Loyola of Los Angeles Law Review

Volume 53
Number 2 *California Supreme Court Issue*

Article 5

Winter 2-1-2020

California's Child Abuse Dependency Hearsay Exception in In re I.C.

Rachel Monas

CALIFORNIA'S CHILD ABUSE DEPENDENCY HEARSAY EXCEPTION IN *IN RE I.C.*

*Rachel Monas**

I. INTRODUCTION

Juvenile dependency courts have the difficult task of deciding when children must be separated from their parents to protect them from abuse or neglect.[1] When faced with a close case, the court balances two grave risks: that it might separate an innocent parent from their[2] child and needlessly traumatize both parties or that the court might dismiss a true claim of abuse and fail to protect the child from further harm.[3]

The dependency court's task is particularly formidable in sexual abuse cases, where the allegations are grave but frequently uncorroborated.[4] There are many reasons for this: child sexual abuse happens in secret, and often leaves no mark.[5] Children who previously told a family member or social worker that their parent abused them may refuse to testify in court out of fear[6] or may be unable to testify

* J.D. Candidate, May 2020, Loyola Law School, Los Angeles; B.A., Art History, Wesleyan University, 2007.

1. *See* CAL. WELF. & INST. CODE § 300 (West 2016). At a jurisdictional hearing, if the dependency court finds proof by a preponderance of evidence that a child has been abused by their parent, or the child otherwise comes within the meaning of section 300, the court may exercise its jurisdiction over the child and deem the child a dependent of the court. *Id.* §§ 300, 355.

2. This Comment uses the singular gender-neutral pronoun "they" in recognition of nonbinary gender expressions. *See* Stan Sarkisov & Carleigh Kude, *Pronoun Power: The Standard for Gender Neutrality*, S.F. ATT'Y, Winter 2017, at 42.

3. *In re* I.C. (*In re I.C. I*), 191 Cal. Rptr. 3d 108, 129 (Ct. App. 2015) (Stewart, J., concurring and dissenting) ("With the exception of death penalty cases, it is hard to imagine an area of the law where there is a greater need for reliable findings by the trier of fact [than child sexual abuse dependency cases]. The consequences of being wrong—*on either side*—are too great." (citing Blanca P. v. Superior Court, 53 Cal. Rptr. 2d 687, 697 (Ct. App. 1996))), *rev'd*, 415 P.3d 773 (Cal. 2018); *see In re* I.C. (*In re I.C. II*), 415 P.3d 773, 788 (Cal. 2018).

4. *See In re I.C. II*, 415 P.3d at 781 ("[T]here are particular difficulties with proving child sexual abuse: the frequent lack of physical evidence, the limited verbal and cognitive abilities of child victims, the fact that children are often unable or unwilling to act as witnesses because of the intimidation of the courtroom setting and the reluctance to testify against their parents.").

5. *Id.*

6. *In re* Carmen O., 33 Cal. Rptr. 2d 848, 852 (Ct. App. 1994).

because they are too young to understand the duty to tell the truth (so-called "truth-incompetent children").[7] In many cases, a child's prior statements to family members or social workers will be the strongest evidence that the child was sexually abused.[8]

Although out-of-court statements like these are typically inadmissible at trial as unreliable hearsay,[9] California's courts and legislature have recognized that the challenges of child sexual abuse cases necessitate an exception for hearsay in dependency proceedings.[10] The child dependency hearsay exception allows juvenile courts to base a finding of abuse solely upon a very young child's uncorroborated hearsay statements, so long as the statements bear special indicia of reliability.[11]

The special indicia of reliability test is intended to neutralize the risk of making an incorrect finding of abuse based on false hearsay statements—a risk that is heightened when the child is too young to differentiate between truth and lies.[12] Such was the case in *In re I.C.*,[13] where the California Supreme Court reversed a dependency court's judgment that had removed a father from his family's home based solely upon his daughter's hearsay statements.[14] The three-year-old child, I.C.,[15] was videotaped in a forensic interview telling stories that interwove graphic descriptions of being sexually abused by her father

7. *See, e.g.*, *In re* Basilio T., 5 Cal. Rptr. 2d 450, 457 (Ct. App. 1992).

8. *See, e.g.*, *In re I.C. II*, 415 P.3d at 773; *In re* Lucero L., 998 P.2d 1019, 1026 (Cal. 2000) (plurality opinion).

9. *In re I.C. II*, 415 P.3d at 780 ("As a general rule, an out-of-court statement offered for the truth of its content is inadmissible in evidence. This rule, which is 'of venerable common law pedigree,' is rooted in concerns about reliability. Unlike in-court testimony, hearsay statements generally are not made under oath; they are generally made outside of the view of the trier of fact, which therefore cannot adequately assess the speaker's credibility; and they are not generally subject to testing through cross-examination.").

10. *See* CAL. WELF. & INST. CODE § 355 (West 2016) (providing that all relevant evidence, including hearsay, is admissible in a child dependency adjudication); *In re Lucero L.*, 998 P.2d at 1037 ("[I]f a parent abuses a particularly young child in private and leaves no physical marks, two common scenarios, the child *cannot be protected* if the trial court does not consider and act on his or her hearsay statements.").

11. Indicia of reliability, or "particularized guarantees of trustworthiness," are those qualities of a statement's content or circumstances that tend to indicate that the statement is true and reliable. *See In re* Cindy L., 947 P.2d 1340, 1352 (Cal. 1997).

12. *In re Lucero L.*, 998 P.2d at 1031–32.

13. 415 P.3d 773 (Cal. 2018).

14. *Id.* at 788.

15. Because the minor's name is confidential, she is referred to by her initials in the court opinions and in this Comment.

with nonsensical, obvious falsehoods.[16] I.C. had recently been molested by an eight-year-old neighbor boy, and many of her statements about her father included details that echoed the events surrounding her prior sexual abuse.[17]

Although the dependency court acknowledged that some of I.C.'s statements were "very unclear, and at times very confusing," the court decided that her "core allegations" bore sufficient indicia of reliability to support a finding of abuse.[18] Two justices on the three-judge panel for the First District Court of Appeal affirmed.[19] The third, Justice Stewart, dissented, arguing that her colleagues were incorrect to "reflexively defer[]" to the dependency court's decision, which in her view was not supported by substantial evidence.[20] The California Supreme Court agreed with Justice Stewart and unanimously reversed the dependency court's judgment.[21]

In re I.C. is the first California Supreme Court case in nearly twenty years to address the correct application of the child hearsay exception in dependency proceedings.[22] This Comment considers the implications of the supreme court's holding in *In re I.C.*, both for dependency courts evaluating children's hearsay statements and appellate courts reviewing those evaluations.

Parts II and III examine the unusual circumstances of *In re I.C.* and the reasoning behind the supreme court's decision. Next, Part IV considers how the child dependency hearsay exception evolved in its social and legal contexts. Finally, Part V analyzes the impact that the decision will have on future courts, including ambiguities and open questions that remain about the child dependency hearsay exception following *In re I.C.*

16. *In re I.C. II*, 415 P.3d at 776–77.

17. *Id.* at 787; *In re I.C. I*, 191 Cal. Rptr. 3d 108, 129–31 (Ct. App. 2015) (Stewart, J., concurring and dissenting).

18. *In re I.C. I*, 191 Cal. Rptr. 3d at 118, 120.

19. *See id.* at 111 (majority opinion), 127 (Stewart, J., concurring and dissenting).

20. *Id.* at 127 (Stewart, J., concurring and dissenting).

21. *In re I.C. II*, 415 P.3d at 773–74.

22. *See id.*; *In re* Lucero L., 998 P.2d 1019 (Cal. 2000) (plurality opinion).

II. STATEMENT OF THE CASE

A. I.C.'s Prior Sexual Abuse and Subsequent Statements About Her Father

As she was being tucked into bed one evening in September 2012, three-year-old I.C. told her mother, "Daddy put his penis on me."[23] I.C.'s mother was alarmed by I.C.'s statement, but hesitated to take it at face value.[24] Sexual abuse and body parts had become a normal topic of discussion in their household.[25]

Two months earlier, in July, I.C. had been molested by an eight-year-old boy from the neighborhood named Oscar.[26] Oscar, I.C., and Julian (I.C.'s five-year-old brother) were together on Julian's bed when I.C.'s mother found them.[27] The children separated suddenly, and Oscar admitted that he had been kissing I.C. on the mouth.[28] I.C. said that Oscar undressed her, removing her "shoes[,] socks, pants, and underwear," and that Oscar "then inserted a wooden train into her vagina."[29] Child Protective Services and the police were both notified.[30]

Over the next two months, I.C. had many conversations with her family about what Oscar did to I.C., the difference between "good" and "bad" touches, and bodily autonomy: that no one is allowed to touch her body without their permission, and that it is not okay for anyone to hurt her.[31]

In early September, I.C. saw Oscar for the first time since he molested her while I.C. and her mother were dropping off Julian on his first day of school.[32] I.C. was scared and confused to see that Oscar attended the same school as her brother.[33] That Friday, Julian told I.C. and their mother that Oscar had bullied him at school, and I.C.'s

23. *In re I.C. I*, 191 Cal. Rptr. 3d at 131.
24. *Id.* at 130, 132.
25. *Id.* at 129–31.
26. *Id.* at 129–30.
27. *In re I.C. II*, 415 P.3d at 775.
28. *In re I.C. I*, 191 Cal. Rptr. 3d at 130.
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*; Brief of Amicus Curiae California Appellate Defense Counsel in Support of Appellant Alberto C. at 13–14, *In re I.C. II*, 415 P.3d 773 (Cal. 2018) (No. S229276), 2016 WL 942885 [hereinafter Brief of Amicus Curiae].
33. *In re I.C. II*, 415 P.3d at 776.

mother called the principal.[34] All weekend long, the family talked about Oscar.[35]

A couple of days later, a Tuesday evening, I.C. told her mother, "My dad put his penis on me."[36] Julian heard I.C. and told her, "No, that's what Oscar did to you."[37] Like Julian, I.C.'s mother assumed that I.C. was thinking about Oscar.[38] I.C.'s mother was worried, but she was unable to get clear details from I.C.[39]

The next morning was a Wednesday, and I.C. usually would have stayed home with her father instead of going to preschool (like she did on Tuesdays and Thursdays).[40] However, I.C.'s mother, still confused about why I.C. had said what she said, decided in an abundance of caution to take I.C. to preschool instead of leaving her alone with her father.[41] I.C.'s mother woke I.C.'s father to tell him that she was taking I.C. to school, and she told him what I.C. had said the previous evening.[42] "That's crazy," he replied.[43]

That morning at preschool, I.C. told her teachers, "Dad put his penis on me."[44] Police were notified, and I.C. was brought to the Child Abuse Listening, Interviewing and Coordination (CALICO) Center for a forensic interview.[45] At the outset of the CALICO interview, I.C. promised not to lie and then made several statements about what she had done that morning that were untrue (she said she went to San Francisco with her mother and to the park with her father, went shopping, bought eggs and glasses, watched a movie, and more).[46] I.C. was then asked what she had told her teachers at school.[47] I.C. answered:

> "I told daddy put penis on me," adding, "then he put a train on me and he put a flower on me yesterday." Pointing to the mat next to her [at the CALICO Center], she said, "In this

34. *In re I.C. I*, 191 Cal. Rptr. 3d at 131; Brief of Amicus Curiae, *supra* note 32, at 14.
35. *In re I.C. I*, 191 Cal. Rptr. 3d at 131; Brief of Amicus Curiae, *supra* note 32, at 14.
36. *In re I.C. I*, 191 Cal. Rptr. 3d at 131.
37. *Id.*
38. *Id.* at 130.
39. *Id.* at 131–32.
40. *Id.* at 132.
41. *Id.* at 123 n.8, 132.
42. *Id.* at 132.
43. *Id.*
44. *Id.*
45. *Id.* at 130, 132.
46. *Id.* at 132; *In re I.C. II*, 415 P.3d 773, 776 (Cal. 2018).
47. *In re I.C. II*, 415 P.3d at 776.

bed," but then said they were on [Julian]'s bed. I.C. climbed on the mat, lay down and opened her legs and, gesturing towards her groin area, said "he do this to my vagina." When asked again what Father had done, I.C. repeated: "Put a penis and then a flower and then the train." The interviewer asked what I.C. was wearing. I.C. said: "I don't wear clothes . . . he take off my clothes. He take off my shoes, my pants and my shirt . . . . My underwear too . . . and my socks."

I.C. said Father then kissed her on her mouth and she said, "stop it," adding: "And he didn't listen to me when I say 'stop it.'" When asked why she wanted Father to stop, I.C. said, "because he can't do that to touch me here," putting her hand on her groin area . . . . "Don't do that. Okay. That's . . . mine. If he leaves my vagina alone, just leave it." . . .

. . . I.C. demonstrated that Father "put penis on me like this," touching her vagina, and "then like that," poking between her legs with her fingers two times, adding "he put penis on me and he do this, this, this, this," poking with her hand each time . . . .

Asked if a penis is the same thing as a train, she said, "Yeah." . . .

I.C. said when Mother returned home, she told Mother what Father had done and "told her 'stop it.'" She "said, Daddy, stop it, that's not . . . yours, that's mine. Anyone can touch my vagina." . . . I.C. stated Mother said, "'[S]top.' 'Oh my, daddy is going to be in all so much trouble.'" I.C. said Father was going to jail and had told the police, "'I promise, I won't do it again.'" . . .

The interviewer asked, "have you ever seen your daddy do that to anybody else?" and I.C. answered, "He do that to RJ," Father's 21-year-old daughter from a previous marriage. Asked what she saw Father do, I.C. said: "Put penis in the flower and the train and train and . . . that's it." She added that Father removed RJ's clothes and removed his own clothes and RJ kissed him. I.C. was with them on [Julian]'s bed, as well as her babysitter and her babysitter's sister. Asked what Father wanted to do, she said, "the bad

> things," which are "the train, the train and train—and the flower and the penis."[48]

Following the CALICO interview, the Alameda County Social Services Agency (the "Agency") filed a petition alleging that I.C.'s father, Alberto, had sexually abused I.C. and requesting that she be made a dependent of the dependency court.[49]

B. Dependency Court Jurisdictional Hearing

At the subsequent jurisdictional hearing,[50] the dependency court observed that "essentially, all the Court has to go on in this case is the hearsay statements of a three-year-old minor."[51] Under the child hearsay exception, as the court understood it, "if the Court finds that the time, content and the circumstances" of the statements "have some indicia of reliability," then the uncorroborated statements would be sufficient to support a finding that Alberto abused I.C. (and the court could exercise dependency jurisdiction).[52] The dependency court considered the factors bearing upon reliability that the California Supreme Court set forth in *In re Cindy L.*[53] and *In re Lucero L.*,[54] including: whether I.C. made the statements spontaneously, whether I.C.'s statements remained consistent, whether she was prompted by adults to answer a certain way, and whether she had any motive to lie.[55]

Considering these factors, the dependency court found "evidence that supports [the] reliability" of I.C.'s statements, as well as "evidence that supports a conclusion that her statements are unreliable."[56] First, the court found the hearsay statements were reliable because: I.C.'s statements to her mother and teachers were

48. *Id.* at 776–77.

49. *Id.* at 775.

50. At a dependency jurisdictional hearing, if the juvenile court finds proof by a preponderance of evidence that a child has been abused by their parent, or the child otherwise comes within the meaning of California Welfare and Institutions Code section 300, the court may exercise its jurisdiction over the child and deem the child a dependent of the court. CAL. WELF. & INST. CODE §§ 300, 355 (West 2016).

51. *In re I.C. I*, 191 Cal. Rptr. 3d at 118.

52. *Id.* (citing *In re* Lucero L., 998 P.2d 1019 (Cal. 2000); *In re* Cindy L., 947 P.2d 1340 (Cal. 1997)).

53. 947 P.2d 1340 (Cal. 1997).

54. 998 P.2d 1019 (Cal. 2000).

55. *In re I.C. I*, 191 Cal. Rptr. 3d at 118 (citing *In re Lucero L.*, 998 P.2d at 1032); *In re Cindy L.*, 947 P.2d at 1353).

56. *In re I.C. I*, 191 Cal. Rptr. 3d at 119.

"completely spontaneous" and "came out of the blue"; I.C. "consistently repeated the same core allegations to various people" and on the CALICO videotape; I.C. "was not prompted by any adults that she talked to"; and she had no motive to lie.[57]

On the other hand, the court found the hearsay statements were unreliable because: I.C.'s description of being in bed with Alberto, her older half-sister, the babysitter, and the babysitter's sister was "not believable"; I.C.'s assertion that Alberto had abused I.C. on the mat at the CALICO Center was "not correct"; and I.C. made "very confusing statements about the train and the flower . . . . [which] leads one to believe that maybe she's having some sort of flashback to the July encounter with the eight-year-old."[58]

Notwithstanding these unreliable aspects, the dependency court found there was "no credible evidence" that I.C. had experienced "some psychological event . . . leading her to recall the events of July and project those events on the father."[59] The court also emphasized that there were "several distinctions between the July incident" and I.C.'s statements about Alberto.[60] For instance, the court noted that I.C. used the word "penis" to describe her father's actions but had not used the word in her statements to police after Oscar's abuse even, though the word was part of her vocabulary at that time.[61] In addition, whereas I.C.'s mother and brother were at home during the July incident, I.C. "was very clear" in the video that they were both absent when Alberto abused her.[62] To the court, these distinctions painted the picture of a "very different scenario than the scenario in the July incident."[63]

In the end, after comparing the indicia weighing for and against reliability, the court found "the evidence that supports the reliability more compelling."[64] The dependency court thus sustained the Agency's petition, found that Alberto had sexually abused I.C., and ordered that Alberto be removed from the family's home.[65]

---

57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.* at 119–20.
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.* at 120 & n.5, 126.

C. First District Court of Appeal

Two years later, a splintered panel of the First District Court of Appeal affirmed the dependency court's decision.[66] Alberto had asked the court of appeal to review "whether [I.C.'s] statements by themselves reached the level of substantial evidence"—in other words, whether the statements bore special indicia of reliability under *Lucero L.*, such that they could support a jurisdictional finding without corroboration.[67] However, in the majority's view, what Alberto was asking was beyond the scope of appellate review.[68]

According to the majority, when the dependency court reviewed the videotaped CALICO interview and drew conclusions from watching I.C. speak and gesture, it "was exercising its power to judge credibility," which the appellate court could not usurp.[69] To avoid overriding the dependency court's credibility determinations, the majority reasoned, the issue was "not whether [the appellate court] think[s] I.C.'s statements bear sufficient indicia of reliability to satisfy *Lucero,* but whether substantial evidence supports the dependency court's finding that they did."[70] The majority held that substantial evidence did support the dependency court's finding that I.C.'s statements were sufficiently reliable and applauded the lower court for "the scrupulousness with which [it] evaluated the pros and cons of the hearsay statements."[71]

In a vehement dissent, Justice Stewart declared that the majority's "reflexive affirmance of the dependency court's erroneous decision" was "a grave injustice."[72] According to Justice Stewart, the dependency court had applied its own "more-reliable-than-not standard," and I.C.'s statements did not reach *Lucero L.*'s special indicia of reliability test.[73] Moreover, Justice Stewart pointed to language in *Lucero L.* stating that a court "may rely exclusively on [a truth-incompetent child's] out-of-court statements only 'if the declarant's truthfulness is so clear from the surrounding circumstances

66. *Id.* at 124.
67. *Id.* at 123.
68. *See id.* at 123–24.
69. *Id.* at 111, 117 (quoting *In re* I.J., 299 P.3d 1254, 1258 (Cal. 2013)) ("[I]ssues of fact and credibility are the province of the trial court.").
70. *Id.* at 124.
71. *Id.*
72. *Id.* at 129 (Stewart, J., concurring and dissenting).
73. *Id.* at 141.

that the test of cross-examination would be of marginal utility.'"[74] According to Justice Stewart, the court thus had a "responsibility under *Lucero L.* to review the record for substantial evidence of I.C.'s clear truthfulness," which it had not done.[75]

Soon after, the California Supreme Court granted review.[76]

III. REASONING OF THE CALIFORNIA SUPREME COURT

A. No Clear Truthfulness Standard

In a unanimous opinion, the California Supreme Court in *In re I.C.* first addressed whether *Lucero L.* requires showing the child declarant's clear truthfulness when relying on the uncorroborated hearsay of a truth-incompetent child, as Justice Stewart had argued.[77] The supreme court held that *Lucero L.* did not require this higher standard,[78] explaining that the *Lucero L.* opinion had only "borrowed"[79] the language in question from *Idaho v. Wright*,[80] a United States Supreme Court case that created a hearsay exception for statements by truth-incompetent children in the criminal context.[81] According to the supreme court in *In re I.C.*, the Court in *Wright* had used the clear truthfulness language simply to illustrate the underlying rationale for permitting exceptions, but it did not actually adopt a clear truthfulness requirement for the child hearsay exception.[82] Instead, *Wright* created an indicia of reliability test, which included a non-exhaustive list of factors that tend to show that a statement is trustworthy.[83]

Because *Lucero L.* adopted a similar "indicia of reliability" requirement to the one in *Wright*, with similar factors, the supreme court in *In re I.C.* reasoned that the clear truthfulness language in *Lucero L.* did not impose a clear truthfulness requirement in dependency cases, just as the original language in *Wright* did not

74. *In re* Lucero L., 998 P.2d 1019, 1034 (Cal. 2000) (plurality opinion).
75. *In re I.C. I*, 191 Cal. Rptr. 3d at 127 (citing *In re Lucero L.*, 998 P.2d at 1034).
76. *In re I.C.*, 358 P.3d 1282 (Cal. 2015) (granting review).
77. *In re I.C. II*, 415 P.3d 773, 783 (Cal. 2018); *In re I.C. I*, 191 Cal. Rptr. 3d at 127.
78. *In re I.C. II*, 415 P.3d at 783–84.
79. *Id.* at 783.
80. 497 U.S. 805 (1990).
81. *Id.* at 820; *see In re I.C. II*, 415 P.3d at 783.
82. *In re I.C. II*, 415 P.3d at 784.
83. *Id.* (citing *Wright*, 497 U.S. at 822).

impose the standard in criminal cases.[84] The court in *In re I.C.* confirmed that the special indicia of reliability test continues to govern the child hearsay exception for dependency proceedings.[85]

B. Substantial Evidence Standard of Review

The supreme court next asked whether substantial evidence supported the dependency court's decision to rely solely on I.C.'s uncorroborated hearsay statements.[86] The supreme court disagreed with the court of appeal's majority, which held that reviewing courts should defer to a lower court if it has at least *some* basis for finding indicia of reliability.[87] Rather, the supreme court considered whether the record as a whole contained substantial evidence showing that I.C.'s hearsay statements had special indicia of reliability.[88] The court found it did not and reversed the judgment.[89]

The court found that I.C.'s statements did not bear special indicia of reliability because the dependency court had "failed to take adequate account of the confounding role of I.C.'s prior molestation" when it considered the reliability factors (e.g., spontaneity, consistency, prompting, and motive to lie).[90] I.C.'s statements were not spontaneous, the supreme court reasoned, in light of the surrounding circumstances: I.C. was molested by Oscar two months prior, I.C. saw Oscar at Julian's school just days earlier, and the family had frequent talks about "bad touches" and private parts.[91] Likewise, the consistency of I.C.'s "core allegations" (namely that Alberto touched her with his penis) was "not particularly strong" when considered alongside I.C.'s other nonsensical statements about her father and trains or flowers, which the dependency court admitted were confusing.[92]

In addition, the court disagreed with the lower court's conclusion that there were clear distinctions between the incident with Oscar and

84. *Id.* (citing *In re* Lucero L., 998 P.2d 1019, 1034 (Cal. 2000) (plurality opinion)).

85. *Id.* at 774 (citing *In re Lucero L.*, 998 P.2d at 1032).

86. *Id.* at 785–86. Part V of this Comment discusses the court's adoption of a substantial evidence review standard and the open question the court left by doing so. *See infra* Part V.

87. *See In re I.C. II*, 415 P.3d at 779, 785.

88. *See id.* at 787–88.

89. *Id.* at 786.

90. *Id.*

91. *Id.* at 776, 786.

92. *Id.*

the one I.C. described with her father.[93] I.C.'s mother testified that she had used the word "penis" in her discussions with I.C., so I.C.'s use of that word in connection with Alberto did not indicate that she must have been referring to an entirely different situation.[94] Moreover, I.C. "did not clearly communicate" that she was home alone with Alberto during the alleged abuse her because she had also said at one point that her mother had been home but sleeping.[95] Finally, the court noted that many of I.C.'s stories showed she "had a tendency to interweave fantasy with truth," which was "relevant in evaluating whether I.C. was likely telling the truth about the incidents involving [Alberto]."[96]

The court also found that the appellate court had erred by deferring so strongly to the dependency court's determination of I.C.'s credibility based on the videotaped CALICO interview.[97] All parties agreed that many of the statements that I.C. made on the video were confusing, contradictory, or plainly untrue.[98] The court noted that any additional credibility the dependency court may have afforded I.C.'s statements based on reviewing the video was likely the result of watching I.C.'s sexually graphic hand gestures.[99] However, the court stated that "given I.C.'s prior sexual molestation, we cannot conclude that the degree of sexual knowledge demonstrated by her gestures is an accurate indicator of the reliability of her allegations involving [Alberto]."[100] The court concluded that "[t]he videotape, in short, cannot close the substantial gap between the indications of I.C.'s unreliability and the dependency court's finding that I.C.'s account was sufficiently reliable to support a jurisdictional finding."[101]

The supreme court thus found that, in light of the whole evidentiary record, there was not substantial evidence to support the dependency court's determination that I.C.'s statements bore special indicia of reliability.[102] Accordingly, I.C.'s uncorroborated statements were insufficient to support the juvenile court's finding that Alberto

93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.* at 786–87.
97. *Id.* at 787.
98. *Id.* at 785, 788.
99. *Id.* at 787.
100. *Id.*
101. *Id.* at 788.
102. *Id.*

sexually abused I.C. and its ensuing exercise of dependency jurisdiction over I.C.[103] The supreme court reversed.[104]

IV. HISTORICAL CONTEXT OF THE CHILD DEPENDENCY HEARSAY EXCEPTION

For the better part of the twentieth century, child sexual abuse was not discussed in the public forum, or if it was, its traumatic impact was minimized.[105] This changed dramatically in the latter half of the twentieth century, as social attitudes towards child abuse began to change and the public became increasingly aware of the effects that abuse during childhood, particularly sexual abuse, can have on its victims.[106] State social services agencies across the country expanded after Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA) in 1974,[107] and the number of reports of alleged child abuse—many of them unfounded—rose dramatically in ensuing years.[108]

In the mid-1980s, public hysteria about "epidemic" child molestation reached a fever pitch as several highly publicized cases of alleged child sexual abuse gripped the nation's attention.[109] The allegations in these cases were shocking and outrageous, and there was a public outcry for justice and an outpouring of concern for victims.[110] A movement developed to expand evidentiary exceptions for hearsay in child abuse trials so that young victims' statements could be considered in court without requiring them to testify and incur

103. *Id.*

104. *Id.*

105. *See* MARK PENDERGRAST, THE REPRESSED MEMORY EPIDEMIC: HOW IT HAPPENED AND WHAT WE NEED TO LEARN FROM IT 2–3 (2017) (ebook).

106. Kathleen Coulborn Faller, *Forty Years of Forensic Interviewing of Children Suspected of Sexual Abuse, 1974–2014: Historical Benchmarks*, 4 SOC. SCI. 34, 34–35 (2015); Stephen M. Krason, *The Mondale Act and Its Aftermath: An Overview of Forty Years of American Law, Public Policy, and Governmental Response to Child Abuse and Neglect*, *in* CHILD ABUSE, FAMILY RIGHTS, AND THE CHILD PROTECTIVE SYSTEM: A CRITICAL ANALYSIS FROM LAW, ETHICS, AND CATHOLIC SOCIAL TEACHING 1, 6–7 (Stephen M. Krason ed., 2013).

107. Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974).

108. Krason, *supra* note 106, at 7–8 ("In 1963, at the time that the first generation of (limited) reporting laws were being put into place, there were 150,000 reports of abuse and neglect nationwide. . . . In 1984, ten years after passage, the number had climbed to 1.5 million.").

109. RICHARD BECK, WE BELIEVE THE CHILDREN: A MORAL PANIC IN THE 1980S, xiii, 115–16 (2015).

110. *Id.* at 116–17.

additional trauma.[111] State legislatures began to pass hearsay exceptions for cases of child sexual abuse, frequently allowing for social workers' reports and the statements contained therein to be admitted.[112]

California's child abuse hearsay exception for dependency proceedings began to evolve in this social environment of growing concern about child sexual abuse. Despite the mounting social attention on child abuse cases in the mid-1980s, California courts declined to create any general reliability exceptions or other special evidentiary rules for child hearsay statements in sexual abuse dependency cases.[113] However, in 1990, the supreme court changed course in *In re Malinda S.*,[114] which found that children's hearsay statements contained in social studies (i.e., social services reports) counted as "legally admissible" evidence under section 355 of the California Welfare and Institutions Code, and dependency courts could therefore admit and rely upon those statements to sustain a jurisdictional finding.[115]

The child dependency hearsay exception continued to expand throughout the 1990s. Not only could prosecuting child protective agencies submit any out-of-court statements into evidence following *Malinda S.* (as long as they wrote them down in the social study first),[116] by 1994 the courts had created a general reliability exception in dependency courts for any child's hearsay statements (whether

111. Dana D. Anderson, *Assessing the Reliability of Child Testimony in Sexual Abuse Cases*, 69 S. CAL. L. REV. 2117, 2122–23 (1996).

112. *See* Jean L. Kelly, *Legislative Responses to Child Sexual Abuse Cases: The Hearsay Exception and the Videotape Deposition*, 34 CATH. U. L. REV. 1021, 1035 (1985).

113. *See, e.g.*, *In re* Donald R., 240 Cal. Rptr. 821 (Ct. App. 1987); *In re* Cheryl H., 200 Cal. Rptr. 789, 807 (Ct. App. 1984) (declining to follow the example of the state of Wisconsin, which had created a "residual exception" test that permitted admission of a child's out-of-court statements that bore indicia of reliability). At that time, courts could admit a child's hearsay statement in a dependency proceeding only if fit under an existing hearsay exception, such as a "spontaneous exclamation." *In re Cheryl H.*, 200 Cal. Rptr. at 809–10. Under the "spontaneous exclamation" or "excited utterance" hearsay exception, the statement may be admitted to prove the truth it asserts so long as the statement was made soon after (e.g., less than five minutes) the relevant event (e.g., the sexual abuse), such that the declarant was still "under the stress of the excitement" of the event. *Id.*

114. 795 P.2d 1244 (Cal. 1990).

115. *Id.* at 1244–45.

116. *Id.*

contained in a social study or not).[117] In *In re Carmen O.*,[118] the court of appeal concluded that a broad child dependency hearsay exception was necessary because "there are particular difficulties with proving child sexual abuse,"[119] and "the typical dependency case often reveals statements of child victims which seem under the circumstances to be reliable" and which the dependency courts "should be entitled to consider."[120] In 1996, California's legislature amended section 355 in part to legitimize both of these hearsay exceptions.[121]

However, as the child dependency hearsay exception expanded in the 1990s, the social tide was turning as the public grew increasingly skeptical of children making sexual abuse accusations. Whereas public support for believing child victims of sexual abuse had been very strong during the mid-1980s child molestation "epidemic" (even when victims' stories were quite bizarre),[122] several of the children involved in high-profile cases recanted their accusations and many of the publicized cases were dropped or overturned on appeal.[123] Fresh concerns emerged about social workers using suggestive or coercive interviewing techniques, which had previously been the professional norm but were shown to implant false memories in children.[124]

Similarly, as California courts honed the newly adopted child dependency hearsay exception in the mid-1990s, the emphasis shifted to ensuring the reliability of hearsay out of concern for parents' due

117. *See In re* Carmen O., 33 Cal. Rptr. 2d 848, 851–55 (Ct. App. 1994) (concluding that an appellate court like itself could validly create what it called a "child dependency hearsay exception" to encompass a child's out-of-court statements, even if not contained in social studies, but failing to specify any test for reliability).

118. 33 Cal. Rptr. 2d 848 (Ct. App. 1994).

119. *In re* Cindy L., 947 P.2d 1340, 1348–49 (Cal. 1997) (for example, "the frequent lack of physical evidence, the limited verbal and cognitive abilities of child victims, the fact that children are often unable or unwilling to act as witnesses because of the intimidation of the courtroom setting and the reluctance to testify against their parents").

120. *In re Carmen O.*, 33 Cal. Rptr. 2d at 852.

121. *See* CAL. WELF. & INST. CODE § 355(a)–(c) (West 1996) (amended 2014); *In re* Lucero L., 998 P.2d 1019, 1028 (Cal. 2000) (plurality opinion).

122. *E.g.*, BECK, *supra* note 109, at xi–xii (describing the allegations in the famous McMartin case, which made headlines in 1983 after social workers interviewed dozens of children from the same daycare in Los Angeles and concluded that the daycare owners had sexually abused at least sixty children in their care, exploited the children for pornography, and forced the children to watch animals be mutilated and killed, and quoting the statement of the mother of one of the alleged victims: "[T]here was no doubt in her mind 'or in anybody else's mind' that her son had been abused. 'You cannot—*he cannot*—have made any of this up. There is no way.'").

123. Anderson, *supra* note 111, at 2117–18.

124. Faller, *supra* note 106, at 35.

process rights.[125] In *Cindy L.*, the supreme court held that a child's non-social study hearsay statements will only be admissible under *Carmen O.* if the statements have sufficient indicia of reliability pursuant to several factors like timing, content, and surrounding circumstances, and only if the child declarant is available to testify or the statements are corroborated by other evidence.[126] Importantly, the *Cindy L.* court also found that hearsay statements by a child who could not distinguish between the truth and lies are not categorically barred as unreliable.[127] Instead, a child's so-called truth-incompetence is another factor relevant in the indicia of reliability test, and the hearsay is admissible so long as it is corroborated.[128]

Finally, in 2000, the supreme court in *Lucero L.* added yet another wrinkle to the child dependency hearsay exception.[129] Whereas many of the cases up to that point had been concerned with the admissibility of children's hearsay evidence, *Lucero L.* was primarily concerned with the *substantiality* of that evidence.[130] In *Lucero L.*, the juvenile court in a dependency jurisdictional proceeding relied solely upon hearsay statements contained in a social worker's report that were made by a truth-incompetent, three-year-old child, even though the hearsay statements were not corroborated by other evidence, in finding that Lucero's father had molested her.[131] The appellate court affirmed, finding that section 355, subsection (c)(1)(B) of the California Welfare and Institutions Code provides that a young child's hearsay statement that is contained in a social study constitutes substantial evidence and is sufficient alone to support a jurisdictional finding (i.e., without corroboration), unless "the statement is unreliable because it was the product of fraud, deceit, or undue influence" (which the dependency court did not find).[132]

---

125. *See, e.g.*, *In re Lucero L.*, 998 P.2d at 1031–35 (plurality opinion); *In re* Cindy L., 947 P.2d 1340, 1348–49 (Cal. 1997).

126. *In re Cindy L.*, 947 P.2d at 1349.

127. *Id.* at 1353.

128. *Id.*

129. *See In re Lucero L.*, 998 P.2d at 1033 (creating the special indicia of reliability test for truth-incompetent minors' uncorroborated hearsay statements in dependency proceedings).

130. *See id.* at 1031 (plurality opinion) (quoting Gregory v. State Bd. of Control, 86 Cal. Rptr. 2d 575, 582 (Ct. App. 1999)) ("The admissibility and substantiality of hearsay evidence are different issues.").

131. *See id.* at 1021, 1023, 1025, 1036.

132. *Id.* at 1025–26.

In a plurality opinion, the *Lucero L.* supreme court found that "a serious due process problem is raised by permitting . . . sole reliance on [a truth-incompetent minor's hearsay] statements without any particular indications of the statements' reliability."[133] Borrowing the reliability test from *Cindy L.*, the court held that a very young child's hearsay statement does not constitute substantial evidence, and is thus insufficient alone to support a dependency jurisdictional finding, unless the court finds that the hearsay evidence "bears special indicia of reliability."[134] Courts should consider whether a statement has special indicia of reliability in light of a "nonexhaustive list of factors" that tend to show that a statement is more or less trustworthy, including: whether the statement was spontaneous, rather than prompted by adults; whether the child consistently repeated the statement; the child's mental state at the time of speaking; whether the child used precocious sexual language or gestures, versus age-appropriate terminology; whether the child had motive to lie; whether the child can distinguish between truth and falsehoods (truth-competence); and more—"any factor bearing on reliability may be considered."[135]

The next time the supreme court would address the child dependency hearsay exception, nearly twenty years after the holding of *Lucero L.*, was in 2018 in *In re I.C.*[136]

V. ANALYSIS

While the supreme court clarified that special indicia of reliability are still required under the exception, the court left ambiguous how a dependency court determines what is "special" and how much courts of appeal should intrude upon that determination on review.[137] Moreover, the supreme court may have created some ambiguity about the impact of a child's prior sexual abuse on the reliability determination.

133. *Id.* at 1031; *see In re I.C. II*, 415 P.3d 773, 782 (Cal. 2018) (In the *Lucero L.* plurality's view, "'relying too heavily on the hearsay statements of incompetent minors to make jurisdictional findings when there has been no opportunity for cross-examining the minor'—and, in particular, when the minor 'has been determined to be incompetent to distinguish between truth and falsehood'—raises a substantial risk of erroneously depriving parents of their substantial interest in maintaining custody of their children." (citations omitted)).

134. *In re Lucero L.*, 998 P.2d at 1032.

135. *In re I.C. II*, 415 P.3d at 785.

136. *See id.* at 773.

137. *Id.* at 782–83, 785, 785 n.7.

A. Reliability Standard: What Is "Special"?

The California Supreme Court's holding in *In re I.C.* confirmed that the test governing the substantiality of truth-incompetent children's uncorroborated hearsay statements asks whether the statements have special indicia of reliability.[138] However, the court missed an opportunity to provide guidance to lower courts about what rises to the level of "special" reliability.[139] One of the difficulties with the special indicia of reliability test is that different courts can perceive that the same circumstances offer different levels of reliability, as the dependency and supreme courts did here.[140] Thus, additional clarification would have been useful here.[141]

Although the supreme court in *In re I.C.* does not explicitly state what constitutes "special" indicia of reliability, we can infer some limits from its analysis. For one, the supreme court explicitly held that special reliability does not require a showing of "clear truthfulness."[142] According to the supreme court, the "reliability requirement is not designed to be 'especially formidable,' or to be 'so stringent' that 'it will impede the government's ability to protect children in an abusive situation.'"[143] In rejecting Justice Stewart's proposed "clear truthfulness," standard, the court established that the upper boundary of special reliability falls somewhere below requiring that a court show the child's hearsay statement was "clearly truthful."[144]

The lower boundary—that is, what is not sufficient to constitute "special" indicia—is more challenging to define. For one, confusing statements most likely fall below the required level of "special" reliability. The *In re I.C.* court placed importance on the fact that the dependency court had acknowledged that I.C.'s statements were "confusing about the train and the flower as it relates to the father" but

138. *Id.* at 783.

139. *See id.*

140. *See generally* Crawford v. Washington, 541 U.S. 36, 63 (2004) ("Reliability is an amorphous, if not entirely subjective, concept. . . . Whether a statement is deemed reliable depends heavily on which [reliability] factors the judge considers and how much weight he accords each of them.").

141. Furthermore, the supreme court has not yet addressed whether the word "special" has any significance to the child dependency hearsay analysis. *See In re I.C. II*, 415 P.3d at 773, 774, 782–83, 785, 787–88; *In re* Lucero L., 998 P.2d 1019, 1022, 1032–33 (Cal. 2000) (plurality opinion); *In re* Cindy L., 947 P.2d 1340, 1353 (Cal. 1997).

142. *In re I.C. II*, 415 P.3d at 783–84; *see supra* Part III(A).

143. *In re I.C. II*, 415 P.3d at 784 (quoting *In re Lucero L.*, 998 P.2d at 1033).

144. *Id.*; *see In re I.C. I*, 191 Cal. Rptr. 3d 108, 144 (Ct. App. 2015) (Stewart, J., concurring and dissenting).

nevertheless found sufficient indicia of reliability.[145] In the supreme court's view, the dependency court "failed to take adequate account of the *confounding* role of I.C.'s prior molestation."[146] Because the inquiry is about ensuring trustworthy, reliable evidence, statements that are confusing probably do not ever rise to the level of "special" reliability.[147]

For another, *In re I.C.* may stand for the proposition that it is not enough for indicia of reliability to outweigh indicia of unreliability.[148] Here, the dependency court found that "the evidence that supports reliability [is] more compelling" than the evidence showing that I.C.'s statements were unreliable.[149] By overturning the dependency court's decision, the supreme court implied that this "more-reliable-than-not standard"[150] (as Justice Stewart put it in her dissent from the court of appeal) is insufficient.[151]

B. Standard of Review: Effectively Independent

The supreme court in *In re I.C.* left an open question regarding the standard of review applicable to lower courts' reliability determinations under the child dependency hearsay exception.[152] Because the *Lucero L.* plurality applied substantial evidence review in its analysis, the court in *In re I.C.* "proceed[ed] on that assumption as well."[153] However, the decision to apply substantial evidence review in *Lucero L.* was not supported by a majority of the supreme court.[154] Moreover, although the supreme court in *In re I.C.* stated that it was reviewing the dependency court's decision for substantial evidence, the review it actually applied suggests that a more independent standard of review is appropriate.[155]

The substantial evidence review standard is deferential to the lower court, whose decision, "if correct, will be upheld even if the

145. *In re I.C. II*, 415 P.3d at 774, 778, 785–86.
146. *Id.* at 786 (emphasis added).
147. *Id.* at 781.
148. *In re I.C. I*, 191 Cal. Rptr. 3d at 119 (majority opinion).
149. *Id.* at 140 (Stewart, J., concurring and dissenting).
150. *Id.* at 141.
151. *See In re I.C. II*, 415 P.3d at 774.
152. *See id.* at 785 n.7.
153. *Id.* at 785.
154. *Id.* at 785 n.7.
155. *Id.* at 785.

stated reasons for the decision are erroneous or incomplete."[156] Under substantial evidence review in *In re I.C.*, "the evidence supporting the jurisdictional finding must be considered 'in the light of the *whole record*' 'to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value.'"[157]

As the diverging supreme court and court of appeal opinions in *In re I.C.* demonstrate, there are particular challenges for appellate courts applying substantial evidence review to a dependency court's special indicia of reliability determination.[158] One possible source of confusion is the overlapping language—both standards may refer to "substantial" evidence.[159] In the context of the reliability test, if a truth-incompetent child's uncorroborated hearsay statement bears special indicia of reliability, then that statement *is* substantial evidence to support the finding alone.[160] Thus, an appellate court applying substantial evidence review in similar cases will probably *only* find substantial evidence to support the finding if the contested hearsay statement *does* have special indicia of reliability, and vice versa. In such cases, there would be no occasion to give the lower court finding any deference, because reviewing the test necessarily means reviewing the finding in full.

The supreme court in *In re I.C.* applied what was, for all intents and purposes, an independent review standard.[161] The court performed what appeared to be an entirely independent reliability inquiry, with little to no deference to the dependency court's findings.[162] Unfortunately, by choosing to assume without deciding the appropriate standard of review,[163] the supreme court missed an opportunity to clarify how much deference appellate courts should give lower courts, which can lead to unequal applications of the law.[164]

156. *In re* Lucero L., 998 P.2d 1019, 1034 (Cal. 2000) (plurality opinion).

157. *In re I.C. II*, 415 P.3d at 785 (quoting People v. Johnson, 162 Cal. Rptr. 431, 444–45 (Ct. App. 1980)).

158. *See id.* at 785; *In re I.C. I*, 191 Cal. Rptr. 3d 108, 118 (Ct. App. 2015).

159. *In re Lucero L.*, 998 P.2d at 1031 (discussing both evidentiary "substantiality" of hearsay evidence and "substantial evidence" standard of review).

160. *In re I.C. II*, 415 P.3d at 785.

161. *See id.* at 786–88.

162. *See id.*

163. *Id.* at 785.

164. *Compare, e.g.*, *In re* Christopher S., No. E030643, 2002 WL 1376243, at *4, *13 (Cal. Ct. App. June 26, 2002) (summarizing the dependency court's finding that statements had indicia of reliability in two brief sentences before holding that the court's determination was supported with substantial evidence), *with In re* J.R., No. B234957, 2012 WL 1664210, at *20–32, (Cal. Ct. App.

Moreover, by explicitly adopting a deferential standard of review in its opinion and then reviewing independently, the *In re I.C.* supreme court will only add to confusion in appellate courts about distinguishing credibility and reliability determinations, like the court of appeal likely experienced here.[165]

C. Implications: Possible New Factors

1. Prior Sexual Abuse

The supreme court in *In re I.C.* may have in effect created a new reliability factor under *Lucero L.*'s "nonexhaustive list"[166]—namely, that a child's history of prior sexual abuse may have a tendency to show that the child's hearsay statements are not trustworthy.[167] In some cases, this precedent may increase the likelihood of an accurate reliability determination where a child has a history of prior abuse. For example, children who have experienced sexual abuse will manifest sexual behaviors inappropriate for their age more often than non-abused peers.[168] Because gestures and language showing precocious sexual knowledge are typically considered to make a child's hearsay statement more reliable, considering whether the child declarant has been previously abused in a different setting would inform the degree of trustworthiness a court should place on the child's sexualized behaviors.[169]

On the other hand, there is a danger that courts will give too much weight to a child having been sexually abused in the past and discredit an honest claim. Child victims of sexual abuse are more likely to be abused again.[170] Thus, future courts reading the opinion in *In re I.C.* may justifiably infer that evidence of a child's past abuse diminishes

May 14, 2012) (reviewing each indicium of reliability found by the juvenile court, and the specific evidence the juvenile court relied upon to determine that there was objective reliability, before upholding the jurisdictional finding).

165. *See In re I.C. I*, 191 Cal. Rptr. 3d 108, 121 n.6 (Ct. App. 2015) (evidencing the court's unusual interpretation of the indicia of reliability test and stating that "[t]his court has taken the position that '[a]ttempting to frame the issues as one of "reliability" is really no more than a challenge to witness credibility'" (second alteration in original)).

166. *In re* Lucero L., 998 P.2d 1019, 1027 (Cal. 2000) (plurality opinion).

167. *See In re I.C. II*, 415 P.3d at 784–85 ("[A]ny factor bearing on reliability may be considered.").

168. Kathleen A. Kendall-Tackett et al., *Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies*, 113 PSYCHOL. BULL. 164, 165–66, 173 (1993).

169. *See In re I.C. I*, 191 Cal. Rptr. 3d at 119.

170. *See* Kendall-Tackett et al., *supra* note 169, at 173.

the reliability of the child's hearsay statements about current abuse, and find the true statements less reliable, particularly if the two incidents share any similarities.

2. Interweaving Fantasy with Truth

Another new factor that the supreme court in *In re I.C.* has implied through its holding is the "tendency to interweave fantasy with truth."[171] This factor goes beyond the truth-competence factor recognized in *Cindy L.* because it is concerned with more than the child's ability to distinguish truth and fact.[172] Here, the *In re I.C.* supreme court considered that I.C. had a "pattern" of making fantastical statements, which the court stated was "relevant in evaluating whether I.C. was likely telling the truth about the incidents involving Father."[173]

This new factor is likely to be relevant to many future courts determining the reliability of a truth-incompetent child's hearsay statements. Research shows that young preschool-aged children have impressionable memories, and often "purposefully exaggerate or even fabricate details" in telling stories rather "than give a precisely accurate account."[174] Because the special indicia of reliability test is only implicated in cases involving truth-incompetent children, who are frequently preschool-aged,[175] this factor may be applied in a large number of future cases.

VI. CONCLUSION

In *In re I.C.*, the California Supreme Court revisited the child dependency hearsay exception for the first time since it devised the special indicia of reliability test nearly twenty years ago.[176] The supreme court did helpfully clear up the appellant's question on appeal—confirming that clear truthfulness is not the test, just special

171. *In re I.C. II*, 415 P.3d at 786–87.

172. *See In re* Cindy L., 947 P.2d 1340, 1353 (Cal. 1997).

173. *In re I.C. II*, 415 P.3d at 787.

174. *See* Gabrielle F. Principe & Erica Schindewolf, Natural Conversations as a Source of False Memories in Children: Implications for the Testimony of Young Witnesses 2 (Sept. 1, 2013) (unpublished manuscript), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3487111/.

175. *E.g.*, *In re I.C. II*, 415 P.3d at 774; *In re* Lucero L., 998 P.2d 1019, 1035 (Cal. 2000) (plurality opinion).

176. *See In re I.C. II*, 415 P.3d 773 (Cal. 2018); *In re* Lucero L., 998 P.2d 1019 (Cal. 2000).

indicia[177]—and provided reviewing courts with an example of rigorous analysis under this exception.

But there is a lingering sense underlying this case that the supreme court did not really grant review here for the legal questions posed. For one thing, the legal issue the supreme court did solve does not seem to have been a source of much confusion before the court saw fit to set the record straight.[178] For another, the supreme court sidestepped those complex legal questions that would benefit most from the court's attention.[179] It seems plausible that it was the "unusual situation"[180] of the "C." family, and righting the wrong that was done to them, that drew the unanimous supreme court's attention to review. Some readers who learn about I.C.'s statements, the factual parallels, and the circumstances, may feel instinctively that the supreme court delivered justice to Alberto C.

177. *See In re I.C. II*, 415 P.3d at 783.

178. Only a few unpublished court of appeal decisions even reference "clear truthfulness," and none of those decisions have actually attempted to apply it as a standard. *See, e.g.*, *In re* Abigail F., No. B267549, 2017 WL 587144, at *8 (Cal. Ct. App. Feb. 14, 2017); *In re* M.G., No. B193671, 2007 WL 2758064, at *9 (Cal. Ct. App. Sept. 24, 2007); *In re* Hannah A., No. A101474, 2004 WL 1879874, at *5 (Cal. Ct. App. Aug. 24, 2004); Dawn Z. v. Superior Court, No. B164965, 2003 WL 21153450, at *8 (Cal. Ct. App. May 20, 2003). One court of appeal did discuss the application of the "marginal utility" test to its review, but the court instead applied the indicia of reliability test without analyzing whether the statements in question were clearly truthful. *In re* Isaac D., No. A128905, 2012 WL 2133638, at *14 (Cal. Ct. App. June 12, 2012). However, because dependency proceedings are sealed, it is difficult to ascertain whether there is confusion at the juvenile court level regarding the standard.

179. *See supra* Part V.

180. *In re I.C. II*, 415 P.3d at 788.