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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re O.M., JR., et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

O.M., SR.,

Defendant and Appellant.

B288912
(Los Angeles County
Super. Ct. No. DK05560)

APPEAL from findings and an order of the Superior Court of Los Angeles County. Victor H. Greenberg, Judge. Affirmed in part and dismissed in part.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

O.M., Sr., (father) challenges the juvenile court's order declining his request to have his son, O.M., Jr. (O., born May 2016), returned to his custody at the Welfare and Institutions Code section 361.21, subdivision (f),¹ hearing. He contends that the juvenile court's order is not supported by substantial evidence. He also argues that the juvenile court's monitored visitation order must be reversed because it erroneously delegated to O.'s therapist the decision of whether father should have unmonitored visits. And, in any event, the juvenile court erred in ordering father monitored visitation. Finally, father challenges the juvenile court's jurisdictional findings regarding his failure to protect his daughter, Sarah M. (Sarah, born Dec. 2017), from Edna M.'s (mother) long-standing and unresolved history of substance abuse despite the fact that she previously lost custody of seven other children, including O., due to the same problem.

Father's objection to that portion of the juvenile court's order delegating discretion to O.'s therapist to decide whether father should have monitored or unmonitored visitation is dismissed as moot in light of subsequent events. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Family and Prior Dependency Court Involvement

This family consists of mother, father, O., and Sarah. Mother has a total of eight children. Father is the father of her two youngest children, O. and Sarah, who are the only subjects of this appeal.

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

Mother's child welfare and juvenile court history spans back to 2001. At the time O. came to the attention of the juvenile court, mother's fifth and sixth children were already dependents of the court and were receiving permanent placement services due to mother's substance abuse. Her four oldest children were prior dependents of the juvenile court as a result of her substance abuse.

Events Leading to This Dependency Action – O.

On May 9, 2016, the Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging that mother and father neglected O. The investigating social worker met with the parents at their friend's apartment where they were temporarily renting a bedroom. The investigating social worker expressed concern regarding mother's case history of losing custody of her children and having an extensive history of being noncompliant with court-ordered programs. Mother and father stated that they understood DCFS's concerns and consented to O. remaining in their care under DCFS supervision in order for DCFS to continue monitoring mother's compliance of her programs and to ensure O.'s safety.

On September 8, 2016, DCFS received a referral alleging that the parents had neglected O. The caller reported having been staying at the apartment where the parents had been temporarily staying. The caller said that the apartment was unsanitary, infested with cockroaches, had spoiled food and trash, and was uninhabitable. Reportedly, four adult males also resided in the apartment, the parents argued a lot, and mother had scratched father. DCFS noted mother's prior dependency history as to her older six children.

On October 12, 2016, the investigating social worker met with the parents and O. inside their one-bedroom and one-bathroom unit at the Pacific Inn and Suites. Mother stated that the family was homeless. When the social worker expressed concern regarding mother's failure to submit to drug and alcohol testing in quite some time, mother responded that finding a place to live had been her priority for the last few weeks. Mother denied that she was using drugs and claimed that she would submit to drug testing whenever the social workers requested. The social worker asked mother to submit to a drug test the following day and advised the importance of showing up. Mother responded that she understood and would find a way to show up to the scheduled drug test.

When the social worker addressed the allegation that the parents had neglected O., father admitted that their previous home was dirty and infested with cockroaches. Father stated that the family was now staying at the Pacific Inn and Suites until they were able to rent an apartment. Father denied that mother abused drugs and alcohol, denied that he had a history of drug or alcohol abuse, and denied that they had ever neglected O. Father also denied having a history with DCFS or ever witnessing others using drugs or alcohol.

The social worker observed that O. did not have any visible marks or bruises. He appeared healthy, in good spirits, and dressed appropriately.

Mother failed to submit to the scheduled drug tests on September 16 and 20 and October 13, 14, and 21, 2016. Father failed to show up for his scheduled drug test on October 13, 2016.

Section 300 Petition (O.) and Detention Hearing

On November 3, 2016, DCFS filed a nondetained section 300 petition on behalf of O. under subdivisions (b)(1) and (j), alleging that the child was at risk of harm due to mother's history of illicit drug use, including amphetamine and methamphetamine; father knew of mother's substance abuse and failed to protect the child from her; two of mother's children were current dependents of the juvenile court due to her substance abuse; and her other children were prior dependents of the juvenile court due to her substance abuse. The petition further alleged that mother had been discharged from Tarzana Treatment Center in 2016 because of her lack of attendance and noncompliance with the substance abuse treatment program.

At the November 3, 2016, detention hearing, the whereabouts for the parents and O. were unknown. The juvenile court issued a protective custody warrant for O. It also made emergency detention findings as to both mother and father, ordered O. detained in shelter care, and issued arrest warrants for mother and father. It ordered monitored visits for the parents once they and O. were located.

Interim Review Report

On December 1, 2016, DCFS reported that the whereabouts of the parents and O. remained unknown. Despite the social worker's efforts to contact mother by telephone and text message, mother failed to return her calls. The maternal aunt reported that she and the maternal relatives were concerned about mother because it had been about two months since they had last received any contact from her. DCFS submitted a due diligence search for the parents.

On December 7, 2016, a confidential source informed the social worker of the whereabouts of the parents and O. The social worker located the family at the home of Mr. and Mrs. C., who reported the parents and child were temporarily residing in their home because they were homeless. Mother stated that she had not enrolled in a substance abuse program. The social worker advised the parents of DCFS's concerns regarding their failure to contact DCFS. That same day, the social worker detained O. in the home of nonrelated extended family members, Maria and Juan.

The parents agreed to submit to on-demand drug and alcohol testing. The parents said that they did not have any identification so the social worker provided them with picture identification for the drug testing.

The next day, the social worker spoke with mother by telephone. Mother had failed to drug test. Mother claimed that she was confused and thought that the social worker had only asked her to call the drug testing hotline for a code. Mother said that she would drug test on-demand on December 8, 2016. The next day, the social worker learned that the parents had again failed to drug test as promised.

Warrant Hearing

At the warrant hearing on December 9, 2016, the juvenile court made detention findings against the parents and ordered O. detained in shelter care with discretion to DCFS to detain the child with any appropriate relative or nonrelated extended family member. It also ordered DCFS to access a section 301 contract,²

² Section 301 allows for a period of voluntary supervision and services in lieu of jurisdiction.

refer mother to drug testing, and provide case appropriate referrals to all parties. The parents' visitation with O. was ordered monitored twice weekly. Adjudication was scheduled for January 6, 2017.

Combined Jurisdiction/Disposition Report

O. had been placed into the foster home of Ms. C.

The dependency investigator (DI) interviewed the parents on December 21, 2016. They were each provided with a referral packet. The DI observed the parents' new residence was a studio apartment.

Regarding the allegations of mother's drug abuse, father responded, "Some things are true. Some things are not." Father denied that mother had been discharged from a drug abuse treatment program and denied that he and mother placed O. at risk. He believed that they took good care of him. When asked if mother had been abusing drugs, father said that she had not based on the fact that he had been checking and monitoring her, they were together all the time, and he took her with him to his job sites. Father said that he wanted O. returned to his custody. Father had negative drug test results on December 10 and 14, 2016, and he failed to show up to the scheduled drug tests on December 8 and 13, 2016.

Meanwhile, when mother was asked about the drug abuse allegations, she admitted, "It was true. I was using drugs a long time ago. I went to Tarzana [CA] but I couldn't go no more because my truck broke down." She acknowledged that she could not go to the drug abuse program because she was not stable and she had lost contact with the social worker who provided services. She claimed that the last time she had abused drugs was on June 16, 2014. When asked about her recently missed drug tests,

mother claimed that she did so because she was not on the list, she “dropped the cup and couldn’t pee again,” and she did not have identification. Mother failed to submit to scheduled drug tests 14 times between June and December 2016. She said that she wanted O. returned to her and she would do whatever it would take to make that happen.

Attached to DCFS’s report was a copy of the discharge letter dated July 1, 2016, from Options for Recovery, documenting that mother had been discharged from the program on June 10, 2016. The letter reflected that mother attended 120 out of 174 possible days of treatment and that she had excessive absences.

On December 12, 2016, the parents failed to show up to the scheduled monitored visit. Four days later, the parents canceled their scheduled monitored visit. Three days later, only father showed up to the scheduled visit.

DCFS assessed that O. could not be safely returned to the parents’ custody due to mother’s substance abuse issues and father’s unresolved neglect issues. Additionally, DCFS determined that the parents would not be appropriate candidates for a section 301 contract because mother had been uncooperative with DCFS for scheduled appointments, failed to take responsibility for leaving her last drug treatment program, and had not yet enrolled in another drug treatment program. DCFS recommended that (1) the juvenile court sustain the section 300 petition, (2) the parents receive reunification services not to exceed six months, (3) the parents participate in monitored visitation with O., and (4) O. be suitably placed in foster care.

Last Minute Information for the Court

On February 3, 2017, DCFS reported that the social worker had met with the parents at father's studio apartment. Mother said that she had removed all of her belongings from father's apartment so that O. could be returned to his custody. According to mother, she was temporarily living with the maternal aunt in Santa Ana, California. The social worker observed mother to be extremely skinny and fragile. When the social worker expressed concern over mother's health, mother responded that everyone was asking her if she was using drugs. Mother claimed that she was not using drugs.

Father said that he worked from 7:00 p.m. to 5:00 a.m., but he was in the process of starting a new job in construction so that his work hours would change to 7:00 a.m. to 5:00 p.m. He indicated that he wanted O. returned to his custody. He also said that he missed his family, mother was a good mother, and he did not understand why O. was removed from their custody. The social worker noted that she had previously advised father of her concerns regarding mother's failure to drug test, her history of substance abuse, and failure to enroll in another substance treatment abuse program. The social worker again informed father of these same concerns, to which he responded that he loved and trusted mother and did not have any concerns about her ability to care for O. He was certain that mother no longer used drugs.

When the social worker asked father about his childcare plan for O. during the time he worked, father said that he did not know, but that he would find someone to take care of him. The parents then asked the social worker if mother could remain in father's apartment until O. was returned to his custody. The

social worker advised that she would have to observe mother out of father's home once the child was returned to his custody. Father reported that he would enroll in a parenting program and continue to drug test consistently.

During this period of supervision, mother failed to show up to the scheduled drug test on January 13, 2017, and had not submitted to any drug tests. Father drug tested negative on January 13, 2017. Regarding their monitored visits with O., the parents showed up on January 11 and 13, 2017, and canceled visits on January 18, 20, 25, and 27, 2017.

The social worker spoke with MAT³ assessor, Dr. Chavez, on January 18, 2017. Dr. Chavez reported that she met with the parents on January 12, 2017. She expressed concern regarding O. being returned to father's custody as she observed that he had a lack of understanding as to why the family came to the attention of DCFS. According to father, the family came to the attention of DCFS because he had engaged in an argument with his cousin. Dr. Chavez stated that she observed that mother would speak on father's behalf and would tell him what to do and say; father appeared unable to set any boundaries with mother. She also was concerned that father may possibly continue to allow mother to have access to O. if the child were returned to father's custody.

³ MAT stands for multidisciplinary assessment team, which is a collaboration between DCFS and the Department of Mental Health designed to ensure the immediate and comprehensive assessment of children and youth entering out-of-home placement. (DCFS Procedural Guide 0600-500.05, Multidisciplinary Assessment Team (MAT), <http://www.ladcf.org/katieA/docs/MATPolicy.pdf>.)

DCFS's recommendations remained unchanged.

Jurisdiction/Disposition Hearing

On February 9, 2017, the juvenile court sustained the section 300 petition under subdivisions (b)(1) and (j). It declared O. a dependent of the court and removed him from his parents' custody. The juvenile court ordered DCFS to provide the parents with family reunification services. Father was ordered to participate in Al-Anon, a parenting program, individual counseling, and dyadic therapy. Monitored visitation was ordered for the parents, with discretion granted to DCFS to liberalize visits. O. was placed in the care of DCFS for suitable placement.

Six-month Review Period

On March 9, 2017, DCFS reported that the parents had not had any visits with O. as of January 13, 2017, and had not returned many of the social worker's telephone calls. Nonetheless, father still wanted O. returned to his custody, described mother as a "good mother," and expressed that he did not understand why O. was initially removed from the parents' custody. The social worker responded that she had previously expressed her concerns to the parents regarding mother's failure to drug test, her history of substance abuse, and her failure to enroll in a substance abuse program. Father responded that he loved and trusted mother, he continued not to have any concerns regarding her ability to care for O., and he was certain that she no longer used drugs. When asked again about his childcare plan for O., he said that he did not have a plan yet. He indicated that he had enrolled in a parenting program. The social worker reminded father that the juvenile court had also ordered him to participate in individual counseling to address case issues and to

enroll in Al-Anon. Father said that he understood and would call the social worker after he had enrolled in the programs. Although father said that he would confirm his monitored visit with O. scheduled for February 17, 2017, he failed to do so.

Father claimed that mother no longer resided in his apartment, he had no contact with her, and he did not know her whereabouts. He claimed that they were no longer a couple. However, father said that he planned to be with mother again once he reunified with O. so that they could be a family. DCFS recommended that the juvenile court continue family reunification services for father.

Six-month Status Review Report

On August 10, 2017, DCFS reported that O. remained placed in the foster care home of Mr. and Mrs. C. He was doing well in their care. He was participating in therapy with Dr. Evelyn Espinoza.

The parents now attended monitored visits with O., but missed several scheduled visits or frequently arrived late. The parents were reportedly appropriate and attentive during the monitored visits. However, Mr. and Mrs. C. reported that O. had difficulty adjusting after the monitored visits ended, and he became aggressive with himself and his foster caregivers.

During this period of supervision, the parents had not completed their court-ordered programs and had not been compliant. Mother enrolled in various substance abuse programs, but continued to provide excuses for not staying in a program. The parents had not provided consistent drug tests and, on several occasions, failed to show up to their scheduled drug tests.

Despite father's prior claim that he and mother were no longer a couple, she was now pregnant with father's second child. The parents reported that she was due to give birth in December 2017, and that they were still a couple even though they initially had claimed that they were not a couple. They claimed that they would live apart in order not to interfere with the possibility of father reunifying with O.

Father's housing was unstable. He was residing in the living room of an elderly friend's home until he was asked to leave by the friend's family. Regarding his court-ordered programs, father was sporadically attending Al-Anon meetings. On May 17, 2017, father provided an Al-Anon sign-in sheet for April 12 and 26 and May 3, 2017. On June 27, 2017, father reported that he continued to attend weekly meetings, but he failed to provide any further proof of attendance. He had enrolled in a parenting program and attended every week. He was on a waitlist for individual counseling at Harbor-UCLA Hospital.

He was also being treated for major depression by Dr. Juliana Gomez-Makhinson. However, he had stopped taking his prescribed medication because it made him feel sleepy and he felt it was unnecessary. The social worker advised father not to stop taking his medication and asked him to inform his psychiatrist that the medication needed to be changed. Father agreed to do so. But Dr. Gomez-Makhinson subsequently told the social worker that father had failed to show up to his scheduled appointments on May 26 and June 22, 2017, and that father said that he continued taking his medication without any negative symptoms. The psychiatrist further stated that father never contacted her to change his medication and that he remained on a waitlist for individual counseling. The following day, father

reported to the social worker that he had missed his scheduled psychiatry appointment on May 26, 2017, and he was still not taking his medication.

Father said that he wanted to be a family with O., mother, and the new baby.

Meanwhile, mother was staying at a shelter for pregnant mothers. The shelter manager expressed concern regarding mother violating curfew hours. The shelter manager said that mother reported that she arrived late due to her substance abuse classes ending late and public transportation had not been running on schedule.

Regarding visitation, the parents repeatedly arrived 10 to 20 minutes late. During this period of supervision, the parents had 10 monitored visits and had missed seven visits. During the visits, the parents were observed to be attentive and appropriate with O. O. still became aggressive after the visits ended, and it took the caregivers an entire day to help him transition and adjust.

DCFS recommended that the juvenile court terminate mother's reunification services and continue services for father. It remained concerned regarding father's ability to protect O. from mother's substance abuse, to provide the child with a stable home, and to obtain all necessary medical services for him. It noted that both parents claimed that they were no longer a couple, but they were expecting their second child together. DCFS also expressed concern that father was homeless, failed to take his prescribed medication, had not been forthcoming with his treating psychiatrist, and was only in partial compliance with his court-ordered programs. DCFS assessed that O. would be at a high risk of harm if he were returned to his parents' custody.

Interim Review Report

DCFS reported that its prior concerns regarding father's ability to take care of O., protect him from mother's substance abuse, and obtain medical services for the child remained unchanged.

Contested Six-month Review Hearing

At the September 7, 2017, hearing, the juvenile court found father in partial compliance with his case plan. It also found that returning O. to his parents' custody would create a substantial risk of detriment to the child.

Section 300 Petition—Sarah

On December 17, 2017, just days after Sarah was born, DCFS received a referral for Sarah. The reporting party stated that mother and Sarah had tested negative for drugs; the reason for the referral was mother's disclosure to the hospital of losing custody of her other children, her current dependency case, and her enrollment in an in-patient substance abuse program.

On the day of the referral, the social worker met with mother. Mother appeared healthy and well-groomed. She reported that she and father had recently begun living together in an attempt to regain custody of O., and that she had remained compliant with her current case plan for that child. Mother claimed that she was drug testing clean and doing all that was required of her. She was agitated and confused about Sarah being subjected to a DCFS investigation, and she became angry and uncooperative with the social worker. Mother then claimed that she had been ill due to a difficult pregnancy and had a doctor's excuse for the times she could not participate in her court-ordered programs.

Father confirmed that he and mother shared an apartment together in an attempt to reunify with O. Father said that he had completed his court-ordered programs, but he did not have documentation to prove that he remained compliant.

The social worker assessed that Sarah would be placed on a hospital hold given that the records did not reflect that the parents were compliant with court orders.

On December 19, 2017, DCFS filed a section 300 petition on behalf of Sarah under subdivisions (b)(1) and (j). The petition's allegations mirrored those as set forth in the petition filed on behalf of O. The baby was detained at the hospital.

Detention Hearing

On December 20, 2017, the juvenile court held a detention hearing. DCFS recommended the release of Sarah to father on the condition that mother not reside in the home and that her visits be monitored. The juvenile court found a prima facie case for detaining Sarah from mother and ordered her released to father on the condition that mother never come to his home at any time. The juvenile court admonished father and asked if he understood the juvenile court's order regarding the release of his daughter to him. Father responded that he understood. Father was ordered to attend Al-Anon or Narconon at least twice weekly, a 12-step program at least twice weekly, and a fatherhood class.

Jurisdiction/Disposition – Sarah

In its combined jurisdiction and disposition report, DCFS reported that Sarah continued to reside with father and that she appeared to be developing appropriately.

Mother was interviewed at DCFS's office. She agreed with the allegations in the section 300 petition, with the exception of father failing to protect Sarah from her drug abuse.

Father was interviewed at his home. The DI observed father to be attentive to Sarah. He denied that mother had a current substance abuse problem; to his knowledge, mother had a substance abuse problem prior to when their relationship began in 2015. He admitted, however, that after two months of dating her, he had heard rumors that she had had her children removed from her custody due to drug use. According to father, he confronted mother about the rumor, to which she admitted that the rumor was true. He said that he told mother that he would help her get sober. He said that mother was doing well now and, based on what mother had told him, she had been sober for two years. Father reported that mother did not use drugs during her pregnancy with Sarah. He denied being fully aware of why mother had failed to reunify with her six other children. He stated that he did not understand why O. was initially detained since mother was not using drugs. Instead, father believed that mother was being punished for having a substance abuse history and DCFS did not give her any credit for the services that she had completed.

Father denied that he failed to protect Sarah from mother's drug abuse, arguing that the child was not born when mother abused drugs. He believed that he had protected Sarah since her birth. He said that he hoped that one day mother would be allowed to live with them as a family.

The DI observed that father struggled to understand why mother could not live with him and Sarah as he did not perceive mother as a drug user. He expressed a commitment to protecting Sarah from mother until the juvenile court approved mother's reunification with the child.

DCFS expressed concern regarding mother's admitted history of substance abuse and her extensive history with DCFS as a result. DCFS also had concerns about father's ability to protect Sarah due to his continuing romantic relationship with mother, his minimization of mother's substance abuse problems, and his blaming DCFS for mother's failure to reunify with her children. DCFS recommended that the juvenile court sustain the section 300 petition and place Sarah with father with family maintenance services. It further recommended that father participate in Al-Anon with a sponsor, Project Fatherhood, individual counseling to address case issues, a psychiatric evaluation, and family preservation services. DCFS also recommended that father be ordered to take all prescribed psychotropic medications.

12-month Status Review Report—O.

O. remained placed with his foster parents since December 22, 2016. He was thriving in their care.

Meanwhile, the parents were now having frequent monitored visits with O. at DCFS's office. The parents obtained a studio back house and father continued to maintain full employment in construction. However, because Sarah had been detained from mother and released to father, mother was currently residing between the homes of the maternal aunt and maternal brother.

Father was in "partial compliance/ongoing [compliance]" with the court-ordered Al-Anon. He completed a parenting program on August 29, 2017, and was in full compliance with individual counseling. He remained under psychiatric care and was in compliance with his psychotherapy sessions. Dr. Gomez-Makhinson's November 9, 2017, progress letter indicated that

father no longer met the criteria for having any major psychiatric disorder and that no medication was prescribed.

The social worker and a human services aide monitored the parents' weekly two-hour visits with O. at DCFS's office. The parents were appropriate with O., but the child appeared to have difficulty adjusting to the visits in the beginning. While the parents tried to console O., father appeared to struggle at calming down the child; father needed guidance as to what he should do. After O. was calmed down, he would be playful towards the parents. On January 25, 2018, the social worker and the parents agreed to change all future monitored visits to a public setting to help O. transition and give the child more space to play and interact with the parents.

Attached to the report was a progress report dated July 3, 2017, authored by Dr. Espinoza. She recommended that the parents attend a parenting course/group where they could learn and understand the impact of trauma on a child's development, and learn to respond to O. to prevent further deterioration of his mental and emotional health.

DCFS assessed that although father had been in partial compliance with his court-ordered programs, had obtained stable housing, and was employed, O. remained at high risk of harm if he were returned to father's custody. DCFS noted that father was still adjusting to caring for one-month-old Sarah and continued to struggle with coping and soothing O. during his monitored visits. DCFS expressed concern with father's ability to care for both Sarah and O. on his own and continue complying with court-ordered programs. DCFS recommended that family reunification services continue, and asked for the discretion to

walk the matter on for a home-of-parent order with father when it was deemed safe and appropriate to do so.

March 15, 2018, 12-month Review Hearing—O.

DCFS reported that father had said that he continued to participate in individual counseling and had completed parenting classes, which the social worker confirmed. While father said that he continued to attend Al-Anon meetings, he failed to provide proof of attendance and was unable to share any information regarding what he learned. Additionally, the parents disclosed that mother had a history of attending Al-Anon meeting with father, which was not approved by Al-Anon. DCFS reported that father was not in full compliance with attending Al-Anon, even though he knew that he had been ordered to participate back in February 2017.

At the contested hearing, father asked for O. to be returned to his custody or, in the alternative, unmonitored visits. Father argued that he was in full compliance with the case plan, that Sarah was already in his care so he could also take care of O., that he was only in the petition for failure to protect, and that he did not present a risk of harm to O. given that there was no substance abuse allegation alleged against him.

O.'s counsel argued that he was concerned that father could not care for O.'s special needs. He agreed father could have unmonitored visitation with O. when Dr. Espinoza so recommended. DCFS's counsel agreed with O.'s counsel that father needed to understand O.'s developmental needs and until Dr. Espinoza observed father, unmonitored visitation was inappropriate.

The juvenile court found that returning O. to his parents would create a substantial risk of harm to the child and declined

to order unmonitored visits for the parents. The juvenile court ordered that family reunification services continue and that the parents continue to participate in all previously ordered services that had not yet been completed. It also found that Dr. Espinoza needed to speak with the parents, and that DCFS had the discretion to liberalize based upon Dr. Espinoza's recommendation.

Contested Adjudication Hearing—Sarah

The contested adjudication hearing regarding Sarah was held on the same day. After entertaining oral argument, the juvenile court found true the allegations in the section 300 petition, under subdivisions (b)(1) and (j). Sarah was declared a dependent of the court, removed from mother, and ordered placed with father with family maintenance services under DCFS's supervision. Father was ordered to attend Al-Anon, individual counseling to address depression, codependency, substance abuse awareness, a psychiatric evaluation, and to take all prescribed psychotropic medication.

Appeal

Father's timely appeal ensued.

Subsequent Events

On June 22, 2018, the juvenile court held the 18-month review hearing and made orders, including mother to have unmonitored visits with O. in a controlled setting. DCFS was granted discretion to allow father to be part of mother's unmonitored visits.⁴

⁴ We hereby grant DCFS's motion to take judicial notice of postjudgment evidence on appeal.

DISCUSSION

I. *Substantial evidence supports the juvenile court's finding that returning O. to father's custody would have resulted in a substantial risk of detriment*

Father argues that the juvenile court erred by not returning O. to his custody at the 12-month review hearing.

A. Applicable law

When a child is removed from parental custody, the juvenile court must, in the absence of certain specified exceptions, order the social worker to provide services to the parent for the purpose of facilitating reunification for the family. (§ 361.5, subd. (a); *In re Michael G.* (1998) 63 Cal.App.4th 700, 714.) In order to facilitate reunification, parents are generally entitled to 12 months of services, but section 361.5, subdivision (a)(2), provides that “court-ordered services shall not exceed a period of six months” if the child was under the age of three when removed from the physical custody of his parent. (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1009, fn. 4.) At each review hearing, the juvenile court must evaluate the efforts or progress towards reunification made by each parent by considering “the extent to which he or she availed himself or herself of services provided.” (§§ 366.21, subds. (e), (f), (g)(1); 366.22, subd. (a).)

At every review hearing, the child who has been removed from parental custody must be returned to his parent unless the court finds that return would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. (§ 366.21, subds. (e) & (f).) Nothing in section 366.21 requires that the detriment that justifies continued removal of the minor from parental custody must be

akin to the detriment that necessitated juvenile court jurisdiction. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.) The decision whether to return a child to a parent is not governed solely by whether the parent has corrected the problem that led to court intervention; rather, the juvenile court must consider the effect the return would have on the child. (*Id.* at p. 901.)

Compliance with court-ordered services is not the sole concern when considering whether to return a child to his parent. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704.)

We review the juvenile court's finding of substantial risk of detriment for substantial evidence. (*In re E.D.* (2013) 217 Cal.App.4th 960, 966.)

B. Analysis

Here, substantial evidence amply supports the juvenile court's finding of substantial risk of detriment to O. if he were returned to father's custody. Like his six older siblings, O. was declared a dependent of the juvenile court due to mother's illicit drug abuse. Father was ordered to participate in Al-Anon, among other services, to address case issues.

By the time of the 12-month review hearing, father had been in full compliance with various services. But, he still remained only in partial compliance with attending court-ordered Al-Anon meetings. His last documented proof of attendance at Al-Anon was on August 16, 2017. Although he claimed to have been attending weekly meetings, he failed to provide proof of attendance. And, when asked to elaborate as to his Al-Anon meetings, such as subjects discussed and what he learned, he was unable to provide any of the requested information and stated that he had not shared anything personally in the Al-Anon meetings nor worked on its 12-step program. Furthermore, the

parents disclosed that mother had a history of attending the Al-Anon meetings with father, which was not approved by Al-Anon.

The fact that father did not learn much from his purported attendance at the court-ordered Al-Anon meetings coincided with his continued denial about the severity and reality of mother's unresolved substance abuse history and his lack of understanding as to why O. came to the attention of DCFS and required the protection of the juvenile court. This demonstrated lack of insight continued despite his apparent participation in individual counseling to address case issues. In fact, when the DI interviewed father in January 2018, he continued to deny that mother had a current substance abuse problem even though mother failed to show up for most of her scheduled drug tests throughout the dependency proceedings and was unable to explain why. (See *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1217 [missed drug test "properly considered the equivalent of a positive test result"].)

Moreover, father stated that he did not understand why O. was initially detained from the parents since he believed that mother was not using drugs. Instead, he blamed DCFS by stating that mother was being punished for having a substance abuse history and by not giving mother credit for the services she had completed. A parent's level of denial is an appropriate factor to consider when determining the risk to the child if placed with that parent. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044.)

By the time of the 12-month review hearing, father also did not show signs that he was capable of providing appropriate care to O., who exhibited behavioral issues that were being addressed in therapy with Dr. Espinoza. Father struggled with calming O.

down during monitored visits and needed guidance as to what he should do. Even O.'s counsel recognized at the 12-month review hearing that O. has special needs that father at that time could not respond appropriately to.

In light of the foregoing, we conclude that the juvenile court's decision not to return O. to father's custody at the 12-month review hearing is supported by substantial evidence.

II. *Father's challenge to the juvenile court's monitored visitation order is dismissed as moot*

Father challenges the juvenile court's visitation order on the grounds that the juvenile court erred in delegating to O.'s therapist the decision of whether father would have unmonitored visits. The juvenile court has since issued a visitation order giving discretion to DCFS to allow father to be a part of mother's unmonitored visits. Thus, father's objection to this portion of the juvenile court's visitation order is moot. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.)

III. *The juvenile court did not abuse its discretion in ordering monitored visitation for father with O.*

When making an order for visitation, the juvenile court must "balance[e] [] the interests of the parent in visitation with the best interests of the child," and may "impose . . . conditions . . . in light of the particular circumstances of the case before it." (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) "The juvenile court has a special responsibility to the child as *parens patriae* and must look to the totality of a child's circumstances when making decisions regarding the child." (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.)

As the parties agree, we review the juvenile court's visitation order for abuse of discretion. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704–1705.)

In light of mother's lengthy and unresolved history of substance abuse, father's continued denial of the severity of her drug abuse history, father's lack of insight as to why O. came before the juvenile court, and O.'s behavioral issues that require individual therapy, we conclude that the juvenile court's order for monitored visitation for father, with discretion to DCFS to liberalize, did not exceed the bounds of reason.

IV. Substantial evidence supports the juvenile court's jurisdictional findings as to Sarah

Father claims that the evidence fails to support the juvenile court's jurisdictional findings under section 300, subdivisions (b)(1) and (j).

A. Standard of review

As the parties agree, we review the juvenile court's findings for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.)

B. Relevant law

Section 300, subdivision (b)(1), authorizes dependency jurisdiction when the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or . . . the inability of the parent or guardian to provide regular care for the child due to the parent's . . . substance abuse." (§ 300, subd. (b)(1).)

Three elements are often cited as necessary for a jurisdictional finding under section 300, subdivision (b)(1): "(1) neglectful conduct by the parent in one of the specified forms;

(2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

A child is described by section 300, subdivision (j), when “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.” (§ 300, subd. (j).)

C. Analysis

Father does not challenge the juvenile court’s findings with respect to mother’s history of substance abuse. Rather, he contends that there is insufficient evidence to support the juvenile court’s finding that he failed to protect Sarah from mother’s substance abuse history and that the child was not a substantial risk of serious physical harm at the time of the jurisdictional hearing. In support, he argues that he “helped ensure Sarah was born drug free and he was still taking precautions to protect her after she was born.” According to father, “[t]hat led to Sarah remaining in [his] care when she was born.”

We are not convinced. Father knew well before mother became pregnant with Sarah that she had a lengthy, serious, and unresolved history of substance abuse. He told the DI that to his knowledge mother had a substance abuse problem prior to when their relationship began in 2015. Father then claimed that mother was doing well and that she had been sober for two years based upon mother telling him that she was sober. Father made this claim even though the social worker (and others) expressed concern about mother’s health and “everyone” had asked mother if she was using drugs. Notably, as set forth above, mother failed

to comply with most of the court-ordered drug tests throughout O.'s and Sarah's dependency cases.

Dependency proceedings were designed "to prevent risk, not ignore it." (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1003–1004.) In determining whether a child is at risk of serious future injury, courts look at the totality of the circumstances. (*In re Rocco M., supra*, 1 Cal.App.4th at p. 817.) The juvenile court did not have to wait until Sarah was actually harmed before intervening to protect her. (*In re Eric B., supra*, 189 Cal.App.3d at p. 1003.) Mother's drug abuse, coupled with father's minimization of her issues, put Sarah at risk of harm.

Dr. Chavez expressed concern regarding the family and stated that father had a lack of understanding as to why the family came to the attention of DCFS. Mother was observed to speak for father; she would tell him what to do and say, and he appeared unable to set boundaries with mother.

Although father claimed that mother no longer resided in his apartment, he had no contact with her, he did not know her whereabouts, and they were no longer a couple, mother got pregnant with Sarah by father during the pendency of O.'s dependency case and even while mother had failed to comply with her court-ordered services. When the social worker discovered that mother was pregnant with Sarah, mother and father admitted that they were still a couple even though they had initially claimed that they were not.

For the March 15, 2018, adjudication hearing, the DI observed that father struggled to understand why mother could not live with him and Sarah because he still did not perceive mother as a drug user. Despite father's expressed commitment that he would protect Sarah from mother until the juvenile court

approved mother's reunification, father continued to minimize mother's substance abuse problems and blamed DCFS for mother's failure to reunify with her other children. Given these facts, the juvenile court was reasonably concerned about father's ability to protect Sarah, a baby, from mother's unresolved history of substance abuse as well as his poor judgment in deciding to remain in a romantic relationship with mother despite her long history of losing custody of her children due to her substance abuse. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 766–767.)

The fact that Sarah tested negative for drugs at birth or that mother recently completed an outpatient substance abuse program did not diminish the future risk of harm to the child by father given that he still had not gained any meaningful understanding about the severity of mother's unresolved drug abuse problems. Courts have long recognized that chronic substance abuse is a serious problem that cannot be ameliorated in a few months. (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081.)

DISPOSITION

Father's objection to that portion of the juvenile court's order delegating discretion to Dr. Espinoza (O.'s therapist) to decide whether father should have monitored or unmonitored visitation is dismissed as moot in light of subsequent events. In all other respects, the juvenile court's findings and order are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT