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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re L.B., A Person Coming Under the  
Juvenile Court Law.

B241083  
(Los Angeles County  
Super. Ct. No. CK92667)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

BLAKE B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,  
Elizabeth Kim, Juvenile Court Referee. Reversed in part and remanded with  
directions.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance by Plaintiff and Respondent.

## **FACTUAL AND PROCEDURAL BACKGROUND**

In March 2012, L. B. (L.), the three-year old daughter of appellant Blake B. (Father) was removed from his home by the Department of Children and Family Services (DCFS) due to the child's report that she had been repeatedly hit by the paternal grandmother. At the time, Father and the child's mother, Rae H. (Mother), were separated and engaged in a dispute over custody of L. in family court. DCFS's investigation revealed a lengthy history of domestic violence in which both Father and Mother initiated physical violence, including an incident in December 2011, when L. incurred scratches while the parents were physically fighting over her.

At the detention hearing, L. was placed with Mother, who at that time was living in the home of the maternal grandmother with two other children, L.'s half-siblings. Mother subsequently submitted to jurisdiction. Father contested, but at the April 2012 jurisdictional/dispositional hearing, the court found true that the couple had a history of engaging in domestic violence, including the incident in December 2011 when L. was injured, and that the parents failed to protect the child from the paternal grandmother, who had hit the girl with a broom.

Although DCFS asked the court to find both parents at fault with respect to the couple's violent domestic disputes and presented evidence that Mother had threatened Father with a knife on one occasion and bit him hard enough to leave visible marks on another occasion, it did not ask the court for a change in the initial custody order. The court concluded that L. could not safely remain in Mother's physical custody and indicated an intention to place the child with the maternal grandmother, with whom L. and Mother had been living since the proceedings began. Counsel for DCFS objected, stating that DCFS had not had a chance to formally approve the grandmother's home, although the caseworker had visited the

home and run a “CWSCMS check” on the grandmother and found “no hits.”<sup>1</sup> Father’s counsel also objected, contending that Father believed the maternal grandmother was a drug user and that another adult living in the home had a drug arrest or conviction. Noting that Father had never before expressed any concerns about the maternal grandmother or her home, the court, by order dated April 30, 2012, removed L. from the physical custody of both parents and gave DCFS discretion to place her “in the home of any appropriate relative including the maternal grandmother.”<sup>2</sup> Father appealed.<sup>3</sup>

## DISCUSSION

Section 361.4, subdivision (a) of the Welfare and Institutions Code provides that “[p]rior to placing a child in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall visit the home to ascertain the appropriateness of the placement.”<sup>4</sup> In addition, subdivision (b) provides: “Whenever a child may be placed in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the court or county social worker placing the child shall cause a state-level criminal records check to be

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<sup>1</sup> We presume counsel was referring to its “Child Welfare Services/Case Management System” and that the check would have revealed if the maternal grandmother had been involved in a child abuse proceeding in the jurisdiction.

<sup>2</sup> The minute order stated: “Custody to be taken from parent, and placed in care of DCFS for suitable placement.” The court did not order Mother to leave the home, but directed her to refrain from taking L. out of the home without a monitor.

<sup>3</sup> No respondent’s brief was filed by any party. The rule we follow in such circumstances “is to examine the record on the basis of appellant’s brief and to reverse only if prejudicial error is found. [Citations.]” (*Votaw Precision Tool Co. v. Air Canada* (1976) 60 Cal.App.3d 52, 55; accord, *Carboni v. Arrospide* (1991) 2 Cal.App.4th 76, 80, fn. 2.)

<sup>4</sup> All further statutory citations are to the Welfare and Institutions Code, unless otherwise indicated.

conducted by an appropriate government agency through the California Law Enforcement Telecommunications System (CLETS) . . . with regard to all persons over 18 years of age living in the home . . . .”<sup>5</sup> Subdivision (c) similarly requires a check of “the Child Abuse Central Index . . . to be requested from the Department of Justice . . . on all persons over 18 years of age living in the home.”

Citing section 361.4, Father contends that the court acted in excess of its jurisdiction when it placed L. with the maternal grandmother prior to DCFS undertaking a formal home visit or running checks for criminal records or records of child abuse of all adults residing in the home. To the extent appellant contends the court lacked authority at the jurisdictional/dispositional hearing to place L. with the maternal grandmother on an emergency basis, we disagree. The juvenile court may place a child with relatives on a temporary, emergency basis prior to the home visit and record checks. (*In re M.L.* (2012) 205 Cal.App.4th 210, 224; see §§ 361.45, 319, subd. (f)(1).) However, the provisions of section 361.4 must be complied with in due course whenever a child is removed from parental custody and placed with others, and the child must be removed if the home is inadequate or adults in the home have a record of child abuse or a criminal record and no exemption is obtained. (*In re M.L.*, *supra*, at p. 225.)

From the record before us, it is not entirely clear that L. was placed with the maternal grandmother, as the court gave DCFS the authority to place her with “any appropriate relative”; nor is it clear whether DCFS complied with section 361.4 after the jurisdictional/dispositional hearing. Accordingly, we will remand to the juvenile

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<sup>5</sup> If the criminal records check indicates that a person in the household has been convicted of a crime that would preclude licensure as a foster home, the child may not be placed in the home unless the Agency grants an exemption. (§ 361.4, subd. (d)(2); *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1056.) The juvenile court does not have authority to grant an exemption, but may review the Agency’s decision to grant or deny such an exemption for abuse of discretion. (*In re Esperanza C.*, *supra*, at pp. 1056, 1058-1061.)

court for the limited purpose of ensuring compliance with section 361.4. If DCFS has not already done so, it shall be ordered to make the inquiries mandated by subsections (b) and (c) of the statute. Based on the results of those inquiries, the court shall maintain or modify its placement order in conformity with the statute's requirements.

### **DISPOSITION**

The court's order of April 30, 2012 is reversed in part and the matter is remanded. After remand, DCFS is to comply with section 361.4 and make the inquiries mandated by subsections (b) and (c) within a reasonable time, and the juvenile court is to maintain or modify its placement order based on the results of those inquiries and in compliance with the statute's requirements.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.