

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re B.T., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

E.T.,

Defendant and Appellant.

E079851

(Super.Ct.No. RIJ2200175)

OPINION

APPEAL from the Superior Court of Riverside County. Cheryl C. Murphy, Judge.

Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Minh C. Tran, County Counsel, Teresa K.B. Beecham and Larisa R-McKenna, Deputy County Counsel for Plaintiff and Respondent.

E.T. (father) appeals the juvenile court’s jurisdictional findings (and, by extension, the disposition order) regarding his two-year-old daughter, B. At a contested jurisdiction and disposition hearing, the juvenile court found that father had repeatedly raped and sexually molested his step-daughter, Emily. Based on that finding and a finding that mother had failed to believe Emily or protect her from the abuse, the court took jurisdiction over B. under Welfare and Institutions Code section 300, subdivisions (b) (neglect) and (j) (abuse of a sibling) but allowed the child to remain in her parents’ care so long as they participated in family maintenance services.¹

On appeal, father argues the jurisdiction findings as to B. are unsupported by the record because Emily was no longer living in the home and thus there was no evidence of a *current* risk of harm to B.T. We conclude the argument lacks merit and affirm.

I

FACTS

A. *Referral and Detention*

Mother and father have one child together, B., who is the subject of this dependency. Mother has three other children with Edwin D.—Emily (whom they adopted and who was 14 at the time of these events), Jennie (who was seven), and Elliot (six). These three children were living with mother, father, and B. in early January 2022 when Riverside County Department of Public Social Services (the department) received a referral alleging that father had been raping Emily.

¹ Unlabeled statutory citations refer to the Welfare and Institutions Code.

On January 25, 2002, a department social worker and a Riverside County Sheriff's Department deputy attempted to interview Emily at school but she refused to answer any questions related to the sexual abuse allegations. The social worker and deputy went to Emily's home to interview the rest of the family. Elliot and Jennie denied any incidents of abuse or neglect and said they felt safe at home. Mother became upset when they asked her about the sexual abuse allegations. She yelled at Emily, "Who the fuck is going to jail now Emily? Tell her, Emily!"

More comfortable discussing the allegations at home, Emily disclosed that father (her stepfather) had been raping her for the past six months. Mother yelled, "You're a fucking liar!" and refused to let the deputy take Emily to the sheriff's station for a forensic interview. She eventually agreed to cooperate with the investigation, however, after the deputy warned her she could be arrested for impeding it.

During the forensic interview, Emily told the two investigators that father had molested her on several occasions during the spring and summer of 2021. The first time, he entered her bedroom as she was trying to sleep, got on top of her, and put his tongue in her mouth, then the incidents got worse. Before going into the details, Emily requested mother leave the room because she would not believe what she was about to say. She then proceeded to describe incidents where father forced her to perform oral sex on him and to have sexual intercourse with him. She estimated he had raped her four or five times and forced her to orally copulate him three times. After each time, father would

apologize to her and warn her that he would deny it if she ever told anyone. She did not know whether father had similarly harmed any of her siblings.

When the investigators interviewed mother, she said Emily had put the family “through hell” and she wasn’t telling the truth about father. She said there was no way Emily’s story could be true because her father (the maternal grandfather) had been living in the home during the timeframe Emily claimed the abuse occurred. She said Emily had become depressed in fifth grade and started cutting herself. Emily had been hospitalized four times, including a three month stay, due to excessive cutting and had last cut herself about a year earlier, in January 2021. According to mother, Emily’s “lying” and “attitude” didn’t change even after she (mother) made sure she was getting mental health services. Mother reiterated her view that Emily was lying and remarked that she could go live with her adoptive father, Edwin.

Emily’s boyfriend told the investigators that in December 2021, Emily told him that father had raped her on several occasions earlier that year.

The investigators attempted to interview father who was represented by an attorney. Following his attorney’s advice, he refused to answer most of the questions and to take a polygraph test. He did, at one point, admit he had been alone with Emily in her room, but he refused to answer any follow up questions. Father’s attorney advised him to comply with the department’s safety plan and leave the home until the investigation was resolved.

The social worker interviewed Emily's father, Edwin, who was skeptical of Emily's story but said he would do whatever was necessary to keep her safe.

Mother told the social worker that her attorney had advised her to seek temporary custody of B., her only child with father. She said she would follow the advice but planned to drop the request as soon as the investigation was over.

On February 18, the social worker spoke with Emily, who was living with Edwin. Emily said she was back on her psychotropic medication, participating in therapy, and doing well. The social worker also interviewed mother at her home and learned that father was back living in the home and mother had not petitioned for temporary custody of B. That same day, the social worker received the police report on Emily's allegations and learned the sheriff's department had forwarded the case to the Riverside County District Attorney's Office for prosecution.

On March 1, 2022, the department filed a dependency petition on behalf of Emily and her siblings. The petition alleged that Emily came within section 300 subdivisions (b) (neglect) and (d) (sexual abuse) and that B., Jennie, and Elliot came within section 300 subdivisions (b) (neglect) and (j) (abuse of a sibling). The petition alleged father had been sexually molesting Emily, mother failed to believe Emily or protect her from the abuse, and mother had unresolved mental health issues.

At the detention hearing on the following day, the juvenile court detained Emily from her mother and allowed her to continue living with Edwin. At the continued detention hearing on March 3, the court heard testimony from the social worker regarding

the risk father posed to B. and Emily's other two siblings. The court allowed the three siblings to remain in the custody of mother and father. The court declined to order father to vacate the home; however, it ordered that father could not be with any of the children unsupervised and that any violation of that order could result in the three children being detained.

B. *Jurisdiction and Disposition*

In its jurisdiction and disposition report, the department noted that the family had a child welfare history. The department had investigated the family for sexual abuse in March 2012 based on allegations made by Emily, who was then four. Emily reported being touched sexually by various individuals, including father and another child at her childcare center, but the investigation was ultimately closed as inconclusive. The department had investigated the family for neglect and verbal abuse on two other occasions, when Emily, who was then 12, was hospitalized for cutting herself. The social worker observed mother to be highly critical and verbally abusive of Emily, but the investigations were ultimately closed as unfounded.

Emily was doing well in her father Edwin's care, and Jennie, Elliot, and B. appeared to be doing well in the care of mother and father. The department recommended the court find the petition allegations true, take jurisdiction over all four children, and order reunification services for mother as to Emily and family maintenance services to mother and father as to the other children.

On April 6, 2022, counsel for Jennie, Elliot, and B. renewed their request for the court to order father to vacate the home. The court denied the request but advised that its order that father not be left alone with the children was still in effect.

The contested jurisdiction hearing for all four children took place on August 8 and 9, 2022. The social worker testified that the department was recommending the court find the allegation father sexually abused Emily true. She also said she did not believe it was safe for father to have unsupervised contact with Jennie.

Emily testified about the incidents of sexual molestation. She explained that she hadn't reported the abuse earlier because she didn't want to leave Jennie without a father. She said everything she had said during her forensic interview was true. She said that when father first started molesting her, her grandfather was also living in the home but he didn't know about the abuse because he was always in his room with the door closed.

Mother testified that Emily had never disclosed any concerns to her about father before this dependency. She said Emily called him "dad" and never seemed afraid of him. She denied that she had called Emily a "liar" in front of the deputy and social worker. She refused to answer whether she believed Emily's allegations of sexual abuse, but after the court ordered her to answer she admitted she did not believe her daughter. She also admitted she would allow father to have unsupervised contact with her three other children absent a court order.

After hearing the testimony, the court found Emily to be credible and found the sexual abuse allegation against father and the failure to protect allegations against mother true. The court declared Emily a dependent under section 300, subdivisions (b) and (d) and declared the other three children (including B.) dependents under section 300, subdivisions (b) and (j).

The contested disposition hearing took place on August 15, 2022. Counsel for Jennie, Elliot, and B. argued the court should remove the children from father's custody and provide family reunification services. Counsel argued it was inappropriate for father to live in the home given the court's finding that he had sexually molested Emily, and she requested an order that he vacate the home. DPSS also requested that father be removed from the home. Father's counsel objected to the requests that he be removed from the home.

The court ordered family reunification services for mother as to Emily and family maintenance services for both mother and father as to Jennie, Elliot, and B. In addition to the services mother and father were already engaging in, the court ordered father to engage in sexual abuse counseling. Finally, the court discontinued the order that he not be allowed to have unsupervised contact with the children, explaining that while the sexual abuse finding was serious, it believed it was safe for father to be around the three younger children because "Emily [was] out of the home," the court would be "monitoring" the family and father would be "getting more appropriate services."

Father filed a timely appeal.

II

ANALYSIS

Father argues the jurisdiction findings as to B. are not supported by substantial evidence and, as a result, we must reverse those findings as well as the disposition order requiring him to engage in family maintenance services. We disagree.

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. ‘In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.’” (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*))

Where, as here, “a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*I.J.*, *supra*, 56 Cal.4th at pp. 773-774.) Thus, although the court exercised jurisdiction over B. under two statutory bases—subdivision (b) and subdivision (j) of section 300—we will focus on the latter, abuse of a sibling under section 300, subdivision (j).

Under that provision, a court may exercise dependency jurisdiction over a child if the department demonstrates by a preponderance of the evidence that “[t]he 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.” (§ 300, subd. (j), italics added.)

Father argues that although the court found he sexually abused B.’s sibling, there was no evidence B. was at a substantial risk of abuse or neglect. To support this argument, father claims the court found there were no safety issues or safety risks as to B. But father misstates the record. What the court actually found was there should be no safety risks to the three younger children *so long as* the parents participate in the required services—which, for father, included engaging in specialized counseling designed for perpetrators of sexual abuse.

As our high court explained in *I.J.*, the abuse and risk analysis under section 300, subdivision (j) exists on a sliding scale. “[T]he more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300.” (*I.J.*, *supra*, 56 Cal.4th at p. 778.) Thus, “[i]f the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary to protect the child from *even a relatively low probability of that abuse.*” (*Ibid.*, italics added.)

The facts of *I.J.* are similar to ours. There, the father had sexually molested his daughter over a prolonged period of time but there was no indication he would similarly abuse his two younger sons. Despite the low risk of abuse or neglect, our Supreme Court concluded the juvenile court properly exercised jurisdiction over the sons, explaining, “when a father severely sexually abuses his own child, the court may assume jurisdiction over, and take steps to protect, the child’s siblings. (*I.J.*, *supra*, 56 Cal.4th at p. 780.) “It is of course impossible to say what any particular sexual predator—and here a predator who has raped his own daughter—is likely to do in the future in any particular instance. But in our view that very uncertainty makes it virtually incumbent upon the juvenile court to take jurisdiction over the siblings.” (*Id.* at p. 779.) We conclude this reasoning applies with equal force to a person who rapes their stepdaughter.

III

DISPOSITION

We affirm the jurisdiction findings and disposition orders as to B.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

SLOUGH
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.