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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re H.P., a Person Coming Under  
the Juvenile Court Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Daniel M. et al.,

Defendants and Appellants.

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B269025

(Los Angeles County  
Super. Ct. No. CK95045)

APPEAL from orders of the Superior Court of Los Angeles County, Julie F. Blackshaw, Judge. Affirmed in part; reversed in part with directions.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant Daniel M.

Elizabeth Klippi, under appointment by the Court of Appeal, for Defendant and Appellant Melissa P.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Jeanette Cauble, Deputy County Counsel for Plaintiff and Respondent.

Karen Robicheau for the Minor.

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## I. INTRODUCTION

The father, Daniel M., and the mother, Melissa P., appeal from the juvenile court's November 18, 2015 jurisdictional and dispositional findings and orders. The father argues the juvenile court erred in finding he was not the presumed father. In addition, the father contends there is insufficient evidence to support the jurisdictional finding that his marijuana abuse posed a risk of harm to the child, H.P. Further, the father challenges the removal order because the child was not in his custody when the petition was filed. Finally, the father and the mother argue the juvenile court failed to comply with the notice requirements of the Indian Child Welfare Act and related California law. Upon remittitur issuance, the juvenile court is to comply with the notice provisions of the Indian Child Welfare Act and related California law. We affirm the jurisdictional and dispositional findings and orders in all other respects.

## II. PROCEDURAL HISTORY

On August 21, 2015, the Los Angeles County Department of Children and Family Services (the department) filed a Welfare and Institutions Code<sup>1</sup> section 300 petition on behalf of the child. Counts b-1 and j-1 of the petition allege the mother has bipolar disorder and schizophrenia which render her incapable of providing the child with regular care and supervision. The mother failed to take psychotropic medication and did not obtain necessary mental health treatment. In addition, the child's four-year old sister, Natalie P., is a dependent of the juvenile court receiving permanent placement services because of the mother's mental and emotional problems. Count b-2 of the petition alleges the father has a history of substance abuse and is a current marijuana abuser. The petition alleges the father's substance abuse renders him incapable of providing regular care and supervision of the child and places her at risk of serious physical harm.

On August 21, 2015, the father signed a Parental Notification of Indian Status, which is referred to as an ICWA 020 form. The father indicated he had possible "Yaki Indian" ancestry. At the August 21, 2015 detention hearing, the paternal grandmother stated when she was young, her grandfather told her the family had "Yaki" ancestry. The juvenile court found it had no reason to know H.P. was an Indian child under the Indian Child

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Welfare Act. The parents were ordered to keep the department, their attorneys and the juvenile court aware of any new information relating to the child's status under the Indian Child Welfare Act.

The child was detained in shelter care with the department having discretion to release the infant to any appropriate relative. The parents were granted monitored visits for three hours per week minimum. The father indicated he had started attending a substance abuse program in early June. He requested random drug testing, which the juvenile court ordered for both parents. In addition, the juvenile court ordered a multidisciplinary assessment of the child and parents.

In addition, the juvenile court ordered a paternity test after the father requested one. The father believed he was the child's father. But the mother had told him that he was not the father during one of their arguments. On October 30, 2015, the father took a paternity test. On November 4, 2015, the paternity test results confirmed he was the child's father.

At the November 18, 2015 adjudication and disposition hearing, the juvenile court found the father to be the child's biological father. The juvenile court sustained the allegations in the petition and declared the child a dependent of the court under section 300, subdivisions (b) and (j). The juvenile court removed the child from the parents' custody under section 361, subdivision (c). The juvenile court ordered reunification services for the father. The father was ordered to participate in random drug testing, anger management,

parenting and individual counseling. The mother was denied reunification services pursuant to section 361.5, subdivision (b)(10). The parents were granted monitored visits with the child with the department having discretion to liberalize visitation.

### III. EVIDENCE

#### A. Detention Report

On August 17, 2015, children's social worker Angela Matthis received a referral alleging caretaker incapacity, general neglect and emotional abuse by the parents. The caller reported the mother had recently given birth to a baby girl. The hospital staff expressed concern about the parents' ability to care for the child. The parents had to be reminded to feed the baby and change her diaper. In addition, the parents got into a heated argument in the middle of the night while at the hospital. The father could be heard screaming and crying repeatedly, "[M]ake the baby stop crying, make the baby stop crying." The mother came out of the hospital room and told hospital staff, "Make him leave because he's calling me names and you're not supposed to call people names." The father was overheard punching his head, slamming furniture and hitting the windows. Later, the father was escorted from the hospital by security staff.

Ms. Matthis interviewed the mother at the hospital. The mother stated the argument was her fault and "it was not bad." The mother said the father was only 18 years old and had not been around babies. She had been residing

with the father's relatives for nearly a month. The mother reported she and the father broke up during the argument.

The father came to visit the baby at the hospital and was interviewed by Ms. Matthis. Ms. Matthis observed the father talked rapidly, had red eyes and kept rubbing his hands on his knees. The father indicated he was nervous. The father said the mother became pregnant two months after they met each other. The father stated the mother had argued with him about paternity testing. When things were going well between them, the mother would say he was the father. When things were not going well, the mother would say he was not the father. He was willing to do what was needed to be the father to the child. But he wanted to know if he was the child's biological father. The father reported he had used marijuana but he stopped two or three months ago. The father stated he recently completed probation as a juvenile for petty theft.

## B. Jurisdiction and Disposition Report

The October 30, 2015 jurisdiction and disposition report indicated the child was placed with Julie S., a relative caregiver. Julie S. had legal guardianship of the child's older sister, Natalie P.

The mother was interviewed by dependency investigator Ioana Mikkelsen on September 3, 2015. The mother said the father was holding the child while hushing and rocking the youngster. This was done in an effort to stop the child from crying. The mother sensed the father was getting frustrated and offered to take the child from

him but he refused. Their argument escalated and the mother asked a nurse to have the father removed from the hospital room. The nurse took the child from the father. The father was asked to leave. The father refused to leave and the mother was sent to another room with the baby. Security was called after the father began yelling, banging on the wall, and acting inappropriately with the nurses.

The mother believed the argument escalated because the father had never been around infants before. The parents had been dating for about a year. They lived together off and on in various motels or with relatives. While they were living together, the mother paid for everything with her supplemental security income benefits. The mother said the father did not work or attend school. The mother indicated the father had a history of smoking marijuana.

Ms. Mikkelson tried to interview the father multiple times but was unsuccessful. On September 2, 2015, Ms. Mikkelson made an unannounced visit at the father's reported home address. Ms. Mikkelson knocked on the door and was greeted by the paternal great grandfather, Louis M. The paternal great grandfather stated neither the maternal grandmother nor the father currently lived in the residence. The paternal grandmother and father had lived with him several weeks ago. However, the paternal great grandfather asked them to leave after the father stole money and collectors' coins. The paternal great grandfather stated he did not trust the paternal grandmother or the father with the child. The paternal

great grandfather intended to call the police if the father came to the residence.

Later, Ms. Mikkelson scheduled three appointments with the father. Although the appointments were scheduled at locations and times of the father's choosing, he did not attend any of the appointments. On October 6, 2015, children's social worker Pat McQueen spoke with the father by telephone. The father was informed of the upcoming hearing and asked to verify his address. A telephone call was made to the father in order to obtain his response to the allegations in the petition. However, the father never returned the telephone call.

The father was currently homeless. He had made no attempts to visit the child. Further, the department was unable to contact the father to refer him to drug testing. The father had requested a paternity test, which was granted by the juvenile court on August 21, 2015. But despite numerous attempts to schedule an appointment with the father, he had not made himself available for an interview or for paternity testing. Ms. Mikkelson wrote, "Father has not cooperated with [the department] as he has not kept [the department] aware of his address, he has failed to show for three appointments, and he has not submitted to drug testing or provided any evidence that he is addressing the concerns before the court."



### C. Last Minute Information for the Court

The November 28, 20015 last minute information for the court attached the Multidisciplinary Assessment Team report. The assessor, Yeni Cruz, reported she was only able to have a five-minute telephone call with the father. Ms. Cruz identified the father's challenges to include substance abuse, anger concerns and lack of financial means to care for the child.

## IV. DISCUSSION

### A. The Father's Parental Status

The juvenile court found the father was the child's biological father. The father asserts the juvenile court erred by not recognizing him as the presumed father. The father contends he is a father within the meaning of *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849 (*Kelsey S.*). In *Kelsey S.*, our Supreme Court held, "[The adoption statutes] violate[] the federal constitutional guarantees of equal protection and due process of unwed fathers *to the extent that* the statutes allow a mother unilaterally to preclude her child's biological father from becoming a presumed father and thereby allowing the state to terminate his parental rights on nothing more than a showing of the child's best interest." (*Kelsey S.*, *supra*, 1 Cal.4th at p. 849; accord, *In re Charlotte D.* (2009) 45 Cal.4th 1140, 1147-1148.) The Supreme Court further ruled, "If an unwed father promptly comes forward and

demonstrates a full commitment of his parental responsibilities – emotional, financial, and otherwise—his federal constitutional right to due process prohibits the termination of his paternal relationship absent a showing of his unfitness as a parent.” (*Id.*, at p. 849; accord, *In re Elijah V.* (2005) 127 Cal.App.4th 576, 583 (*Elijah V.*).) Although *Kelsey S.* is an adoption case, its reasoning has been extended to dependency proceedings. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 451; *In re D.S.* (2014) 230 Cal.App.4th 1238, 1244; *In re D.M.* (2012) 210 Cal.App.4th 541, 551.)

The father concedes he did not request presumed father status under *Kelsey S.* But the father argues he raised the issue below by asking for a judgment of paternity and acknowledging he was responsible for H.P.’s support. However, a similar argument was rejected by the Fourth Appellate District, Division One in *Elijah V.*, *supra*, 127 Cal.App.4th at page 582. The father in *Elijah V.* argued he sufficiently raised the *Kelsey S.* issue by arguing he was entitled to presumed father status and reunification services. (*Elijah V.*, *supra*, 127 Cal.App.4th at p. 582.) The Court of Appeal held the father forfeited the issue by failing to specifically address the *Kelsey S.* factors or make a request for a *Kelsey S.* father designation. (*Ibid.*) Likewise, here, the father did not request *Kelsey S.* rights at the detention or jurisdictional hearing. Thus, the father has forfeited the issue by failing to raise it in the juvenile court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 “[A] reviewing court ordinarily will not consider a challenge to a ruling if

an objection could have been made but was not made in trial court.”]; *Elijah V.*, *supra*, 127 Cal.App.4th at p. 582.)

In any event, he has failed to establish he is a *Kelsey S.* father. (*In re D.S.*, *supra*, 230 Cal.App.4th at p. 1246 [biological father asserting *Kelsey S.* rights has burden of proof]; *Elijah V.*, *supra*, 127 Cal.App.4th at p. 583.) In *Kelsey S.*, the Supreme Court stated: “Once the father knows. . .of the pregnancy, he must promptly attempt to assume his parental responsibilities as fully as the mother will allow and his circumstances permit. In particular, the father must demonstrate ‘a willingness himself to assume full custody of the child—not merely block adoption by others.’ [Citations.]” (*Kelsey S.*, *supra*, 1 Cal.4th at p. 849; accord, *V.S. v. M.L.* (2013) 222 Cal.App.4th 730, 739.) We consider the father’s conduct before and after the child’s birth including: the father’s public acknowledgment of paternity; payment of pregnancy and birth expenses commensurate with the ability to do so; and prompt legal action to seek custody of the child. (*Kelsey S.*, *supra*, 1 Cal.4th at p. 849; *Elijah V.*, *supra*, 127 Cal.App.4th at p. 583.)

The father is not entitled to *Kelsey S.* rights because he did not demonstrate a full commitment to his parental responsibilities. The father’s JV-505 form, Statement Regarding Parentage, indicates he attended the child’s birth, slept at the hospital and helped care for the youngster. However, the child was referred to the department because of caretaker incapacity and general parental neglect. After the child’s birth, the parents had to be reminded to feed and change the youngster’s diaper. In

addition, the parents argued in the middle of the night while at the hospital with the child. The father screamed repeatedly, “[M]ake the baby stop crying, make the baby stop crying.” The hospital staff heard the father punch his head, slam furniture and hit the windows. The father was escorted from the hospital by the security staff because of his violent behavior.

In addition, the father did not promptly establish paternity. The father’s parentage form indicates he told his family and friends that he was the child’s father. In addition, the father states his relatives visited the baby at the hospital. However, the father was not present to sign the birth certificate because the security staff escorted him from the hospital after his violent outburst. Further, the mother and father did not sign a voluntary declaration of paternity pursuant to Family Code section 7570 et seq. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 595; *In re Liam L.* (2000) 84 Cal.App.4th 739, 747.) Instead, the father requested a paternity test, which was granted by the juvenile court at the detention hearing on August 21, 2015. Further, the father did not promptly take the paternity test. Despite the department’s numerous attempts to schedule an appointment with the father, he did not make himself available for paternity testing until October 30, 2015.

Furthermore, the father never provided financial support for the child. In the JV-505 parentage form, the father claims he purchased clothes, diapers, a bassinet and other necessities. But the mother reported prior to the child’s birth, the parents lived together off and on in

various motels or with relatives. While the parents were living together, the mother paid for everything with her supplemental security income benefits. The mother stated the father did not work or attend school. Also, the father admitted he recently completed probation as a juvenile for petty theft. The October 30, 2015 jurisdiction and disposition report indicates the father is currently homeless. The paternal great grandfather asked the paternal grandmother and father to leave the family residence. This occurred after the father stole money and collectors' coins from the paternal great grandfather. There is no evidence the father has financial means to support the child or provide her with a stable environment.

Finally, the father made no effort to establish a parental relationship with the child after the detention hearing. Once the child was detained, he did not visit her. Further, the father did not cooperate with the department. He did not inform the department of his current address, failed to appear for three appointments and did not submit to court-ordered drug testing. In addition, the father failed to participate in the court-ordered Multidisciplinary Assessment Team assessment process. Ms. Cruz, the assessor, reported she was only able to have a five-minute telephone call with the father. The father fails to meet his burden of demonstrating he is a *Kelsey S.* father.

## B. Jurisdictional Findings

The father challenges the juvenile court's jurisdictional finding concerning his substance abuse. Count b-2 of the petition alleges the father has a history of substance abuse and is a current marijuana abuser. The petition further alleges the father's substance abuse renders him incapable of providing regular care and supervision of the child.

The father does not challenge the jurisdictional findings regarding the mother's mental health issues in counts b-1 and j-1. Only one jurisdictional finding is required for the juvenile court to assert jurisdiction over the child. (*In re Mia Z.* (2016) 246 Cal.App.4th 883, 894; *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 ["As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate."].) Where multiple grounds for dependency jurisdiction are alleged, we may affirm the jurisdictional findings if any of the statutory bases for jurisdiction is supported by substantial evidence. (*In re Ashley B.*, *supra*, 202 Cal.App.4th at p. 979; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) Because jurisdiction was proper under counts b-1 and j-1, we need not consider the father's appeal of the jurisdictional finding in count b-2. (*In re J.L.* (2014) 226 Cal.App.4th 1429, 1435; *In re Ashley B.*, *supra*, 202 Cal.App.4th at p. 979.)

### C. Removal Order

Section 361, subdivision (c)(1) provides: “A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . . [¶](1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody . . . . The court shall consider, as a reasonable means to protect the minor, each of the following: [¶] (A) The option of removing an offending parent or guardian from the home. [¶] (B) Allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.”

The father challenges the juvenile court’s dispositional order removing the child from his custody under section 361, subdivision (c). The father argues the juvenile court did not have authority to issue the removal order because the child was not in his custody at the time the petition was filed. Further, the father contends the removal order is inconsistent with the juvenile court’s finding that the father was merely the biological father,

and not the presumed father. We need not address the father's arguments. The father failed to raise any objection to the findings and removal order made by the juvenile court at the November 18, 2015 jurisdiction and disposition hearing. On appeal, the father has forfeited the issue by failing to raise it below. (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293; *In re Aaron S.* (2015) 235 Cal.App.4th 507, 521.)

#### D. Notice Under the Indian Child Welfare Act

The Indian Child Welfare Act was enacted to “protect the best interests of Indian children” and to promote tribal and family stability and security. (25 U.S.C. § 1902; *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1385; *In re H.G.* (2015) 234 Cal.App.4th 906, 908-909.) An Indian child is defined under federal law as follows: “‘Indian child’ means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe[.]” (25 U.S.C. § 1903(4); see *Adoptive Couple v. Baby Girl* (2013) 570 U.S. \_\_\_, \_\_\_, \_\_\_, [133 S. Ct. 2552, 2555-2556].) Under California law, an Indian child is defined thusly: “As used in connection with an Indian child custody proceeding, the term ‘Indian child’ also means an unmarried person who is 18 years of age or over, but under 21 years of age, who is a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe, and who is under the jurisdiction of the dependency court, unless that person or his or her attorney elects not to be



considered an Indian child for purposes of the Indian child custody proceeding. All Indian child custody proceedings involving persons 18 years of age and older shall be conducted in a manner that respects the person's status as a legal adult.” (§ 224.1 subd.(b)); see *In re K.P.* (2015) 242 Cal.App.4th 1063, 1071.) The Indian Child Welfare Act requires notice be sent to the Indian tribe and Indian custodian if the juvenile court knows or has reason to know the minor is an Indian child. (25 U.S.C. § 1912 (a); *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1385; *In re S.B.* (2005) 130 Cal.App.4th 1148, 1157.) Likewise, California law requires notice to the minor’s tribe and Indian custodian if the juvenile court or department knows or has reason to know that an Indian child is involved in the proceedings. (§ 224.2; Cal. Rules of Court, rule 5.481 (b); *In re Kadence P.*, *supra*, 241 Cal.App.4th at pp. 1385-1386; *In re J.T.* (2007) 154 Cal.App.4th 986, 993-994.) Further, the juvenile court and the department have a continuing duty to inquire whether the minor is an Indian child. And the juvenile court and the department have a continuing duty to provide notice to the Indian tribe or custodian. (§ 224.3, subds. (a), (d); Cal. Rules of Court, rule 5.481. (a); *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1386; *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1168.)

The father and mother argue the department failed to comply with the notice requirements of the Indian Child Welfare Act and its California counterpart. On August 21, 2015, the father signed an ICWA 020 form indicating possible “Yaki Indian” ancestry. At the August 21, 2015 detention hearing, the paternal grandmother stated when

she was young, her grandfather told her the family had “Yaki” ancestry. Notwithstanding this information, the juvenile court found it had no reason to know the minor was an Indian child subject to the Indian Child Welfare Act. The parties agree the father misspelled the Yaqui tribe as the “Yaki” tribe. The department admits no notice was ever sent to the Yaqui tribe or the Bureau of Indian Affairs. The parties agree the case should be remanded for compliance with the Indian Child Welfare notice requirements. We concur a limited remand is necessary for compliance with the notice requirements of the Indian Child Welfare Act and related California law. (*In re Kadence P.*, *supra*, 241 Cal.App.4th at p.1388; *In re J.T.*, *supra*, 154 Cal.App.4th at p. 994.)

## V. DISPOSITION

The jurisdictional and dispositional orders are reversed. Upon remittitur issuance, the department is to comply with the notice provisions of the Indian Child Welfare Act and related California law. In all other respects, the juvenile court's factual findings and orders are affirmed.

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TURNER, P.J.

We concur:

BAKER, J.

KIN, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.