a finding that a child in the same household is at risk of sexual abuse within the meaning of section 300, subdivision (j). The second issue is whether the court's finding under section 300, subdivision (j) must be reversed because no basis for jurisdiction over I.R. was found under any other provision of section 300.

A. Risk of Sexual Abuse

J.R. relies on discrepancies in K.A.'s testimony as to whether I.R. was exposed to the sexual abuse of his sister by J.R. in challenging the sufficiency of the evidence that I.R. comes within section 300, subdivision (j). J.R. also argues there is no indication that I.R. is at risk of sexual abuse in the absence of any evidence that J.R. had an interest in sexually abusing male children.

As we understand the court's reasoning, jurisdiction over I.R. was not based on a finding that he had witnessed, or could have witnessed, the abuse of K.A. by J.R. Rather, it was based on J.R.'s aberrant sexual behavior and mother's failure to protect her children from his behavior.

Courts are split on the showing necessary to establish a risk to siblings based on their father's sexual abuse of other children or stepchildren within the meaning of section 300, subdivision (d). In *Maria R., supra*, 185 Cal.App.4th at p. 63, there was substantial evidence that two of the three daughters named in the petition had been sexually abused by their father for many years. In addition, there was evidence that for years father had sexually abused at least one of his daughters from a prior marriage. On appeal, mother argued that this evidence did not establish that her son, an 8-year-old boy, was at risk of being sexually abused as defined in subdivision (d). She suggested that under subdivision (j) jurisdiction could be asserted over her son only under the same subdivision under which his sisters had been adjudicated dependents. The agency took the position that the son was at risk of sexual abuse because he was approaching the age

at which the sexual abuse of his sisters began, and because the father's behavior with the daughters was sexually aberrant.

The *Maria R.* court held that a father's sexual abuse of his daughters alone is not sufficient to establish that his son is at substantial risk of sexual abuse within the meaning of subdivision (j). (*Maria R., supra,* 185 Cal.App.4th at p. 68.) In doing so, it acknowledged that other courts had concluded that sexual abuse of a daughter is sufficient to bring a son within the meaning of section 300, subdivisions (d) and (j). (*In re Andy G.* (2010) 183 Cal.App.4th 1405; *In re P.A.* (2006) 144 Cal.App.4th 1339; *In re Karen R.* (2001) 95 Cal.App.4th 84.)

We need not determine which line of authority is the better reasoned because here, as we next discuss, the court relied on section 300, subdivision (j) as a basis for jurisdiction over I.R rather than on section 300, subdivision (d).

B. Sufficiency of Section 300, Subdivision (j) Findings

The juvenile court amended the allegations of the petition under section 300, subdivisions (b) and (d) to dismiss those charges as to I.R., sustaining them only as to K.A.[2] Since the only finding as to I.R. was made under section 300, subdivision (j), mother concludes there is no identified risk that would justify bringing I.R. within the jurisdiction of the court. She contends that a finding of current risk under one of the other subdivisions of section 300 is required as a basis for jurisdiction under section 300, subdivision (j), citing *In re Carlos T.* (2009) 174 Cal.App.4th 795, 803. That case held that subdivision (j) requires that a child be both the sibling of an abused child and at risk of being abused. (*Ibid.*) Mother construes the court's jurisdictional finding as to I.R. to

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[2] Section 300, subdivision (b) provides for dependency jurisdiction where a child is found to have suffered or is at substantial risk of suffering serious physical harm or illness as the result of the failure or inability of a parent to adequately protect the child. Subdivision (d) of section 300 provides for dependency jurisdiction where the child has been sexually abused, or is at substantial risk that he or she will be sexually abused, by a parent, guardian, or member of the household. It also applies if the parent has failed to protect the child from sexual abuse when the parent knew or reasonably should have known that the child was in danger of sexual abuse.

mean that the court found that J.R.'s sexual abuse of K.A. placed only K.A., and not I.R., at risk of sexual abuse or any other harm enumerated in section 300. Therefore she contends that there was no basis for jurisdiction under section 300, subdivision (j).

The Court of Appeal addressed the basis for jurisdiction under section 300, subdivision (j) in *Maria R., supra,* 185 Cal.App.4th 48, a case relied upon by all parties to this appeal. Based on the plain language of section 300, the court concluded that "subdivision (j) permits the adjudication of a child whose sibling has been determined to have been sexually abused under subdivision (d), if the court finds that there is a substantial risk that the child will be abused or neglected, as defined in subdivisions (a), (b), (d), (e), *or* (i) of section 300. Thus, the basis for taking jurisdiction of [the sibling], under subdivision (j) is not limited to a risk of sexual abuse, as that term is defined by subdivision (d) and Penal Code section 11165.1." (*Maria R., supra*, 185 Cal.App.4th at pp. 62-63.) The court explained that the broad language of subdivision (j) "clearly indicates the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, *within the meaning of any of the subdivisions enumerated in subdivision (j)*." (*Id*. at p. 64, italics added.) It concluded that subdivision (j) gives the court "greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance." (*Ibid.*)

The *Maria R.* court also held that the evidence of the father's sexual abuse of the daughters constituted prima facie evidence that the son is a child as described in section 300, subdivision (a), (b), (c), or (d) and that he is at substantial risk of neglect under section 355.1, subdivision (d)(3). (185 Cal.App.4th at p. 69.) The mother's failure to protect her daughters and failure to cooperate during the dependency proceeding was found to have increased the dysfunction in the family and thus the consequential harm or risk of harm to the children. (*Ibid.*) The court reasoned: "We conclude that where, as here, a child's sibling has been sexually abused by a parent, subdivision (j) allows the court to assume jurisdiction of the child if, after considering the totality of the child's circumstances, the court finds that there is a substantial risk to the child in the family

home, under *any* subdivision enumerated in subdivision (j), taking into consideration the totality of the child's and sibling's circumstances." (*Id.* at p. 65).

In *Maria R.*, the section 300 petition alleged only that the son was at risk of sexual abuse, and did not allege any other ground for dependency jurisdiction based on other harm he might have suffered or was at risk of suffering. The Court of Appeal remanded the case for an assessment of any harm the son might have suffered or was at risk of suffering under section 300. (185 Cal.App.4th at pp. 69-70.)

Here, the court modified the allegation under section 300, subdivision (j) and expressly found that in light of the abuse and neglect of K.A. "as defined in subdivision (A), (B), (D), (E), or (I)," "there is a substantial risk that the child [I.R.] may be abused or neglected, as defined in those subdivisions." As modified, the petition states that this finding, by preponderance of the evidence, is made in view of the totality of the evidence, "whether a specific count was sustained or not, and whether [I.R.] was included in such a sustained count." The juvenile court cited *Maria R., supra*, 185 Cal.App.4th 48 in the modified petition, clearly intending to make the finding that was not made in that case. This finding distinguishes our case from *Maria R.* It was the absence of this finding in *Maria R.* that necessitated remand for additional findings. The question before us is whether the court's finding was sufficient, or whether jurisdiction over a child under section 300, subdivision (j) requires a finding sustaining an allegation under another subdivision of that statute as well.

Mother cites *In re Janet T.* (2001) 93 Cal.App.4th 377 (*Janet T.*) in which the Court of Appeal concluded that allegations made under section 300, subdivision (b) were not sufficient to support jurisdiction. (*Id.* at p. 391.) It went on: "It necessarily follows the sustained allegation of sibling abuse alleged under section 300, subdivision (j) must fail as well. Its validity in this case was dependent on a sustained finding of a substantial risk of serious physical harm or illness under subdivision (b)." (*Id.* at pp. 391-392, footnote omitted.) In that case, the juvenile court sustained the amended section 300

petition under subdivisions (b), (g)[3], and (j), which alleged that mother had failed to protect her children because she did not ensure the two older children attended school, which subjected the two younger siblings to the risk of serious physical and emotional harm, and that mother had demonstrated numerous mental and emotional problems. (*Id.* at p. 383.)

In *Janet T.*, there is no indication the court made the sort of express finding made here—that a sibling was at risk of harm under specified subdivisions of section 300—in sustaining the allegation under section 300, subdivision (j). The court in that case concluded that since there was insufficient evidence that any of the children came within section 300, subdivision (b), the allegation that the siblings came within section 300, subdivision (j) also had to be reversed. Here we have found substantial evidence to support the allegations under sections 300, subdivisions (b) and (d) as to K.A. The subdivision (j) allegation as to I.R. was based on those sustained findings.

We turn to the language of section 300, subdivision (j) to determine whether a separate finding that I.R. came within another provision of section 300 was required. The standard rules of statutory interpretation have been applied to the dependency law. (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743) "'"A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. [Citations.] In construing a statute, our first task is to look to the language of the statute itself. [Citation.] When the language is clear and there is no uncertainty as to the legislative intent, we look no further and simply enforce the statute according to its terms. [Citations.] [¶] Additionally, however, we must consider the [statutory language] in the context of the entire statute [citation] and the statutory scheme of which it is a part. 'We are required to give effect to statutes "according to the usual, ordinary import of the language employed in framing them." [Citations.]' [Citations.] '"If possible, significance should be given to every word, phrase, sentence

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[3] A finding that a sibling comes within section 300, subdivision (g) (child has been left without provision for support) is not one of the enumerated grounds for jurisdiction under section 300, subdivision (j).

and part of an act in pursuance of the legislative purpose." [Citation.] . . . "When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear." [Citations.] Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. [Citations.]"'' [Citation.]" (*Ibid.*)

Section 300 subdivision (j) states that jurisdiction may be taken of a child whose sibling has been abused or neglected as defined in section 300, subdivisions (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." The Legislature expressly directed the juvenile courts to consider "the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and *any other factors the court considers probative in determining whether there is a substantial risk to the child*." (§ 300, subd. (j), italics added.) The statute does not require a finding that a child comes within subdivisions (a), (b), (d), (e), or (i) as a *separate* basis for jurisdiction under section 300 as a condition to imposition of jurisdiction under section 300, subdivision (j). Instead, it directs the juvenile court to determine whether the child is at substantial risk of abuse or neglect as *defined* in those subdivisions.

In *In re Joshua J.* (1995) 39 Cal.App.4th 984, the juvenile court declared Joshua a dependent of the court under section 300, subdivision (j). The petition alleged that Joshua came within that statute because his half-brother had been physically and sexually abused by Joshua's father. No other basis of jurisdiction was alleged as to Joshua. The court identified two elements to jurisdiction under section 300, subdivision (j), the minor's sibling has been abused or neglected, and there is a substantial risk that the minor will be abused or neglected. (*Id*. at p. 992, fn. 6.) It concluded that the language in section 300, subdivision (j) directing the court to consider various factors was "directed at the second prong or element [of the subdivision], namely, whether there is a substantial risk that the minor . . . will be abused or neglected; it does not involve the first prong or element that the sibling . . . was abused or neglected." (*Id*. at p. 994.) Based on the

extreme nature of the injuries inflicted on the child's sibling, and the father's mental condition, the court concluded there was an abundance of evidence to establish jurisdiction under section 300, subdivision (j) including the requisite risk of abuse. (*Id*. at p. 995.)

Here the juvenile court credited K.A.'s testimony regarding the sexual attacks by J.R. which had occurred on a number of occasions over several years. Mother was asked at the contested hearing whether her belief that K.A. was fabricating the abuse claims had changed after hearing the child testify so emotionally. Mother said she still did not believe the child. Substantial evidence establishes that J.R. sexually abused I.R.'s half-sister beginning when she was 7 years old, that I.R. was 5 years old and thus nearing the age when the sexual abuse of K.A. began, that J.R. continued to deny the sexual abuse, and that mother had done nothing to protect K.A. even after the 2004 dependency matter was filed. This evidence of mother's failure to protect K.A. from severe abuse supports the finding that I.R. was in substantial risk of similar harm, as defined in section 300. As we have discussed, under section 300, subdivision (j), the juvenile court is directed to consider the totality of the circumstances and any other factors probative in determining whether there is a substantial risk to the child whose sibling has been abused. The juvenile court acted within its authority in finding that I.R. is a child within the meaning of section 300, subdivision (j) in these circumstances, even though it dismissed the allegations regarding the child under section 300 subdivisions (b) and (d).

As we have discussed, we find substantial evidence to support the jurisdictional finding as to I.R. in father's aberrant behavior toward K.A. and in mother's failure to protect and support her daughter. "In juvenile dependency litigation, due process focuses on the right to notice and the right to be heard." (*In re Matthew P.* (1999) 71 Cal.App.4th 841, 851.) Here the focus of the case from the outset was the impact of J.R.'s sexual abuse of K.A. and mother's failure to protect her children. Father was given notice and an opportunity to be heard on the allegations and his counsel participated fully in the contested hearings. We find no due process violation.

IV

The juvenile court referee made dispositional orders on August 20, 2010. Department's application for rehearing of the disposition order by a juvenile court judge was filed on August 26, 2010 and granted by operation of law on September 20, 2010 under California Rules of Court, rule 5.542(c) (rule 5.542). Under rule 5.542 (e), a rehearing of matters other than a detention hearing heard before a referee "must be held within 10 court days after the rehearing is granted." In an ex parte proceeding, the juvenile court set the rehearing for October 22, 2010. On September 21, 2010, at a hearing attended by counsel for the parties and minors, the juvenile court continued the rehearing to October 29, 2010.

J.R.'s challenge to the disposition orders made on rehearing on October 29 is that they were untimely under rule 5.542(e), because, by the time the orders were made on rehearing, the disposition orders had been final for over a month. He cites no authority for this proposition. To the contrary, California Rules of Court, rule 5.540 provides: "An order of a referee becomes final 10 calendar days after service of a copy of the order and findings under rule 5.538, if an application for rehearing has *not* been made within that time . . ." (Italics added.) Here, Department filed an application for rehearing within the 10-day period so the order did not become final under this rule. J.R. also seeks reversal of the orders on rehearing because they were not made within the 10-day time period of rule 5.542(e). He does not raise any other challenge to the modified disposition orders issued on October 29, 2010.

Department concedes the violation of rule 5.542(e), but argues that the orders were not invalid, citing *In re C.T.* (2002) 100 Cal.App.4th 101 (*C.T.*). In that case, the Court of Appeal addressed the juvenile court's violation of a provision of the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3400 et seq. (the Act)). "When a California court is asked to make a child custody determination under the Act and is informed that a child custody determination has previously been made by a sister state court having jurisdiction, the California court '*shall immediately communicate with the other court*.' (§ 3424, subd. (d).)" (*Id*. at p. 110.) It was undisputed that the California

court did not contact the sister state court until almost a month after learning of that court's custody order. (*Ibid.*) As a practical matter, the *C.T.* court interpreted this provision to require the California court to contact the sister state court as soon as possible after learning of proceedings in the sister state court. (*Ibid.*)

The *C.T.* court found the error was not prejudicial. It reasoned: "Although the statute states the court *shall* immediately contact the other court, it does not provide any penalty for noncompliance. When a statute does not provide any consequence for noncompliance, the language should be considered directory rather than mandatory. [Citations.]." (*C.T., supra*, 100 Cal.App.4th at p. 111.) The court explained that "[t]he directory and mandatory designations do not refer to whether a particular statutory requirement is permissive or obligatory, *but simply denote whether the failure to comply with a particular procedural step will invalidate the government action to which the procedural requirement relates*." (*Ibid*, italics added.) Based on these principles, the court in *C.T.* concluded that the error in not contacting the sister state promptly did not warrant reversal because there was no showing of prejudice. (*Ibid*.)

C.T., supra, 100 Cal.App.4th 101 was followed in *In re Miguel E.* (2004) 120 Cal.App.4th 521, 542. In that case, the juvenile court erred by not bifurcating a proceeding to determine whether minors should be removed from the custody of the grandmother under section 387 as required by former rule 1431 (now see rule 5.565). That rule provided that the hearing on a subsequent or supplemental petition under section 187 was to be bifurcated to first determine the truth of the allegations of the supplemental petition and then address removal under the procedures for disposition hearings. (*In re Miguel E., supra*, 120 Cal.App.4th at p. 542; Cal. Rules of Court, former rule 1431(d).) That court quoted the passage of *C.T., supra*, 100 Cal.App.4th at p. 111 quoted above and concluded that the rule provided no penalty if the court failed to comply with it, making the language directory. (*In re Miguel E., supra*, 120 Cal.App.4th at p. 542.)

Like the rules at issue in *C.T., supra*, 100 Cal.App.4th 101 and in *In re Miguel E., supra*, 120 Cal.App.4th 521, the rule establishing the deadline for rehearing (rule

5.542(e)) had no provision setting out the consequences for a violation of that deadline. J.R. has failed to demonstrate that he was prejudiced by the delay. His counsel fully participated in the rehearing and J.R. testified. We find no basis for reversal in the violation of the deadline under rule 5.542(e).

J.R. also argues that the dispositional findings and orders must be reversed because we must reverse the jurisdictional findings and orders. We have found substantial evidence supporting the jurisdictional findings and orders as to both minors and therefore reject J.R.'s argument on this basis. J.R. also contends we must review the order removing I.R. for clear and convincing evidence. The referee applied that standard in determining that a substantial danger exists if K.A. were to be returned to the home of mother and J.R. While the referee initially placed I.R. at home of parents, on rehearing, the juvenile court found by clear and convincing evidence that a substantial danger to I.R.'s physical or mental health exists in the care of father.

J.R. incorrectly states the standard of review on appeal from a disposition order. "'[O]n appeal from a judgment required to be based upon clear and convincing evidence, "the clear and convincing evidence 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." [Citation.]' (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 881." (*In re E.B.* (2010) 184 Cal.App.4th 568, 578.)

In light of J.R.'s extended sexual abuse of K.A. and mother's failure to protect the child from J.R., we are satisfied, under any standard, that the juvenile court did not err in entering a disposition that removed I.R. from the custody of his father.

DISPOSITION

The jurisdictional and dispositional orders of the juvenile court, as modified on October 29, 2010, are affirmed.

EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re K.A. et al., Persons Coming Under the Juvenile Court Law.	B227997
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.R. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. CK82253) ORDER CERTIFYING OPINION FOR PARTIAL PUBLICATION [NO CHANGE IN JUDGMENT]

THE COURT:*

The opinion in the above-entitled matter, filed on November 8, 2011, was not certified for publication in the Official Reports. For good cause it now appears that the initial two paragraphs of the opinion and section IV of the Discussion should be certified for partial publication in the Official Reports and, with the following modification, it is so ordered:

On page 2, the following paragraph shall be inserted following the first paragraph of the opinion: "In the published portion of this opinion we review the last of these contentions, and conclude that there is no basis for reversal because J.R. failed to

demonstrate that he was prejudiced by the delay. In the unpublished portion of the opinion we find no error with respect to the issues raised. We shall affirm the order."

There is no change in judgment.

*EPSTEIN, P. J. MANELLA, J. SUZUKAWA, J.