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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ASIA L., a Person Coming Under the Juvenile Court Law. _____ DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff, Respondent and Appellant, v. ASIA,L., Defendant and Appellant.	B146125 (Los Angeles County Super. Ct. No. CK37850)

Appeal from an order of the Superior Court of Los Angeles County. D. Zeke Zeidler, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed and remanded with directions.

Lloyd W. Pellman, County Counsel and Doraine F. Meyer, Senior Deputy County Counsel; Janette Freeman Cochran, under appointment by the Court of Appeal, for Plaintiff, Respondent and Appellant.

Karen L. Christensen, under appointment by the Court of Appeal, for Defendant and Appellant.

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In this dependency case, the minor child Asia L. ("Asia"), and the Los Angeles County Department of Children and Family Services ("DCFS"), challenge certain jurisdictional findings made by a juvenile court referee, and the granting of reunification services to Asia's mother. The referee found that the severe water-immersion burns that Asia suffered while in the care of her mother, Tanesha U. ("Mother"), were not inflicted on Asia nonaccidentally by Mother. This finding was made despite the following facts: (1) Mother's account of how Asia came to be burned changed several times during the course of the pre-adjudication proceedings, (2) there is evidence from an expert on burns that Asia had been intentionally immersed in hot water by Mother and suffered second degree burns from this horrific incident, and (3) Mother pled no contest to a felony charge under Penal Code section 273a, subdivision (a) which prohibits willfully inflicting on, or causing, or permitting a child to suffer unjustifiable physical pain or mental suffering under circumstances or conditions likely to produce great bodily harm or death. On the basis of his finding that Asia's burns were not intentionally inflicted, the referee stated he would not sustain the allegations, in the DCFS dependency petition, that Asia was a child coming within subdivision (a) of Welfare and Institutions Code section 300 (addressing serious physical harm inflicted nonaccidentally), and subdivision (i) of that section (addressing acts of cruelty).[1] [2] [3] [4]

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[1] Unless otherwise indicated, all references herein to statutes are to the Welfare and Institutions Code.

[2] DCFS filed a cross-appeal from the referee's findings and orders, and has joined in Asia's appellate brief.

[3] The order appealed from is a disposition order. Such orders constitute the judgment of the case and are made appealable by section 395. (*In re Shelia B.* (1993) 19 Cal.App.4th 187, 196.) A dependency court's jurisdictional findings are subject to review in an appeal from a disposition order. (*In re Megan B.* (1991) 235 Cal.App.3d 942, 950.)

[4] Section 300 states in relevant part: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

"(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, 'serious physical harm' does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

"(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, . . .

"(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. . . .

"(e) The child is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, 'severe physical abuse' means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; . . . or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; . . .

"(g) The . . . child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; . . .

The record shows the trial court either misapprehended the evidence relevant to the issue whether Asia's burns were inflicted nonaccidentally, or failed to consider a portion of such evidence, and such error is prejudicial to Asia. Ordinarily, we would remand this case with directions to the trial court to redetermine whether Asia is a child coming within subdivisions (a) and (i) of section 300 because of her burns. However, because the evidence is overwhelming, we can say as a matter of law that Asia sustained the burns in a nonaccidental manner and she is a child coming within subdivisions (a) and (i) of section 300 because of them.

Therefore, the disposition order will be reversed and the cause remanded to the trial court with directions to enter a new and different order sustaining section 300, subdivision (a) and (i) allegations regarding Asia's burns, and make any necessary additional findings and orders consistent with the views expressed herein.

"(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

"(j) 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."

BACKGROUND OF THE CASE

1. *Events Leading to DCFS Involvement*

Asia came to the attention of DCFS when she was taken to the hospital on May 17, 1999, and found to have, among other things, welts on her back and second degree burns on her feet which were inconsistent with Mother's explanation of how these injuries occurred. Mother's explanation for the burns was that they occurred when Asia was taking a shower by herself. The DCFS application for a dependency petition states that apart from the burns on Asia's feet, "there [were] no other water splotches on her body which [caused] the doctors and officers to believe that [Asia] may have not been in the shower. They state that the water would have burned her on the upper part of her body as well do [sic] to the shower head being above her." A police follow-up report, dated May 18, 1999, states Asia also had old healing scars on her arms, legs and face and these appeared to have been caused by an extension cord.

This police follow-up report states that when the investigating officers observed Asia at the hospital, she had "water immersion burns to both feet in the pattern of socks. Her feet were covered with large blisters and dying skin on the top and ankles, however, she had only a small blister on the bottom of her left foot and nowhere else on the bottms, [sic] which is indicitive [sic] of the feet being held down with force in hot water." The report states the head of the pediatrics unit at the hospital, a Dr. English, informed the officers that Asia's burns were second degree and were obviously water immersion burns.

The juvenile dependency petition filed by DCFS alleges that Asia's conditions were the result of Mother's unreasonable conduct, and such conduct placed Asia and her siblings at risk of severe damage to their physical and emotional health and safety. Asia was three years old at the time, having been born in July 1995. Her sister Dajahki was five years old, sister Jerminthia was one year old, and sister Monique was 2 months old. All four of the children were taken into protective custody. Asia remained in the hospital for treatment and was discharged on May 19, 1999. (Mother, who was 21 years old when this case was initiated, gave birth to a fifth child, Oshay, in August 2000. Oshay was also taken into protective custody by DCFS.)

2. *Statements Made by Mother and Father Regarding Asia's Burns*

All of the following was admitted into evidence. According to the DCFS application for dependency petition, a children's services worker interviewed Mother on May 17, 1999, the day Asia was admitted to the hospital for the burns on her feet. Mother stated that Asia had "boo-bood on herself" and so Mother ran water for a shower for Asia. Mother left Asia in the shower and went to tend to her baby. (Mother explained that she usually did not stay with three-year-old Asia during the child's showers.) Later, Mother heard Asia scream, so she went back to the bathroom. Mother stated she didn't know if Asia turned the hot water on harder or turned the cold water off altogether. Mother took the child out of the shower and while her feet looked all right at first, later they started to blister and so Mother took Asia to the hospital. Asia's father, Jerry Lockhart ("Father"), was not around at the time of the burning.

Mother told the police officers who came to the hospital to investigate the incident that when she discovered Asia had wet her pants, she ran warm water from the shower head into the tub and told Asia to take a shower. She left and when she heard Asia scream she returned to the bathroom and saw Asia jumping up and down. She didn't remove Asia immediately because she didn't know what the problem was, but when she discovered how hot the water was she took the child out. This occurred between 4 and 5 p.m. She waited until Asia's father came home from a party around 12:30 a.m. to call 911 because she didn't see any injuries and because she was afraid she would be forced, by paramedics, to go to the hospital and leave her other children home alone. Asked about the welts on Asia's back, Mother stated the child played aggressively, but she did not know what caused the welts.

According to the May 18, 1999 police follow-up report, on that day (May 18), the officers went to the family home and questioned Mother and Father. Mother told the officers that when she took Asia to the bathroom to clean her defecation on the day in question, she turned the faucet and the shower partially on and checked the temperature of the water. Asia took off her shirt and then got into the tub and removed her pants and placed them over the drain which made the tub fill up more quickly. Mother then left Asia, who was in the tub for 15 minutes before she screamed for Mother. When Mother went to the bathroom, Asia was lifting up her feet in the tub. Mother lifted Asia out of the tub and saw the skin on the child's feet was wrinkled. Asia asked to be put back into the tub but to have cold water. Mother filled the tub with cold water and bathed Asia.

Also on May 18, 1999, Mother and Father went with the investigating police officers to Parker Center to be interviewed. Mother told a polygraph officer (who did not actually give Mother a polygraph test but only interviewed her) that Asia had been on her nerves all day. Asia and one of her sisters had wet the bed the previous night. When Asia drank from her sister's cup, Mother whipped Asia's back with a belt. Later, Mother became enraged when Asia defecated in her pants after Mother had told Asia to "hold it" because there was no toilet paper in the home. Instead of giving Asia a whipping with the belt, Mother took Asia to the bathroom for bathing. She turned the hot water on but didn't check the temperature of the water like she usually does. She grabbed Asia and forced her into the tub. Asia squirmed and said "mommy" when placed in the water and held there by Mother. Mother answered "What!" Asia replied "nothing," and remained in the water. Mother said Asia responded "nothing" because Asia was probably afraid of getting another whipping. Mother closed the shower door and Asia remained in the tub while whimpering. When Mother finally came to check on Asia after she yelled "mommy" several times, Asia was sitting on the back ledge of the tub, shivering, and Mother observed the burns. Mother stated she took her time going to check on Asia because she was still angry with her. She stated she had been angry with Father all day because he always goes out with friends and leaves her home with the children.

After her interview by the polygraph officer, Mother made a written statement for the police, dated May 18, 1999. In the statement, she admitted to being angry on the day Asia was burned because Father had left her alone with the four children and she is "always in the house." Dajahki and Asia had wet their beds the night before. Asia's

drinking from her sister's cup added to Mother's anger. After that, Dajahki told Mother Asia had done something wrong in the kitchen, so Mother grabbed Asia and whipped her with a belt. Then Mother smelled "boo boo" and she realized Asia had defecated. Because she was angry, Mother did not check the temperature of the water when she turned it on and put Asia in the tub. Asia jerked, but Mother closed the shower door because she was still angry. Asia made a noise and cried a little but Mother told her to be quiet because Asia was "always crying." When Asia screamed, Mother took her time getting to the bathroom. She saw Asia shaking. She dressed Asia and Asia seemed all right. Father came home and he and Mother argued and then Father left to take one of the girls to a party. Mother then put cocoa butter on Asia's feet and they all took a nap. When Mother awoke, she checked Asia's feet and saw the skin had bubbled. Mother got more scared but just fed Asia dinner and put her to bed. Father came home and the burn was worse, so the parents called 911 and went to the hospital with Asia. In this written statement, Mother stated that the reason she lied "the first time" is because she was "scard [sic] of what was going to happen."

The DCFS interim report for the August 5, 1999 hearing contains statements from Mother and Father. Mother stated that on the day Asia was burned, one of the children reported that Asia had drank from the baby's cup, and Mother spanked Asia on the butt with a belt. Later, Mother smelled feces and discovered Asia had defecated. Mother turned on the bath water for Asia and told the child to take her clothes off and get into the tub and hurry with the bath. Mother was angry at this time and wasn't paying attention to the water. Nor did she pay attention when Asia "started stepping in the bath like she had

to pee." Mother went to the living room and heard Asia whining but Mother thought it was because Asia believed she was going to get spanked again. The shower doors were shut. Then when Mother was in the kitchen, she heard Asia crying "Mama, Mama," and Mother went to see why Asia was crying. Asia was at the back of the tub and Mother snatched her out by her arm. Asia's feet were pink, but not blistered. Mother told Asia she was going to put her back into the tub, and Asia asked for cold water, so Mother "put in cold and washed her up." Hours later, Mother saw Asia's feet "puffing up." Then Father came home, left again to take one child to a party, and then returned and saw Asia's feet and called for an ambulance. Mother would have called, but didn't know with whom to leave her other children. Mother denied hitting the children on the stomach with the belt, but said that when she uses it on Asia's butt, Asia "moves" and so it may end up hitting other parts of Asia's body. Mother denied ever seeing a mark from using the belt. She denied that Father ever hit the children and denied ever fighting with Father, only arguing with him. Asked about a scar on Asia's inner thigh, Mother stated she didn't know of the mark but Asia is clumsy, and "we're accident prone." She stated the scratches on Asia's neck were the result of Mother grabbing her.

Father stated that when he first arrived home on the day that Asia was burned, he saw minor injury on Asia, but then after he arrived home from taking one of his children to a party, he saw blisters and called for an ambulance. He denied seeing Mother use a belt on the children, saying she only spanks them on the hands. He denied hitting the children at all, saying he doesn't believe in hitting children. Rather, he sends them to a corner. He admitted that prior to having the children, he and Mother used to push and

shove each other. Now, they just play fight. Neither parent had visited the children nor called to inquire about them.

The August 5, 1999 interim report also contains a statement from a Dr. Gutierrez at the hospital where Asia was taken for her burns. The doctor reported that while Asia had said the large scar on her thigh was the result of Mother hitting her there, Mother's version was that the scar was the result of Asia picking at herself or rough housing with her siblings.

Additionally, the August 5, 1999 DCFS interim report includes an August 4 telephone interview with one of the investigating officers. The officer stated Mother told him that when she returned to the bathroom after hearing Asia scream, Mother saw the child's feet had already blistered and the skin was lifting. However, this officer's statement also states that Mother was "put on a polygraph." Thus, it is not clear that the officer remembered the facts with the passage of time.

3. *Statements Made by Asia and Dajahki Regarding the Burns and Whippings*

All of the following was admitted into evidence. In an early interview (when she was at the hospital), Asia told the social worker that Mother put her in the shower but Mother was not angry. During the same interview, Asia stated Mother turned the water on and Asia got into the shower by herself. The report states Asia "switched her story twice."

A follow-up investigation report from the police officer who investigated the incident when Asia was at the hospital states that when the officer asked Asia how her

feet were burned, the child replied "mommy put me in hot water." The report states Asia did not want to say anything else, due to her condition and discomfort.

The jurisdictional/dispositional hearing report for July 7, 1999, has a statement from Asia. Asked by the CSW what happened to her feet, Asia stated: "My Mommy did that. My mom did the hot one. My Daddy was crying. I go to doctor." Asia explained that she had wet herself and Mother put her in hot water to clean her. She denied getting spankings, and said "I'm good."

The DCFS report for the July 7, 1999 hearing has statements from the oldest child, Dajahki, who told a CSW that Mother and Father whip her with a belt on her stomach, legs and back, and that Mother whips Asia on her back and there are lots of sores there. (Besides the aforementioned welts on Asia's back that the police officer questioned Mother about at the hospital, the record shows there were also a few thin scars, about 1 and 1/2 inches long, on the top and middle of Asia's back, and by her waist.)

4. *DCFS Proceedings Leading Up to the Jurisdiction and Disposition Hearing*

On May 19, 1999, the juvenile court found reason to detain the children. They were placed in the temporary custody of DCFS. The court found a prima facie case that the children were persons described by certain subdivisions of section 300, and the court found that a substantial danger of physical or emotional health of the children existed with no reasonable means of protecting them without removal. Family reunification services were ordered, with monitored visits with Mother, and no visits with Father. The matter was continued to July 7, 1999.

A jurisdictional/dispositional hearing report for the July 7, 1999 hearing shows that DCFS made several attempts to contact both Mother and Father for their statements, but did not receive a reply. Asia's feet were still bandaged and being treated at that time. She and Dajahki were together in a foster home. The other two girls were separated from each other in other foster homes. The four enjoyed weekly visits with each other. Neither parent had called the foster parents or tried to visit the children. The parents were incarcerated until June 3, 1999. A first amended petition was filed on July 7, 1999, which realleged the infliction of the burns, and also alleged that on several occasions, Mother and Father whipped Asia and her sister Dajahki with a belt on their stomachs, legs and back, causing the children unreasonable pain and suffering and endangering the other children's health and safety. The July 7, 1999 hearing was continued because the parents failed to appear and they needed to be arraigned on the first amended petition.

On August 5, 1999, a second amended petition was filed. In addition to the previous charges under subdivisions (a), (b), (c), (i) and (j), it added an allegation under subdivision (b) that Mother and Father exposed the minors to violent confrontations, including Father punching Mother in the mouth, which caused her to seek medical attention at a hospital. An allegation of severe physical abuse was added under subdivision (e), (based on the burning and the whippings). By the August 5 hearing, the four children were residing together in a foster home. The hearing was continued to November 8, 1999 for adjudication. A Dr. Matt Young of The Grossman Burn Center at Sherman Oaks Hospital was appointed to examine Mother and Father, and if indicated, to also examine Asia. Dr. Young was instructed to examine the relevant medical reports,

photographs, DCFS reports and police reports. His report was to discuss Mother's accounts of what caused Asia's burns in relation to the physical evidence, and render an opinion as to whether it is more likely than not that the injuries were caused by nonaccidental means.

On September 23, 1999, a third amended petition was filed. This is the operative petition. It added, among others, allegations that on the day Asia was burned, Father left Asia at home in order to take another child to a party even though he knew Asia's feet were burned to the point of needing medical attention; and that Mother told Asia to not have a bowel movement because there was no toilet paper, and when Asia defecated, Mother became enraged and took Asia to the bathroom where she ran hot water into the tub and forced Asia into the water resulting in second degree burns.

Included with the DCFS interim report for the November 8, 1999 hearing was the requested report from Dr. Matt Young of the Grossman Burn Center. According to his report, the burns appeared to be second degree burns, involved the tops of both feet, extending around the ankles. There were open wounds, blisters and dead skin. The soles of Asia's feet were not burned. There is a sharp demarcation line of burned and unburned skin, with no splash marks. It was Dr. Young's opinion that the burns "are the result of submersion in scalding water. The unburned soles of the feet would be the result of her standing, with the soles of her feet being against the cooler surface of the shower/tub. In addition the soles of the feet are much less susceptible to burning because they are covered with thicker skin. The burns could not be from water flowing from a shower but are from standing scalding water." Dr. Young also opined that the burns were

inflicted rather than the result of accidental scalding. He stated that "[t]he fact that both feet are burned, described as mirror image burns, is indicative of inflicted injury. The history given by the mother is not consistent with the burn injuries. A child would not voluntarily put both feet into water hot enough to cause these burns. The child would have been held and placed in the hot water. The sharp line of demarcation, between burned and unburned skin, and absence of splash marks, is indicative of inflicted, not accidental, scalding."

On November 8, 1999, the case was continued, and thereafter repeatedly continued for various reasons. As of May 4, 2000, Mother had been convicted of violating Penal Code section 273a, subdivision (a), child endangerment, after pleading no contest, and was scheduled to be sentenced on June 19, 2000. (A criminal case against Father was dismissed at some point in time.) On June 29, 2000, Mother was placed on formal probation for five years, on the condition, among others, that she serve 365 days in jail and participate for one year in a parenting class and an anger management class. She was given credit for 340 days, and was released on July 7, 2000. (Mother's testimony at the jurisdiction/disposition hearing on October 2, 2000 was that she pleaded no contest to the felony charge because she hoped to be released for time served. At the criminal hearing, Mother specifically stated she was not admitting the allegations of great bodily injury.)

On August 28, 2000, DCFS filed an ex parte application for an order modifying the then-current visitation orders for Mother and Father. Under that current order, each parent was permitted monitored visits with the children. DCFS requested that the court

modify that order to preclude visits between Asia and her parents until Asia's therapist deemed it appropriate to resume the visits. According to the ex parte application, Father had his first visit with the children in November 1999 and thereafter visited with them two to three times a month. The foster mother reports the majority of his attention is given to the oldest child, Dajahki, and his interaction with Asia is very limited and he shies away from her. Often, Asia just sits in the corner by herself during the visits. Since her release from jail, Mother attended a few of the visits. The foster mother reported that several times after visits with the parents, Asia has defecated in her pants on the way home. Asia was examined by a doctor to see if her enuresis and encopresis were due to medical problems. The determination was she does not have such medical problems, and she was referred to a clinical psychologist, Dr. Biatriz Zamudio, Ph.D. The psychologist stated Asia's problems were due to her emotional instability which was caused by her history of physical abuse by her parents. Dr. Zamudio was of the opinion that Asia's visits with her parents should stop immediately because they are premature and counter-productive to Asia's emotional well-being. The foster mother reported she observed no difficulty when the other children visit with Mother and Father.

On September 11, the parties were unable to reach an agreement in mediation, and the case was continued for trial to October 2000. DEFS submitted an interim review report for the October hearing. The report contains a September 22, 2000 letter from an Anthony Shaw, M.D. to Mother's dependency case attorney. Dr. Shaw states he reviewed the file for this case and the photographs showing the blistering of Asia's feet. He was of the opinion that the burns to Asia's feet were due to immersion in hot water

and the bruises were inflicted by a belt. He further opined that if the burns did not result in permanent disfigurement or disability, then neither the burns nor the bruises from the whippings with a belt, "individually or together, rise to the level of 'severe physical abuse' as defined in Section 300(e) of the Welfare and Institutions Code." In a letter to a deputy public defender, who apparently was Mother's criminal case attorney, Dr. Shaw stated he reviewed Asia's burn medical records and photos, the arrest report, the police investigative report, and a psychiatric report relating to Mother. He stated the depth of the burns cannot be ascertained from the photos "but the physical findings in the record and the clinical course of healing indicate that these are fairly superficial second degree, or partial thickness, burns." Shaw stated the severity of immersion burns will depend on both the temperature of the hot water and the length of exposure to it. If there is immersion in water of 130 degrees Fahrenheit, that will produce a second-degree immersion burn in just a few seconds, whether the immersion is accidental or inflicted. If the water is 125 degrees, a longer period of immersion is required to produce a burn of equal severity. Shaw stated that knowing the numerical value of one of these two variables enables him to make a good estimate of the other, but in Asia's case neither is known. He noted that in Mother's several versions of what happened (which he stated he read), she stated she closed the shower door and left the bathroom, and in order for any of her versions to be credible, "the water temperature would have had to be much lower to inflict a second degree burn with the longer time of immersion." Shaw also speculated on how the burns occurred. He stated that of the several accounts of Asia's burning that Mother gave, "the scenario she outlines in her 5/18/99 statement is the most believable,

given the other circumstances of the day.[[5]] Ms. Underwood may have been correct in surmising that Asia tried to control her initial response to the hot water out of fear of getting another beating with the belt. That the water was not extremely hot and/or Asia was not left in it for very long is indicated by the relative superficiality of the burns. (In superficial second-degree burns, it usually takes several hours for blisters to appear.)"

5. *The October 2, 2000 Adjudication and Disposition Hearing*

On October 2, 2000, the adjudication and contested disposition hearing on the third amended petition was held. The referee sustained the petition on subdivisions (a), (b), (c) and (j) of section 300. Regarding subdivision (a), the court found Asia and Dajahki suffered pain inflicted nonaccidentally when the parents inappropriately disciplined them by hitting them with a belt, and further found this placed all the children in risk of physical harm. The court did not find that Asia's burns were inflicted nonaccidentally.

Regarding subdivisions (b) and (c), the court found that Mother placed Asia in a bathtub of hot water which resulted in Asia's being hospitalized for second degree burns, that such conduct caused Asia pain and suffering and placed the other children at risk of severe harm, and that Mother was convicted of a felony under Penal Code section 273a, subdivision (a). Under subdivision (b), the court also found that the parents exposed

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[5] By "other circumstances of the day," Dr. Shaw apparently was referring to Mother's account of how the day had been stressful for her because of Mother's argument with Father, and Asia's wetting herself, drinking from a cup contrary to Mother's instructions, and defecating on herself.

Dajahki to a domestic confrontation, and thereby placed her and the other children in danger of harm. With respect to subdivision (j), the court made the same findings as it did for the counts under subdivisions (a) and (b).

The court did not make a finding under subdivision (e) of section 300 as that charge was dismissed by motion of the department. The court dismissed the subdivision (i) count (charging cruelty against Mother for having subjected Asia to standing in hot water, resulting in second degree burns, because Asia had defecated after Mother told her not to because there was no toilet paper in the home).[6]

The referee found that reasonable services had been provided to prevent removing the children from the parents' custody. However, the court determined there was clear and convincing evidence that substantial danger exists to the physical health of the five children and/or they were suffering severe emotional damage and there was no reasonable means to protect them without removing them from the parents' physical custody. (§ 361, subd. (c) (1).) The referee declared all five children dependent children of the court and custody was given to DCFS. Family reunification services were ordered for all children, including Asia, with the court remarking that since Asia lived with her siblings, "who could ends up going home [sic]," it "would not make sense to deny reunification services to her." Visits were to be monitored, and visits with Asia were to

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[6] There was also a count against Father under subdivision (i). It charged that Father knew that Asia's burns needed treatment but nevertheless Father left the home to take a child to a party rather than taking Asia to the hospital. As a reason for not sustaining the count against Father, the referee stated that "[t]he information we have is that the blistering would have taken hours to show up."

be weekly either in a therapeutic setting or at the DCFS office. The parents were ordered to participate in conjoint counseling with Asia and Asia was given individual therapy also.

Asia applied for a rehearing, asserting the court erred in finding her burns were accidental. The application was denied. Thereafter, Asia filed this appeal, challenging both the adjudication and disposition findings and the order for family reunification services for Mother. DCFS also filed an appeal, challenging the October 2, 2000 order and findings. On April 2, 2001, the referee terminated family reunification services and ordered permanent placement services for the parents and children.

CONTENTION ON APPEAL

Asia argues that even though the court sustained portions of the section 300 petition and determined she is a dependent child of the court, *correct* jurisdictional findings are necessary for her protection and will impact the ongoing proceedings. She contends the referee committed prejudicial error when he refused to find that the burning of her feet was nonaccidental. She contends the court should have determined she is a child coming within subdivisions (a) and (i) of section 300 with respect to her burns. She acknowledges that our standard of review is the substantial evidence test, but she asserts the referee had no rational basis for determining that the burns inflicted by Mother were not intentionally caused.[7]

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[7] Asia also acknowledges that because the reunification services have taken place and ended, the challenge to the order for such services has become moot.

DISCUSSION

1. *Standard of Review*

At the jurisdiction hearing, the dependency court applies the preponderance of the evidence standard to determine whether a minor child is described by section 300 (§ 355; *In re Sheila B.*, *supra*, 19 Cal.App.4th at p. 198.) On appeal, we apply the substantial evidence test in reviewing the court's jurisdiction findings. If there is any substantial evidence (contradicted or uncontradicted) to support the findings of the court, we must uphold such findings. All reasonable inferences are made in support of the findings, and the record is viewed in the light most favorable to the juvenile court's order. (*In re Basilio T*. (1992) 4 Cal.App.4th 155, 168.) We determine the sufficiency of the evidence; we do not reweigh the evidence or judge credibility. (Cf. *In re Laura F*. (1983) 33 Cal.3d 826, 833; *In re Heather P*. (1988) 203 Cal.App.3d 1214, 1226, disapproved on another point in *In re Richard S*. (1991) 54 Cal.3d 857, 866, fn. 5.) Substantial evidence is defined as " 'evidence which is reasonable, credible, and of solid value--such that a reasonable trier of fact could find [that subdivisions (a) (charging burns inflicted nonaccidentally) and (i) (charging cruelty in association with the burns) of section 300 do not apply to Asia]' " (*In re Angelia P*. (1981) 28 Cal.3d 908, 924.)

2. *The Evidence Does Not Support the Trial Court's Stated Analysis Regarding Asia's Burns*

Asia argues that the very fact that Mother was convicted of violating Penal Code section 273a brings this case within subdivisions (a) and (i) of section 300. However, Mother testified that she only pleaded no contest to that criminal charge because she

wanted to be released for time served. Thus, assuming arguendo that Asia would necessarily come within subdivisions (a) and (i) if Mother's conviction of violating Penal Code section 273a had occurred after a trial in the criminal case during which she was found her guilty of the charge, we believe that Mother's testimony about why she pleaded no contest, if believed, precludes a automatic finding that Asia is a child coming within subdivisions (a) and (i).

However, the record does show factual error in the trial court's stated reason for rejecting the charge by DCFS that Mother intentionally placed Asia in hot water and thereby caused her burn injuries. The court stated it was rejecting the charge because "*the mother didn't pay any attention to how hot the water was, which pretty much gets rid of the [subdivision] (A) [count], because the mother didn't intend to burn Asia*. And there are definitely parents who burn children, intending to burn them. And that's what the (A) is all about, and that's what the (I) is all about." (Italics added.) The court went on to say that "no matter which version of the story you believe from all of the ones offered, whether it was the mother holding her down in the hot water or the mother leaving her in the bathroom alone and her ending up in the water or the mother leaving her in the tub alone and her turning up the water herself, not one single version that's been offered is one that shows the mother intentionally burning her. It shows her being the one who caused the burns and it shows her acting out in anger and frustration and it shows her having definite anger management issues and emotion control issues, but none of them tend to show the mother as being the level of cruelty as the people who we get in this courthouse who on purpose burn their children with irons, or lots of other means."

Our review of the record shows the trial court misapprehended or did not consider the facts of the burning as Mother *initially* related them, because contrary to the trial court's statement of why it did not believe Mother intentionally caused Asia's burns, Mother reported several times that she *did check the temperature of the water*. To the first children's services worker who interviewed Mother, Mother stated that when she discovered Asia was standing in the burning water, Mother didn't know whether Asia had turned the hot water up or turned the cold water off. The reasonable inference from such a statement is that Mother *did* check the temperature of the water when she ran it for Asia and found it acceptable and that it only became unacceptable because Asia had changed the water temperature herself. Additionally, Mother told police officers, at the hospital where Asia was taken for her burns, that she ran *warm* water for Asia from the overhead shower. Moreover, Mother told the police officers who came to her home the day after the burning that she *checked* the temperature of the water. Thus, the record contains three statements from Mother wherein she expressly or impliedly stated that she did check the temperature of the water she ran for Asia. This evidence undermines the premise on which the dependency court referee operated in deciding that the subdivision (a) and (i) counts were not sustainable on the basis of the burns, i.e., that Mother could not have intended to burn Asia because she didn't pay attention to the temperature of the water when she ran it.

Mother herself argues, in her appellate brief, that the trial court had a "rational basis" for its determination that the burns were not inflicted nonaccidentally, namely the court's belief that Mother had not paid attention to the temperature of the water. Because

such belief is only supported by Mother's subsequent revisions of her account of how Asia came to be burned, and because the trial court believed that these revisions make up the whole of Mother's accounts of how the burning occurred, it is clear that the trial court did not consider all of the evidence before it, or misapprehended important parts of it.

3. *The Court's Faulty Analysis Is Prejudicial to Asia*

We agree with Asia that the failure of the trial court to properly consider all of the evidence is prejudicial to her (and to her siblings). It is important that the jurisdiction findings in this case be based on all of the evidence available to the court so that a correct history of Mother's care of her children is known for future proceedings, such as section 388 petitions for modification of orders that Mother might make, and proceedings regarding permanent plans.

The question remains, however, whether we should send this case back to the trial court for its reconsideration of the subdivision (a) and (i) counts in light of all of the evidence, or whether we should say as a matter of law either that DCFS made its case for those two subdivisions, or cannot make its case. Clearly we cannot say as a matter of law that DCFS cannot make its case. There is sufficient evidence in the record to support a finding that Asia is a child coming within those two subdivisions because of her burns. Indeed, the evidence is overwhelming on the side of such a finding. To begin with, Mother's credibility is put into question by the fact that she repeatedly changed her story about the facts surrounding the burning of Asia. For example, Mother's accounts of the event varied as to whether she checked the water temperature, whether Asia objected to being placed in the water, whether it was Asia's urinating or defecating that caused

Mother to put her in the shower, what Asia was doing when Mother returned to the bathroom to check on her, and whether it was Asia's back or buttocks that Mother whipped with a belt prior to the burning. Mother's credibility is also challenged by her statements concerning what she knew about a large scar on Asia's inner thigh, and by her denial of knowing what caused the welts on Asia's back. Indeed, even Mother's statements that she did not check the temperature of the water are open to interpretation. A person can have a good idea of how hot water is by knowing how far she turned the hot and cold water knobs, and how long the water has run. Mother could know that the water was too hot for Asia without actually "checking" it before Asia was standing in it.

There is also physical evidence and medical expert evidence that calls into question Mother's denial that she intentionally burned Asia. Although Asia was in a *shower*, her only burns were the immersion burns on her feet and ankles. Moreover, there is very strong evidence against Mother in Dr. Young's report from the Grossman Burn Center, wherein he gave his professional opinion that the burns were inflicted rather than accidental. He stated Mother's history of the burning was inconsistent with the burns; Asia would not voluntarily allow her feet to be in water hot enough to cause the burns, the burns were on the tops of her feet and ankles, and there were no splash marks. Additionally, there is the evidence of Mother's uncaring attitude about Asia's health—the whippings with a belt, and her telling Asia to not have a bowel movement because there was no toilet paper in the home. By her own admission, Mother's anger towards Asia began early in the day and continued as the day wore on, and the whipping she gave to Asia with a belt that day occurred *prior* to Asia's soiling her pants after Mother had told

her to not have a bowel movement. Lastly, the report of Mother's own expert, Dr. Shaw, does not preclude a rational finding that Asia's burns were inflicted nonaccidentally.

Thus we find, as a matter of law, that Asia's burns were nonaccidental and therefore she is a child described by subdivisions (a) and (i) of section 300 because of such burns. The trial court must vacate its October 2, 2000, revise its jurisdiction findings accordingly, and issue a new and different order based on our finding.

DISPOSITION

The disposition order is reversed and the cause is remanded. The trial court is directed to enter a new and different order sustaining section 300, subdivision (a) and (i) allegations regarding Asia's burns, and make any necessary additional findings and orders, all consistent with the views expressed herein.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CROSKEY, J.

We Concur:

KLEIN, P.J.

KITCHING, J.