

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re JACK G. et al.,

Persons Coming Under the Juvenile
Court Law.

B239846

(Los Angeles County
Super. Ct. No. CK78733)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LUPE L. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County, Donna Levin,
Juvenile Court Referee. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and
Appellant Lupe L.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and
Appellant Daniel G.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Lupe L. (Mother) and Daniel G. (Father) appeal from orders terminating their parental rights with respect to their sons, Jack G. and Patrick G., pursuant to Welfare and Institutions Code section 366.26.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 25, 2009, the Department of Children and Family Services (DCFS) received a referral alleging general neglect, in that Mother and her newborn, Jack, tested positive for amphetamines and methamphetamines at the time of his birth.² A children's social worker (CSW) conducted an investigation, including interviews with Mother, Father, and the nurse caring for Jack. The nurse stated that, at that time, Jack had no symptoms of drug withdrawal, but he was a poor feeder and had difficulty with respiration. Jack had been diagnosed with hip dysplasia due to breech birth and would be kept in the hospital for a while. During his first year and a half of life, Jack was diagnosed with failure to thrive and possible partial fetal alcohol syndrome. He was also diagnosed with developmental delay, undescended testicle, eczema and impetigo.

Mother told the CSW she began using amphetamines and methamphetamines in May 2009 due to depression after her grandmother died of leukemia. She denied any

¹ All further statutory references are to the Welfare and Institutions Code.

² Mother and Father's other son, Patrick G., was born in June 2011, during the course of dependency proceedings as to Jack.

prior drug use. Mother stated that she was unaware she was pregnant until July, she knew then that she should stop using drugs during the pregnancy, but she continued drug use. Mother said she did not tell Father about her pregnancy until the day she was hospitalized for delivery.

Father told the CSW that he believed he was Jack's father and wanted to take a DNA test.³ Father said that he and Mother were "just good friends," and he was there as a support for Mother when she became depressed about her grandmother's death. Father stated that he did not know Mother was pregnant until a maternal aunt called and informed him; when he ask Mother if she was pregnant, she said she was not. Father denied knowing Mother was using drugs. Father said that he went through a period of using cocaine 14 years ago, but he had not used drugs since then.

The CSW obtained a report of Father's criminal history. The history included, inter alia, a 1995 conviction for manufacturing a controlled substance and conspiring to manufacture a controlled substance for sale; a 1996 charge for manufacturing a controlled substance for sale; a 2003 charge for possession and manufacturing of methamphetamine; in 2006, Father's probation was revoked and he was charged with manufacturing a controlled substance, possession of narcotic controlled substance and possession of a dangerous weapon. Mother had no criminal history.

On August 26, the CSW interviewed Father regarding his criminal history. Father admitted he manufactured a controlled substance in 1995 and was in prison for it for a long time. However, Father denied using the controlled substance. He denied the 2006 possession charge, stating that his friend had pills in his possession while driving. Father stated that, as of the interview, he was clean and agreed to test later that day. Father later left a voicemail for the CSW stating that he went to the testing site, but did not leave a sample because he felt uncomfortable providing a sample while the staff member was watching him.

³ In December 2009, based upon the DNA/HLA test results, the juvenile court found that Father was Jack's biological father.

The CSW conducted an assessment of the future risk to Jack's safety and well-being. The CSW concluded that "[b]ased on the positive toxicology results for mother and child, and mother's continued usage of amphetamines and methamphetamines with the knowledge that she was pregnant, [Jack] can be determined as high risk for future abuse."

On August 28, 2009, DCFS filed a petition alleging, pursuant to section 300, subdivision (b),⁴ that Mother's and Father's substance abuse endangered Jack and created a detrimental home environment, placing Jack at risk of harm. At the detention hearing, the juvenile court ordered that Jack be detained and placed in suitable care. At the time of the hearing, Jack remained hospitalized. The court ordered Mother and Father to have weekly random drug tests and ordered DCFS to provide family reunification services to them, with monitored visitation a minimum of three times a week for three hours each visit.

In September 2009, Mother entered an in-patient substance abuse rehabilitation program which would allow Jack to reside with her. Mother's program required six months of in-patient treatment followed by six months of out-patient treatment.

At a hearing shortly thereafter, the juvenile court gave DCFS discretion to place Jack with Mother after he was released from hospital care. The court's placement order was subject to the condition that Mother remain in the in-patient drug treatment program, complete the entire program and maintain sobriety thereafter. DCFS returned Jack to Mother's care at the in-patient rehabilitation facility. Prior to Jack's arrival, Mother had

⁴ Section 300 provides in pertinent 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: [¶] . . . [¶] (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 . . . to adequately supervise or protect the child, . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness, developmental disability, or substance abuse."

completed medical training to enable her to provide the care he required due to his hip dysplasia.

In Mother's jurisdiction/disposition hearing in December 2009, she pled no contest to count b-2, as amended. The juvenile court sustained count b-2 and dismissed count b-1. The sustained count b-2 stated that Mother's substance abuse placed Jack at risk of physical and emotional harm.

In January 2010, the juvenile court held a contested jurisdiction hearing as to Father. The court sustained count b-3 of the petition, finding Father's history of substance abuse and his criminal history of manufacturing and possessing controlled substances put Jack at risk of physical and emotional harm. The juvenile court then moved into the disposition hearing as to Father. The court questioned the need for the hearing, in that Jack had already been placed with Mother.

Months later, Mother successfully completed the in-patient portion of her program. In May 2010, however, Mother relapsed. She tested positive for amphetamine and methamphetamine. DCFS again detained Jack.

DCFS promptly filed a section 387 supplemental petition against Mother and Father. The supplemental petition included only one count alleging Mother's relapse and that her drug abuse endangered Jack's well-being.

In its July 14, 2010 jurisdiction/disposition report, DCFS acknowledged that it filed the supplemental petition against both parents. The report included each parent's progress to date with respect to their court ordered reunification activities. The report stated that Father had not had any visitation with Jack as he had not made contact with DCFS to arrange a visit. In addition, both Mother and Father had recently tested positive for methamphetamines and amphetamines.

On July 14, the juvenile court conducted a jurisdiction/disposition hearing on the supplemental petition. Mother pled no contest to count s-1, as amended, of the supplemental petition. The court sustained the petition and found that its previous disposition had not been effective, and there was a substantial risk to Jack if returned to Mother's physical custody. The court ordered Jack suitably placed.

According to the January 12, 2011 status review report, Mother had not been in compliance with her case plan. She had not participated in any substance abuse program, had several drug tests positive for methamphetamines and amphetamines, and was not participating in individual counseling. Father had been in partial compliance with his case plan. He completed a parent education program and attended individual counseling. However, Father had two positive drug tests for amphetamines and methamphetamines and then did not submit to random drug testing. Father resumed drug testing when he enrolled in a substance abuse rehabilitation program and had given 12 negative drug tests. Father attended most of the program's required therapy sessions and meetings. According to the report, both parents were consistent in their visitation with Jack. The CSW reported that "[b]oth parents do present as having a bond with" Jack. However, the CSW stated, the parents demonstrated a lack of awareness of Jack's developmental delays and related needs.

At the January 12 six-month review hearing, the juvenile court found "by clear and convincing evidence that the extent of progress made to alleviate or mitigate the causes necessitating placement, by the mother, has been minimal compliance; by the father, has been partial compliance. [¶] Failure to participate and make substantive progress in court-ordered treatment constitutes prima facie evidence that return would be detrimental."

In June 2011, Mother gave birth to Patrick. He tested positive for amphetamine and opiates. Mother tested positive for amphetamine and cocaine. DCFS received an emergency response referral. A CSW interviewed Mother, Father and the nurses caring for Mother and Patrick. Mother said that she and Father had been living together for about a year. Mother stated that she did not know she was pregnant before she came to the hospital on the day of Patrick's birth and that she did not know why she had opiates in her system. Father said he suspected Mother was pregnant, but she denied it and would not get tested. He stated that he had not seen Mother drink or use any drugs. He and Mother said that he was Patrick's father. Patrick's nurse told the CSW that Patrick was not eating on his own.

During his first year of life, Patrick was diagnosed with club foot, underwent corrective surgery and began wearing a brace that would require daily manipulation for about four years. He was also diagnosed with partial fetal alcohol syndrome with mild retardation, and he was assessed to be delayed in all areas of development.

On June 17, 2011, DCFS filed a petition with respect to Patrick under section 300, subdivisions (b) and (j). At a detention hearing the same day, the juvenile court ordered that Patrick be detained in foster care with DCFS having temporary custody. The court found that Father was the presumed father of Patrick. The court ordered monitored visitation for the parents for a minimum of two times a week for two hours per visit.

On July 11, DCFS filed a first amended petition with respect to Patrick under section 300, subdivisions (b) and (j). On July 13, the court held a jurisdiction/disposition hearing for Patrick and a 12-month review hearing (§ 366.21, subd. (f)) for Jack. As to jurisdiction over Patrick, the court sustained certain counts of the first amended petition and dismissed the original petition. Father pled no contest to the first amended petition, and the court sustained the first amended petition as to Mother. Jurisdiction was based on Mother's and Father's substance abuse and positive drug tests, Patrick testing positive for drugs at the time of his birth, and the fact Jack was a dependent child of the court due to Mother's and Father's drug use.

Mother's and Father's attorneys requested contested hearings as to disposition for Patrick and termination of family reunification services as to Jack. Ultimately, the contested hearings were set for August 2011.

On August 24, DCFS filed a supplemental report stating that Mother and Father had had 6 months of failed family maintenance services as to Patrick, and failed family reunification services as to Jack for 13 months by Mother and 18 months by Father. DCFS was extremely concerned about the continued use by Mother and Father of amphetamines and methamphetamines. According to the report, since the time of her relapse in May 2010, Mother tested 41 times and produced only 3 negative tests. Her most recent positive test was on August 9. Since June 2010, Father tested 28 times and had only 4 negative tests.

On August 31, the juvenile court conducted contested hearings regarding Jack and Patrick. At the contested hearing for Jack pursuant to section 366.21, subdivision (f), the court found that the parents were never able to complete the case plan and were still testing positive for drugs, “and so I have no basis on which to continue family reunification.” The court stated: “The court finds by a preponderance of the evidence that return of [Jack] to the physical custody of the parents would create a substantial risk of detriment to the safety, protection, physical and emotional well-being of the child, creating a continuing necessity for and appropriateness of the current placement [i.e., in a foster home].” The court further found “by clear and convincing evidence that the extent of progress made to alleviate or mitigate the causes necessitating placement by the mother has been minimal; compliance by the father has been minimal compliance. Failure to participate and make substantive progress in court-ordered treatment constitutes prima facie evidence that return would be detrimental.”

The juvenile court found there was no substantial probability that Jack would be returned to the parents by the 18-month date. The court continued by finding “that the parents have not consistently and regularly visited [Jack] and have not made significant progress in resolving the problems that led to removal of the child and have not demonstrated the capacity and ability to complete the objectives of the treatment plan and provide for the child’s safety, protection, physical and emotional health and special needs.” It therefore terminated reunification services for Mother and Father as to Jack and set a permanency planning hearing pursuant to section 366.26 as to Jack. The court ordered visitation with Jack by the parents for one visit per month for one hour.

At Patrick’s contested disposition hearing on the same date, the juvenile court denied family reunification services as to Patrick, noting the history of the parents’ failure to “ameliorate the chronic and habitual drug habits” that had occurred with respect to Jack. The court also found pursuant to section 361, subdivision (c), that there would be a substantial danger to Patrick if returned to the parents’ custody. The court set a section 366.26 permanent plan hearing for Patrick. The court ordered visitation with Patrick by the parents for one visit per month for one hour.

In preparation for the permanent plan hearing for Jack and Patrick, DCFS submitted a section 366.26 report in late December 2011 and a status review report just prior to the February 2012 permanent plan hearing for the children. The reports noted that Jack and Patrick had been placed together with the prospective adoptive parents who had cared for Patrick since he was 16 days old. The prospective adoptive parents had an approved home study.

DCFS reported that, in August 2011, Mother admitted herself into a one-year in-patient drug rehabilitation program and was testing clean. Mother was maintaining a relationship with Father. DCFS also acknowledged: “As a credit to the parents, they have been consistent with their visits with both children throughout the supervision of the case and may have a relationship with the child Jack.”

On February 29, 2012, the juvenile court conducted the permanent plan hearings for Jack and Patrick. The court heard argument and offers of proof from Mother’s attorney and Father’s attorney in support of their requests that the court conduct a contested hearing on the matter. The court denied the requests on the ground the offers of proof provided insufficient basis for holding a contested hearing under the facts and circumstances of the case. The juvenile court designated prospective adoptive parents with whom the children had lived for over six months and who had taken at least one step to facilitate the adoption process. The court found that the children were adoptable, and “it would be detrimental to the children to be returned to the parents.” The court further found that no exception to adoption applied and ordered the termination of the parental rights of Mother and Father.⁵

⁵ Prior to the hearing, Mother filed two section 388 petitions on the basis that she was currently enrolled in a substance abuse rehabilitation program and had tested clean. The juvenile court denied the petitions.

DISCUSSION

A. Denial of Requests for Contested Section 366.26 Hearing

Contrary to their contentions, Mother and Father were not denied due process with respect to the denial of their requests for a contested section 366.26 hearing. Their due process claims present a question of law, and we review it de novo. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460.) Mother and Father maintain they should have been given the opportunity to present evidence of the existence of the beneficial parent-child relationship exception to termination of their parental rights. (§ 366.26, subd. (c)(1)(B)(i).)

In a juvenile dependency proceeding, a parent has a due process right to a meaningful hearing with the opportunity to present evidence, but that right is subject to certain limitations not applicable, for example, in criminal proceedings. (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146.) A parent's due process right does not include entitlement "to full confrontation and cross-examination." (*In re Sade C.* (1996) 13 Cal.4th 952, 992.) The right to a hearing under the dependency statutory scheme "does not necessarily entitle the . . . party to a full evidentiary hearing. It is well recognized that due process is a flexible concept which depends upon the circumstances and a balancing of various facts." (*In re E.S.* (2011) 196 Cal.App.4th 1329, 1340.)

As a result of such limitations, a parent's right to due process is not violated when a juvenile court requires "an offer of proof before conducting a contested hearing on one of the statutory exceptions to termination of parental rights." (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.) "The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court." (*Maricela C. v. Superior Court, supra*, 66 Cal.App.4th at p. 1147.) Before committing limited judicial and attorney resources to a contested hearing, the juvenile court has the authority to determine whether the parent has "evidence of significant probative value" on the statutory exception at issue. (*Tamika T., supra*, at p. 1122.) Thus, the juvenile court's

request for an offer of proof prior to holding a contested hearing did not violate the parents' due process rights. (*Ibid.*)

The question of the existence of an exception to termination of parental rights arises where, as in this case, a juvenile court finds, by clear and convincing evidence, that a dependent child is likely to be adopted. When adoption is likely, section 366.26, subdivision (c)(1), requires the court to terminate parental rights and order that the child be placed for adoption, unless the court finds that a statutory exception applies. (See also § 366.26, subd. (b)(1).) One such exception applies when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) This exception is subject to the duty of the juvenile court to “act in the best interests of the child” in all the court’s determinations under section 366.26. (§ 366.26, subd. (h)(1); see also *id.*, subd. (c)(4).)

The parent has the burden to show that the beneficial parent-child relationship exception applies. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.) The parent first must show that he or she has “maintained regular visitation and contact with the child.” (§ 366.26, subd. (c)(1)(B)(i).) If so, then the parent must show that “the child would benefit from continuing the relationship” to the extent that termination of parental rights and adoption would not be in “the best interests of the child.” (*Id.*, subds. (c)(1)(B)(i), (c)(4), (h)(1).)

Such a showing presents, as the juvenile court here observed, “a high hurdle” for a parent to overcome. A parent’s relationship with his or her child must be more than “merely a friendly or familiar one”; it must “meet the child’s need for a parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) A parent must show that continuing the relationship “will promote the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents” or that termination of the relationship “would be detrimental to the child.” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.) To establish the requisite detriment, “the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.”

(*Ibid.*) “The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.” (*Id.* at p. 467, fn. omitted.)

The offers of proof here were based upon the parents’ regular visitation with Jack. Mother’s attorney said: “The mother visits the child regularly. . . . The court has given her visitation and she goes to visits all of the time.” When the court asked how much visitation Mother had, her attorney said, “Once a month.” Father’s attorney stated that Father was joining in the request and offer of proof. Father’s attorney told the court that he has one visitation a month, “and he does say that he does go consistently for that.” Father’s attorney also said that the most recent DCFS report “note[d] that Jack is bonded to the parents, that visitation does go well.”

Mother and Father claim that the juvenile court improperly used the fact that they had had only one visitation a month for one hour as the basis for denying a contested hearing. As they assert, that is the visitation schedule that the court ordered at the prior hearing, at which the court also terminated their family reunification services.⁶ As Mother points out, the juvenile court stated, “And based on the one a month visits, with the parents having only monitored visits, I am going to deny a contested” hearing.

The record demonstrates, however, that the juvenile court considered many other factors, such as the children’s ages and the period the children had spent in each parent’s custody. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467.) The court noted that the proffered evidence of visitation was not enough, but rather, the parents needed to show that the parental bond was such that it would benefit the child to continue the relationship. The court stated, “[T]he bond isn’t even the issue. The issue is whether it is so beneficial to the child that to have that bond Jack is only two years old. He has

⁶ Neither Mother nor Father objected to the visitation order at the time it was made. Mother asserts that she would have objected if she had known that would hinder her ability to prove the beneficial parent-child relationship exception existed.

been out of the parents' custody now for quite a while. Patrick was never in the parents' custody. They have only had monitored visitation with Patrick and they have visits one time per month. . . . [T]o overcome that [section 366].26 hurdle . . . is a very high hurdle . . . and based on the offers of proof that the parents . . . have a nice time with the children and the children may even enjoy the visits, I am not sure that an eight-month-old is cognizant of the fact that these are his mother and . . . father, but even a two-year-old — that does not overcome the burden of [section] 366.26. . . . [T]he burden shifts to the parents to show that they can overcome, and based on the offer of proof, I am denying the contested [section 366].26 hearing.”

Implicit in the court's statements is its determination that neither parent had offered evidence of significant probative value of the existence of a beneficial parent-child relationship exception to warrant holding a contested hearing on the termination of parental rights. (*Maricela C. v. Superior Court, supra*, 66 Cal.App.4th at p. 1147; see also *In re Angel B., supra*, 97 Cal.App.4th at p. 466.) The trial court did not violate either parent's due process rights by denying the parent's request for a contested section 366.26 hearing, based upon the parents' inadequate offer of proof. (*In re Tamika T., supra*, 97 Cal.App.4th at p. 1122.)

B. Finding of Detriment as Prerequisite to Termination of Parental Rights

Father contends that his due process rights were violated, in that the juvenile court failed to make a finding by clear and convincing evidence that return of Jack to him would be detrimental to Jack. According to Father, at the July 14, 2010 hearing on the supplemental petition, which DCFS filed when Mother relapsed, the juvenile court made such a finding, but only as to Mother. Father claims that the due process violation requires reversal of the order terminating his parental rights with regard to Jack. We disagree.

As Father asserts, at the July 14 hearing, the court stated: “Now, pursuant to . . . section 361, the court has read and considered and admitted into evidence the social worker's report dated today's date, July 14th, and the sustained [section] 387

petition . . . , and makes the following findings and orders: *The court finds by clear and convincing evidence pursuant to [section] 361[subdivision] (c) that there's a substantial danger if the child was returned home, to the physical health, safety, protection, physical and emotional well-being of the child, and there are no reasonable means by which the child's health can be protected without removing the child from the mother's physical custody.*"⁷ (Italics added.)

If there is any ambiguity in the terminology the court used, the context also supports the conclusion that the court was referring not just to Mother, but also to Father when it made the finding by clear and convincing evidence that it would be detrimental if Jack were "returned home." The supplemental petition stated that it was filed against Father, as well as Mother. In its July 14 jurisdiction and disposition report, DCFS confirmed that fact. The report addressed case plan compliance information and issues with respect to Father, as well as Mother. DCFS reported that Jack was not considered safe in Mother's home or Father's home due to each parent's illicit drug use and recent positive tests for amphetamines and methamphetamines. DCFS recommended "that the court find: [¶] By clear and convincing evidence that the welfare of the child requires that physical custody be removed from the parents as: [¶] There is substantial danger to the physical health of the child or would be if the child was returned home and there are no reasonable means by which the child's physical health may be protected without

⁷ Section 361, subdivision (c), provides: "A dependent child may 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 of any of the following circumstances . . . : [¶] (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 . . . physical custody. . . . The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent . . . from the home [or] . . . allowing a nonoffending parent . . . to retain physical custody"

removing the child from the child's parents." The juvenile court did not use the exact language recommended by DCFS, but its intended result was the same.

The juvenile court's express reference to the necessity to remove Jack from Mother's physical custody reflected the existing factual situation. Since birth, Jack had never been in Father's physical custody or resided in Father's home. Jack was detained from Mother's physical custody in the hospital soon after his birth. It so happened, that the court eventually allowed him to be placed with Mother, subject to certain conditions. Thus, when he was detained the second time due to Mother's noncompliance with the conditions, he was physically removed from Mother's physical custody and home.

In addition, the juvenile court made a finding at the section 366.26 hearing that affirmed that the court's intent was that the finding of detriment by clear and convincing evidence applied to Father, as well as Mother. The court stated that it "finds by clear and convincing evidence that the children are adoptable, and the court finds that it would be detrimental to the children to be returned to the parents." The court did not articulate a different standard for its finding of detriment. A reasonable interpretation is that the standard was the same as for the adoptability finding.

The foregoing interpretations of the orders are supported by findings made at other hearings required by the dependency statutory framework. The juvenile court sustained the petition against Father on the basis of the court's finding that Father's "substance abuse . . . creates a detrimental home environment." At the hearings required by section 366.21, subdivisions (e) and (f), as to Jack, the juvenile court found "by clear and convincing evidence that the extent of progress made to alleviate or mitigate the causes necessitating placement by the mother has been minimal; compliance by the father has been minimal compliance. [¶] Failure to participate and make substantive progress in court-ordered treatment constitutes prima facie evidence that return would be detrimental."

Even if the juvenile court's clear and convincing finding of detriment as to Father were ambiguous, legal authority Father relies on provides support for affirmance of the termination order, rather than reversal based upon a due process violation. Father cites

Cynthia D. v. Superior Court (1993) 5 Cal.4th 242, *In re Gladys L.* (2006) 141 Cal.App.4th 845, and *Santosky v. Kramer* (1982) 455 U.S. 745 [102 S.Ct. 1388, 71 L.Ed.2d 599].

The *Gladys L.* court highlights the principles from these judicial decisions in regard to due process requirements for termination of parental rights. “Parents have a fundamental interest in the care, companionship, and custody of their children. (*Santosky v. Kramer*[, *supra*,] 455 U.S. [at p.] 758) *Santosky* establishes minimal due process requirements in the context of state dependency proceedings. ‘Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.’ (*Id.* at pp. 747-748.) ‘After the State has established parental unfitness at that initial proceeding, the court may assume at the dispositional stage that the interests of the child and the natural parents do diverge.’ (*Id.* at p. 760.) ‘But until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.’ (*Ibid.*)

“California’s dependency system comports with *Santosky*’s requirements because, by the time parental rights are terminated at a section 366.26 hearing, the juvenile court must have made prior findings that the parent was unfit. (*Cynthia D. v. Superior Court*[, *supra*,] 5 Cal.4th [at p.] 254) ‘The number and quality of the judicial findings that are necessary preconditions to termination convey very powerfully to the fact finder the subjective certainty about parental unfitness and detriment required before the court may even consider ending the relationship between natural parent and child.’ (*Id.* at p. 256.) The linchpin to the constitutionality of the section 366.26 hearing is that prior determinations ensure ‘the evidence of detriment is already so clear and convincing that more cannot be required without prejudice to the interests of the adoptable child, with which the state must align itself.’ (5 Cal.4th at p. 256.)” (*In re Gladys L.*, *supra*, 141 Cal.App.4th at p. 848, italics omitted.)

Jack was detained on August 25, 2009. Over two years later, the juvenile court terminated Father’s parental rights. During that time, DCFS collected information about

Father and reported regularly to the juvenile court in connection with numerous hearings held in this matter. The juvenile court made numerous findings of detriment as to Father in the hearings over the first two years of Jack's life. By the time of the section 366.26 hearing, these prior determinations ensured that "the evidence of detriment [was] already so clear and convincing that more cannot be required without prejudice to the interests of the adoptable child." (*Cynthia D. v. Superior Court, supra*, 5 Cal.4th at p. 256.) As the California Supreme Court explained, "The dependency scheme, when viewed as a whole, provides the parent due process and fundamental fairness while also accommodating the child's right to stability and permanency." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

Father contends that the absence of a finding of detriment by clear and convincing evidence is a reversible due process error and an appellate court cannot infer such a finding. He relies on *In re Frank R.* (2011) 192 Cal.App.4th 532, in which the court found that the father, who was not the custodial parent, was deprived of his due process rights "because the court never made a finding [the] father was unfit, having never made a finding of detriment by clear and convincing evidence with respect to [the] father." (*Id.* at p. 538.) The court explained further that "although there may be valid bases for the juvenile court to make a finding of [the] father's unfitness, the court never made that finding, let alone by the required clear and convincing standard. We may not make that finding here or infer such a finding. '[A] finding of detriment . . . asks this [reviewing] court to act as petitioner and fact finder, thereby denying [the father] an opportunity for notice of specific charges and an opportunity to respond to the charges against him. [Citation.]'" (*Id.* at p. 539, quoting *In re Gladys L., supra*, 141 Cal.App.4th at pp. 848-849 [reversing termination order as to father who was never named in a petition alleging statutory violations and never adjudicated unfit].)

The facts relevant to Father, however, are readily distinguishable from those applicable to the father in *Frank R.*⁸ In *Frank R.*, at the jurisdiction hearing, the father

⁸ Father cites other appellate decisions where the juvenile court never found by clear and convincing evidence that the child would suffer a detriment in the parent's custody,

was deemed a nonoffending parent and, thus, the juvenile court did not make an initial finding of unfitness. (*In re Frank R.*, *supra*, 192 Cal.App.4th at p. 538.) Here, by contrast, Father was named as an offending parent from the beginning, not only in the original DCFS petition but also in the supplemental petition regarding Jack. He had notice of specific charges and he had the opportunity to respond to them. (Cf. *In re Gladys L.*, *supra*, 141 Cal.App.4th at p. 848.) From August 2009 through August 2011, Father and his attorney participated in at least six hearings, some of which were contested. At the hearing on the supplemental petition and again at the section 366.26 hearing, the juvenile court made a finding, by clear and convincing evidence, of detriment if Jack were returned home, and it did not specify that the finding applied only to Mother.

In light of the extensive record with regard to Father, we need not “act as petitioner and fact finder.” (*In re Gladys L.*, *supra*, 141 Cal.App.4th at p. 848.) There is ample basis for concluding that Father was not deprived of his constitutional right of due process with respect to termination of his parental rights as to Jack.

and the reviewing court determined the parent’s due process rights had been violated and reversed the parental rights termination order. As with *Frank R.*, the decisions are factually distinguishable from the instant case.

In *In re Gladys L.*, *supra*, 141 Cal.App.4th 845, no petition was filed against the father whose parental rights were terminated and he was never adjudicated to be an unfit parent. (*Id.* at p. 848.) In *In re Z.K.* (2011) 201 Cal.App.4th 51, the mother’s whereabouts were unknown and she was not a subject of the earlier stages of the dependency proceedings due to the abduction of her son by his father. (*Id.* at p. 65.) When she learned of the proceeding and contacted the child protective agency, the agency put home study requirements and other roadblocks up to her request for custody. (*Id.* at pp. 59-62.) The juvenile court terminated her parental rights without adjudicating that she was an offending parent or any finding of detriment to placing her son with her. (*Id.* at pp. 62-63.)

DISPOSITION

The orders are affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.