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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In the Matter of ROBERT K., a
Person Coming Under Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DENISE B.,

Defendant and Appellant;

ROBERT K., a Minor, etc.,

Respondent.

B292343 c/w B293976
(Los Angeles County
Super. Ct. No. DK24178A)

APPEAL from orders of the Superior Court of Los Angeles County, Juvenile Division, Rashida A. Adams, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Minor.

INTRODUCTION

Denise B. is Robert K. Jr.'s biological mother. Robert K. Sr. is Robert Jr.'s biological father. In this consolidated appeal, Denise challenges the juvenile court's ruling that Robert Sr. is Robert Jr.'s presumed father, as well as its orders awarding Robert Sr. sole physical and legal custody of Robert Jr. and terminating jurisdiction. We affirm.

After Denise drove herself and 11-year-old Robert Jr. to a police station on July 31, 2017 and began making delusional statements, she was placed on a psychiatric hold, and Robert Jr. was referred to the Department of Children and Family Services (DCFS). DCFS filed a petition under Welfare and Institutions Code section 300, alleging Denise's mental issues rendered her incapable of providing Robert Jr.

with regular care and supervision.¹ The court sustained the petition, placed Robert Jr. with his maternal grandparents, and ordered Denise to undergo mental health evaluation and treatment. Denise resolutely denied she had any mental health problems and refused all resources and treatment.

DCFS located Robert Sr., who was living in Alabama and had not seen Robert Jr. or Denise for approximately nine years. Robert Sr. was unsure he was Robert Jr.'s biological father but agreed to take a paternity test. On April 25, 2018, based on that paternity test, the court ruled Robert Sr. was Robert Jr.'s biological father. On May 30, 2018, Robert Sr. petitioned the court under section 388 to elevate his status to "presumed," later clarifying he also sought custody of Robert Jr.

On August 15, 2018, after hearing testimony from Robert Sr. about his interactions with Robert Jr., both for the first two years of Robert Jr.'s life, and after the positive paternity test, the court granted Robert Sr.'s petition to be elevated to the status of presumed father under Family Code section 7611, subdivision (d).² The court ordered Robert Jr. placed with Robert Sr. in Alabama. Denise appealed this order on August 28, 2018.

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

² Family Code section 7611, subdivision (d) provides: "A person is presumed to be the natural parent of a child if . . . [¶] . . . [¶] [t]he presumed parent receives the child into his or her home and openly holds out the child as his or her natural child."

On October 18, 2018, after Robert Jr. had safely arrived in Alabama, the court held a hearing under section 364 and awarded physical and legal custody of Robert Jr. to Robert Sr. and then terminated jurisdiction. Denise appealed that order on the same day. On March 12, 2019, at the request of Robert Jr.'s counsel, we consolidated Denise's appeals.

In her appeals, Denise argues: (a) no substantial evidence supports the court's finding that Robert Sr. is Robert Jr.'s presumed father; (b) because Robert Sr. is only Robert Jr.'s biological father, the court was not authorized to place Robert Jr. with Robert Sr.; (c) because the termination of jurisdiction was based on the court's erroneous finding that Robert Sr. was the presumed father, the order terminating jurisdiction must be reversed; and (d) the juvenile court prejudicially erred in terminating jurisdiction under section 364, rather than section 361.2.

As detailed below, we conclude: (a) substantial evidence supports the court's finding that Robert Sr. is the presumed father; (b) because Robert Sr. is the presumed father, the court was authorized to place Robert Jr. with him under section 361.2; (c) having properly found Robert Sr. to be the presumed father, the order terminating jurisdiction was proper; and (d) while the juvenile court should have terminated jurisdiction under section 361.2, its reference to section 364 was harmless. We affirm.

PARTIES' MOTIONS FOR JUDICIAL NOTICE

On November 19, 2018, Denise requested we take judicial notice of three orders issued by the juvenile court in this case, attached as Exhibits A through C to her motion. Exhibit A is an October 18, 2018 order from a "364 Judicial Review Hearing." Exhibit B is an October 26, 2018 order from a "Juvenile Custody Order Hearing." Exhibit C is an October 26, 2018 Custody Order. On February 28, 2019, DCFS asked us to take notice of the same three minute orders. Because the October 18 minute order is already part of the record on appeal, we deny the request to judicially notice the order again. We grant the parties' request to judicially notice both October 26 orders.

STATEMENT OF RELEVANT FACTS

A. Denise Behaves in a Delusional Manner; Robert Jr. Is Detained

On July 31, 2017, Denise, who lived in Riverside, drove herself and Robert Jr. to the North Hollywood Division of the Los Angeles Police Department. Denise made several bizarre statements to the officers there, including that she wanted her car checked for bugs, that her car was being tracked, that voices commanded her to come to the station, that she saw multi-colored lights and a "computer window block" floating in the air, that she was being "touched" by something and wanted a rape kit for herself, and that the same thing was violating her son. Denise was placed on a psychiatric hold under section 5150. An emergency response

referral was made to DCFS about Robert Jr., and DCFS placed the boy in his maternal grandparents' home .

On August 3, 2017, DCFS filed a dependency petition under section 300, alleging Denise had mental and emotional problems, including auditory hallucinations and delusions, rendering her incapable of providing Robert Jr. with regular care and supervision. Denise identified Robert Sr. as Robert Jr.'s father, but stated she had no contact with him. The court deemed Robert Sr. to be the "alleged father." The court ordered Robert Jr. removed from Denise, and detained with his grandparents.

At the October 5, 2017 adjudication hearing, the court sustained the section 300 petition, removing Robert Jr. from Denise and ordering Denise to undergo mental health counseling, including psychological assessment and psychiatric evaluation. The court ordered a six-month review hearing for April 5, 2018.

B. Denise Denies Problems and Refuses Services

Between August 2017 and March 2018, Denise continued to exhibit signs of mental health problems while denying she had any problems and refusing virtually all treatment, suggestions, and information provided by DCFS. When interviewed by DCFS on August 1, 2017, she spoke loudly and quickly, and had to be calmed down by the social worker interviewing her. She denied any mental health issues, but recounted how, the previous day, she had seen a red dot and a "Norton block" She made other bizarre

statements regarding “someone with an ability for cyber sex” poking her on the legs, “Mexican mafia men sitting on their smart phones,” and voices telling her where to go. The social worker interviewing her reported Denise’s speech was “pressured.” On September 6, 2017, Denise met with social workers, was “very combative,” and refused any information or recommendations. On September 12, 2017, Denise was observed to be treating her hand as a phone and “texting” on it.

After her initial psychiatric hold, on August 3, 2017, she was diagnosed with an “unspecified psychosis” and recommended to follow up with outpatient mental health services. As of October 4, 2017, however, she had not obtained any services and insisted she did not need them.³ On October 13, 2017, DCFS discovered Denise was homeless. On October 17 and again on November 6, 2017, DCFS attempted to provide her with the name of a homeless shelter, as well as mental health resource information, but Denise declined to accept the information.

On December 29, 2017, a social worker from DCFS warned Denise her continued failure to at least try to follow

³ In a later status report dated April 5, 2018, DCFS noted that on September 5, 2017, Denise sought counseling services for stress based on the open DCFS case -- not for the case issues -- but then stated the visit was a waste of time, and she was present only because her social worker recommended the visit. She refused to return for any further visits or to seek a full psychiatric evaluation.

the court's orders would result in DCFS's recommendation to terminate family reunification services. In response, Denise refused to speak further with the social worker and threatened to call the police. Further conversations using her hand as a communication device were reported, and Denise continued to refuse to receive documents from her social worker.

***C. Robert Sr. Is Found to Be Robert Jr.'s
Biological Father and Petitions for Custody***

In a Status Review Report dated April 5, 2018, DCFS noted it had been able to contact Robert Sr. on August 29, 2017, and he was requesting a paternity test. Robert Sr. was living in Alabama and thought a paternity test would be sent to him. He later learned he would need to come to California to do the test. He told DCFS he would be at the April 5, 2018 court hearing. He also stated he would care for Robert Jr. if the paternity test revealed him to be Robert Jr.'s father.

On April 5, 2018, the court held a six-month review hearing. The court continued Robert Jr.'s detention with his grandparents, and ordered a paternity test for Robert Sr. DCFS's report for the hearing found Robert Jr. not adoptable, and both of Robert Jr.'s maternal grandparents stated they would be unable to adopt Robert Jr. or be his legal guardian.⁴

⁴ Robert Jr. was autistic and had cerebral palsy.

On April 25, 2018, Robert Sr. was confirmed to be Robert Jr.'s biological father. Robert Sr. stated he was willing to take Robert Jr. into his custody as soon as possible. On May 17, 2018, the court declared Robert Sr. to be Robert Jr.'s biological father.

On May 30, 2018, Robert Sr. filed a petition under section 388, requesting his status be changed from alleged father to presumed father. On July 5, 2018, DCFS recommended the court grant Robert Sr.'s petition. On July 12, 2018, at the hearing for Robert Sr.'s petition, Robert Sr.'s counsel clarified Robert Sr.'s desire to have custody of Robert Jr. or alternatively to be offered reunification services. Because Robert Sr. was not present for this hearing, the court continued it to August 15, 2018, so Robert Sr. could testify telephonically.

For the August 15 hearing, DCFS submitted a Last Minute Information, documenting Denise's increasingly erratic behavior as well as her refusal to acknowledge problems or get help. At that hearing, the court heard testimony from Robert Sr. and Denise. Robert Sr. testified he was not present for Robert Jr.'s birth, but he visited Robert Jr. and Denise in the hospital a week after the birth, and then weekly until they were discharged. Thereafter, Robert Sr. saw Robert Jr. once or twice a week until Robert Jr. was two years old. One such visit took place at Robert Sr.'s house. Robert Sr. bought clothes or other items for Robert Jr. "every . . . now and then" but never gave Denise money.

Robert Sr. also testified he asked to take a paternity test after DCFS contacted him in August 2017, and told DCFS if Robert was his son, he would do whatever it took to be part of his life. But Robert Sr. discovered he could not get the test sent to him in Alabama, and so the test was delayed until April, when he was able to come to California. April was a good time for Robert Sr. to take a week off from work, and also there was a court date around that time. During Robert Sr.'s visit to California, he saw Robert Jr. at least four out of the nine days he was there. After returning to Alabama, Robert Sr. found a center to help with Robert Jr.'s autism, and Robert Sr. and his wife began taking a class to learn more about autism. Since April 2018, Robert Sr. communicated with Robert Jr. via video chat two or three times a week, chats on which his other children joined him.⁵

Denise testified that Robert Sr. visited her in the hospital for the first two or three weeks, and inconsistently thereafter. She stated Robert Sr. came to her apartment one time, and Robert Jr. may have visited Robert Sr.'s home once. Denise denied Robert Sr. ever provided anything for Robert Jr.

Counsel for Robert Sr. and Denise argued for and against Robert Sr.'s petition, respectively. Counsel for

⁵ In June 2018, Robert Jr.'s maternal grandmother reported Robert Sr. and Robert Jr. had contact via Skype several times a week and Robert Sr. had introduced Robert Jr. to his other children and his wife.

Robert Jr. “join[ed] in full with [the] argument of Father’s attorney . . . asking Father to be elevated to presumed status.” Counsel for Robert Jr. also asked “for Robert to be placed with his father in Alabama.” Counsel for DCFS “join[ed] with Father’s counsel and Minor’s counsel.” The court granted Robert Sr.’s petition to be deemed Robert Jr.’s presumed father, finding that “at the child’s infancy, there is evidence of some relationship between the father and child. The father visited while the child was in the hospital. The testimony from both parents indicates at least one visit of the child in the father’s home.” The court also found that after the results of the paternity test, Robert Sr. “maintain[ed] regular and consistent visitation within the limitations of the distance between the child’s residence and the father’s residence.” The court additionally noted “[t]his is not a situation where we have competing demands for paternity.” The court ordered Robert Jr. placed with Robert Sr. in Alabama. Denise appealed the court’s order on August 28, 2018.

***D. Robert Jr. Arrives in Alabama; Court Awards
Robert Sr. Custody and Terminates
Jurisdiction***

On October 4, 2018, the court stated it was holding a “364 review hearing.” Denise requested Robert Jr. be released to her custody or, if the court refused that request, that she be provided immediately with the phone number to facilitate visits. Denise also requested the case be kept open.

DCFS informed the court Robert Jr. was on his way to Alabama, and requested the court terminate jurisdiction after confirming his safe arrival. The court continued the hearing to October 18.

The Last Minute Information submitted for the October 18 hearing reported an October 5, 2018 text from Lydia, Robert Jr.'s grandmother, informing DCFS of Robert Jr.'s arrival in Alabama. It also contained an October 9, 2018 statement from Lydia that Robert Jr. was doing fine and adjusting well. She reported he seemed overwhelmed at times being around his siblings for the first time but was handling it well. She also stated Robert Jr.'s first day of school would be that day. The Last Minute Information additionally contained an October 10, 2018 statement from Robert Sr. reporting Robert Jr. was adjusting fine, and Robert Sr. had no difficulties with Robert Jr.'s behavior. Robert Sr. stated Robert Jr. was doing well, even though his grandmother had left.

On October 18, 2018, the court again stated it was holding a "364 review hearing." The court stated it had read and considered the October 18 Last Minute Information, and was admitting it into evidence. Denise renewed her objection to Robert Jr.'s placement with Robert Sr., again requested the case be kept open, and indicated issues regarding visitation. Her counsel informed the court Denise had stable housing and the financial ability to support Robert Jr. Counsel for Robert Sr., Robert Jr., and DCFS all requested the court terminate jurisdiction. Both DCFS's and

Robert Jr.’s counsel also requested the court award Robert Sr. sole physical and legal custody. The court found “continued supervision of the child is no longer necessary and the court will terminate dependency jurisdiction today.” The court stayed the order pending receipt of a juvenile custody order providing Robert Sr. sole legal and physical custody. The court found, “based on the totality of the evidence in the record, that a sole legal order is the most appropriate and in the best interest of the child.” That same day, Denise filed a second appeal.

On October 26, 2018, the court received the juvenile custody order. The court signed the juvenile custody order awarding sole legal and physical custody to Robert Sr. and terminated jurisdiction. On March 12, 2019, upon Robert Jr.’s request, we consolidated Denise’s two appeals.

DISCUSSION

A. Substantial Evidence Supports Finding Robert Sr. the Presumed Father

On appeal, Denise argues no substantial evidence supports the court’s finding that Robert Sr. is Robert Jr.’s presumed father. Specifically, she argues: (a) no substantial evidence supports the finding that Robert Sr. received Robert Jr. into his home; (b) no substantial evidence supports the finding that Robert Sr. openly held Robert Jr. out as his son; and (c) we may not assume Robert Sr. met these two requirements after Robert Jr. was placed into

Robert Sr.'s home in Alabama in October 2018. We are unpersuaded.

“A person is presumed to be the natural parent of a child if the person . . . [¶] . . . [¶] . . . receives the child into his or her home and openly holds out the child as his or her natural child.” (Fam. Code, § 7611, subd. (d).) “We review a juvenile court’s determination of presumed parentage status under the substantial evidence standard.” (*In re D.A.* (2012) 204 Cal.App.4th 811, 824, quoting *In re M.C.* (2011) 195 Cal.App.4th 197, 213.) “In doing so, we are required to view the evidence in the light most favorable to those determinations. We draw all reasonable inferences, and resolve conflicts in the evidence, in favor of the trial court’s findings, and we do not reweigh the evidence.” (*In re A.A.* (2003) 114 Cal.App.4th 771, 782.) As detailed below, substantial evidence supports the finding that Robert Sr. received Robert Jr. into his home and openly held Robert Jr. out as his natural child.

B. Robert Sr. Received Robert Jr. Into His Home

“There are no specific factors that a trial court must consider before it determines that a parent has ‘received’ a child into the home and has established a parental relationship. ‘In determining whether a man has “receiv[ed] a] child into his home and openly h[eld] out the child” as his own [citation], courts have looked to such factors as whether the man actively helped the mother in prenatal care; whether he paid pregnancy and birth expenses

commensurate with his ability to do so; whether he promptly took legal action to obtain custody of the child; whether he sought to have his name placed on the birth certificate; whether and how long he cared for the child; whether there is unequivocal evidence that he had acknowledged the child; the number of people to whom he had acknowledged the child; whether he provided for the child after it no longer resided with him; whether, if the child needed public benefits, he had pursued completion of the requisite paperwork; and whether his care was merely incidental.” (*W.S. v. S.T.* (2018) 20 Cal.App.5th 132, 145-146, quoting *In re T.R.* (2005) 132 Cal.App.4th 1202, 1211.)

Regular visitation has been held to satisfy the receipt requirement. (*In re Cheyenne B.* (2012) 203 Cal.App.4th 1361, 1379 [“Although Richard admits that Cheyenne never lived in his home, the law recognizes an alternative means of satisfying the first requirement under section 7611, subdivision (d) by evidence of regular visitation”]; *In re A.A.*, *supra*, 114 Cal.App.4th at p. 784 [unnecessary for parent to live with child to be determined presumed parent under Family Code section 7611, subdivision (d)].)

Here, at the hearing for Robert Sr.’s section 388 petition, he testified he regularly visited his son for the first two years of the boy’s life, with one such visit occurring in Robert Sr.’s home. He also visited Robert Jr. four of the nine days he was in California in April 2018. Additionally, after he was confirmed to be Robert Jr.’s biological father, Robert Sr. regularly “visited” with Robert Jr. as geographically and

technologically practicable (i.e., using video chat). Moreover, the record is undisputed that Robert Sr. had prepared a room for Robert Jr. in Robert Sr.'s home in Alabama, and, on October 5, 2018, Robert Sr. welcomed Robert Jr. into that home to live permanently. Substantial evidence supports the court's finding that Robert Sr. received Robert Jr. into his home.

C. Robert Sr. Openly Held Robert Jr. Out as His Natural Child

At the hearing for Robert Sr.'s section 388 petition, the court asked him, "Have you told anyone that you are Robert [Jr.]'s father?" Robert Sr. responded affirmatively, and the court asked whom he had told. Robert Sr. answered "ever since the paternity test came in, you know, and I was the father I told everybody. Some of my family. My friends. Everyone knows." On cross-examination, when asked whether he had told anyone prior to the paternity test, he responded "I never said that I was his father, but I said I could be his father, but I wasn't sure." Based on this testimony the court found "following the results of that [paternity] test, the father has held himself out openly as the father of the child, identifying himself as the child's father."

Denise does not dispute that Robert Sr. told "everybody" following the results of the paternity test. Instead, citing *In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1653-1654 (*Spencer W.*), Denise argues no substantial evidence supports the court's finding that Robert Sr. held

himself out openly as Robert Jr.’s father because he failed to tell the California Department of Child Support Services or Robert Jr.’s various doctors, teachers, or other support staff. In other words, Denise faults Robert Sr. for not acknowledging Robert Jr. as his son during a time when he had lost contact with Denise and Robert Jr., and before the results of the paternity test established he was Robert Jr.’s father. But Denise cites to no authority finding a time limit for when the requirements of section 7611 must be completed, and it is undisputed that after Robert Sr. was confirmed to be the father, he told “everybody.” (See *E.C. v. J.V.* (2012) 202 Cal.App.4th 1076, 1086 [“nothing in section 7611(d) requires appellant to have received the minor into her home immediately after the minor’s birth, only that appellant did receive the minor into her home”].)

Spencer W. does not help Denise. First, the *Spencer W.* court concluded substantial evidence supported the trial court’s finding that the father was *not* the presumed father. (*Spencer W.*, *supra*, 48 Cal.App.4th at pp. 1653-1655.)⁶ Holding substantial evidence supports a finding one was *not*

⁶ (See, e.g., *Spencer W.*, *supra*, 148 Cal.App.4th at pp. 1653-1654 [“a trier of fact could conclude [father]’s actions, as a whole, were not sufficient to satisfy the requirement that [he] ‘openly and publicly admit paternity’”], italics omitted; *id.* at p. 1655 [“The trial court had ample basis on which to conclude [father] failed to show by a preponderance of evidence the existence of either foundational element required for presumed father status”].)

a presumed parent does not preclude holding the same evidence also could support a finding one *was* a presumed parent. (See, e.g., *In re Misako R.* (1991) 2 Cal.App.4th 538, 545 [“[W]hen two or more inferences can reasonably be deduced from the facts,’ either deduction will be supported by substantial evidence, and a ‘reviewing court is without power to substitute its deductions for those of the trial court’”], citations omitted.)

Second, in *Spencer W.*, “[t]he evidence showed [father] claimed paternity to his friends and family but was unwilling to proclaim paternity when there might have been some cost to him (i.e., reduced AFDC payments).” (*Spencer W.*, *supra*, 48 Cal.App.4th at p. 1654.) “Indeed, in August 1995 when the trial court ordered [father] to participate in a paternity blood test, he failed to cooperate with the Department’s efforts to arrange for the test.” (*Id.* at p. 1652.) In contrast, the record in this case demonstrates Robert Sr. readily agreed -- and in fact requested -- a paternity test and, once confirmed as Robert Jr.’s father, told everyone and sought custody, even though there would obviously be a cost associated with doing so.

Substantial evidence thus supports the court’s finding that Robert Sr. openly held himself out as Robert Jr.’s father. When combined with the court’s finding that Robert Sr. received Robert Jr. into his home, substantial evidence

supports the court's determination that Robert Sr. was Robert Jr.'s presumed father.⁷

D. The Court Was Authorized to Place Robert Jr. With Robert Sr.

“When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought

⁷ Moreover, Denise's argument that Robert Sr. be denied presumed parent status is particularly weak when no one else has asserted a competing claim. In *In re J.O.* (2009) 178 Cal.App.4th 139, we reversed a juvenile court finding that the father's presumed status had “f[a]ll[en] away” due to lack of contact and support for several years: “Refusing to grant presumed father status to a man such as appellant, where no other parental figure is available to fill the gap, would serve only to punish the children by depriving them of a second parent. In addition, it would for all practical purposes deprive them of a connection with their father's family and the opportunity of finding a home with one of the father's relatives, should the mother's attempt at reunification fall short.” (*Id.* at p. 149.) “[T]he Legislature [has] implicitly recognized the value of having two parents, rather than one, as a source of both emotional and financial support, especially when the obligation to support the child would otherwise fall to the public.” (*Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 123.) “The paternity presumptions are driven, not by biological paternity, but by the state's interest in the welfare of the child and the integrity of the family.” (*In re Salvador M.* (2003) 111 Cal.App.4th 1353, 1357-1358.) We think the record clearly demonstrates Robert Jr.'s welfare is best served by a finding that Robert Sr. is his presumed father.

the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a).) Our Supreme Court has held, in this context, that “parent” means presumed parent and not merely a biological parent. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 451.)

Denise argues “[b]ecause Robert was merely a biological father, the juvenile court erred in granting him custody pursuant to section 361.2.” As we have determined that substantial evidence supports the court’s finding that Robert Sr. was Robert Jr.’s presumed father, Denise’s argument fails. The court did not err in placing Robert Jr. with Robert Sr. (Cf. *In re A.J.* (2013) 214 Cal.App.4th 525, 536-537 [affirming placement of child with non-custodial, non-presumed parent under juvenile court’s inherent authority where such placement was in best interests of child].)

***E. The Court’s Orders Provide No Basis for
Reversing the Court’s Termination of
Jurisdiction***

Denise argues we must reverse the court’s order terminating jurisdiction because “substantial evidence did not support the juvenile court’s presumed-father finding under Family Code section 7611, subdivision (d)” and

“because Robert [Sr.] was a mere biological father, the juvenile court erred in placing R[obert Jr.] with him pursuant to section 361.2.” Because we affirm both the finding and the placement, neither is a basis for reversing the order terminating jurisdiction.

F. No Prejudice Resulted from Termination of Jurisdiction Under Section 364

On October 18, 2018, the court stated the parties were present for “a continued 364 review hearing.” After considering a Last Minute Information dated October 18, 2018, and hearing argument from counsel, the court found “continued jurisdiction and supervision by the department is no longer necessary” and terminated jurisdiction.

Denise argues the court should have proceeded under section 361.2, not section 364, and that this error prejudiced her because “[s]ection 364 contains a presumption in favor of terminating jurisdiction” whereas “[s]ection 361.2 . . . contains no such statutory presumption.” Denise further argues that “under the correct statute, section 361.2, DCFS and others needed to prove that dependency jurisdiction was no longer necessary” and DCFS and others “did not even try to prove that continued supervision was no longer necessary.” We agree the court should have proceeded under section 361.2, but find its reference to section 364 harmless.

Courts determine whether to terminate jurisdiction under section 364 when “an order is made placing a child under the supervision of the juvenile court pursuant to

Section 300” and “the child is not removed from the physical custody of his or her parent or guardian” (§ 364, subd. (a).) However, when a child is placed with a non-custodial parent under section 361.2, “the court shall determine whether supervision is still necessary.” (§ 366.21, subd. (e)(6).) Because Robert Jr. was removed from Denise’s physical custody and subsequently placed with Robert Sr., the applicable section was 361.2. (§ 361.2, subd. (b)(1) [“If the court places the child with that [non-custodial] parent it may do any of the following: [¶] (1) Order that the parent become legal and physical custodian of the child. . . . The court shall then terminate its jurisdiction over the child”].)

By arguing DCFS failed to prove continued supervision was no longer necessary, Denise essentially makes a substantial evidence challenge to the court’s ruling that jurisdiction was no longer necessary. (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1134 [court’s conclusion continued supervision no longer necessary is a factual finding reviewed under the substantial evidence standard]; see also *In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them”].) Her challenge fails.

At the beginning of the hearing, the court stated it had “read, considered and admit[ted] into evidence the Last Minute Information for the court dated October 18th, 2018, which report[ed] on that trip [of Robert Jr. from California to his father in Alabama]” The Last Minute Information

contained an entry on October 9, 2018, documenting that Robert Jr.'s grandmother told DCFS that "Robert Jr. was doing fine, and adjusting well. She reported that he appears overwhelmed at times, being around his siblings for the first time, but he is handling it well. She also stated that Robert [Jr.]'s first day of school was on this day." The report contained an entry on October 10, after the grandmother's departure, reporting from Robert Sr., who "stated that Robert [Jr.] is adjusting just fine and [Robert Sr.] hasn't experienced any difficulties with [Robert Jr.'s] behavior. [Robert Sr.] reported [Robert Jr.] has been doing well, even without [the grandmother] around." Such evidence is sufficient to support the court's finding that jurisdiction was no longer necessary.⁸

In short, the court considered the evidence relevant to a determination under section 361.2 and made findings supported by the evidence. "Because the court's order[] demonstrate[s] it applied the standards set forth in section 366.21, subdivision (e) and 361.2, subdivision (b)(1), any error it may have committed by referencing section 364 was

⁸ Because substantial evidence supports the trial court's finding that jurisdiction is no longer necessary, we need not and do not address whether Denise's challenge to the trial court proceeding under the incorrect section is forfeited because she failed to object below. Nor do we address Robert Jr.'s argument that the reference to section 364 is harmless because the same presumption to terminate jurisdiction exists under section 361.2 as under section 364.

necessarily harmless.” (*In re Maya L.* (2014) 232 Cal.App.4th 81, 101.)

DISPOSITION

The orders are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

MANELLA, P. J.

We concur:

COLLINS, J.

CURREY, J.