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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re VALERIE F. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Defendant and Appellant,

v.

MOISES F.,

Plaintiff and Respondent.

B269428

(Los Angeles County
Super. Ct. No. DK05525)

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Dismissed.

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

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Moises F. (Father)¹ appeals from a dispositional order of the dependency court removing his children from his custody pursuant to Welfare and Institutions Code² section 361, subdivision (c)(1). Father's sole contention is that the court erred in removing the children from him because at the time of removal he was a noncustodial parent and section 361, subdivision (c)(1), applies to custodial parents. He does not appeal the factual findings underlying the November 4, 2015 removal order, nor does he argue that he is entitled to custody of the children. After he filed this appeal, however, the juvenile court terminated its jurisdiction over the children and dismissed the dependency proceedings. Accordingly, the issue on appeal is moot, and any ruling by this court would have no practical effect upon Father. We, therefore, dismiss the appeal.

FACTS AND PROCEEDINGS BELOW

On May 27, 2014, the Department of Children and Family Services (DCFS) received a referral alleging that Father was physically abusing his children and using illegal drugs. Specifically, the referral alleged that Father hit, kicked and threw objects at the children, and often left marks and bruises on them. The caller also alleged that Father punched and slapped Mother, and used and sold drugs. A social worker investigated the referral, interviewing the children, Father and Mother, who all denied the physical abuse, domestic violence and drug use allegations. Both Mother and Father admitted, however, that there was a domestic violence incident between them in 2005 or 2006. Further investigation by the social worker found that Father's criminal history included a 2006 conviction for inflicting corporal injury to a spouse, a 2007 arrest for battery on a spouse and arrests in 2008, 2012, and 2014 for inflicting corporal injury to a spouse and battery with serious bodily injury. Father also denied selling or using drugs, but he agreed to submit to a drug test, which was positive for marijuana and cocaine.

On June 12, 2014, DCFS detained the children. On June 17, 2014, DCFS filed a section 300, subdivision (b)(1) petition on behalf of the children alleging that they were

¹ Joanna G., Mother, is not a party in this appeal.

² Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

at risk of harm due to Father's drug abuse. The court sustained the petition, ordered the minors detained from Father and released to Mother, pending the next court hearing, with the condition that Father move out of the family home. The court ordered visits for the Father in a neutral setting by a DCFS monitor.

On August 22, 2014, DCFS submitted an amended section 300, subsection (b)(1), petition, recommending that Father be allowed to return to the family home with family maintenance services provided to the parents, Father to participate in individual counseling and group counseling, submit to random drug testing and attend couples' counseling when deemed appropriate by Father's therapist. On that date, the court sustained the amended petition and ordered that the children should be released to the home of their parents with DCFS supervision.

In January 2015, Father moved out of the family home. According to Mother, she asked Father to move out because he was not complying with the court ordered services and was failing to participate. For the next eight months, Father failed to complete his court-ordered classes and therapy and tested positive on five occasions for marijuana.

On August 10, 2015, the children's counsel filed a section 388 petition, requesting that the court change its prior order placing the children in the home of their parents to an order placing them in the home of Mother and removing them from Father pursuant to section 361, subdivision (c). DCFS's counsel joined the children's counsel in requesting the court grant the section 388 petition.

The court found by clear and convincing evidence that that there was a substantial danger to the physical health, safety and protection or physical or emotional well-being of the children if they were returned to the custody of Father, and there was no reasonable means that the children could be protected without removing them from Father's custody. The court ordered the children removed from Father and stated that the "home of parents' order is now—has been changed, and it is now a home-of-parent Mother order." The court also ordered Father monitored visitation and allowed DCFS the discretion to liberalize the visits based on Father's compliance with his court-ordered services. The court continued its jurisdiction.

On December 23, 2015, Father’s counsel filed a Notice of Appeal.

On February 3, 2016, the juvenile court terminated jurisdiction with a juvenile custody order awarding Mother sole legal and physical custody of the children with monitored visitation for Father.³

DISCUSSION

Father’s sole contention on appeal is that the juvenile court erred, in its November 4, 2015 order, when it removed the children from his custody pursuant to section 361, subdivision (c), because the children did not reside with him at the time, and that section only applies to custodial parents. Father’s sole request for relief is that we “strike the removal language in the court’s November 4, 2015” order. We reject Father’s request.

As a general rule, “an appeal presenting only abstract or academic questions is subject to dismissal as moot.” (*Downtown Palo Alto Com. for Fair Assessment v. City Council* (1986) 180 Cal.App.3d 384, 391.) While this appeal was pending, the juvenile court terminated its jurisdiction and dismissed the dependency proceedings. The November 4, 2015 order, that removed the children from Father pursuant to section 361, subdivision (c), which Father appeals, no longer has any legal effect on the parties. It was superseded by the February 3, 2016 order, which awarded Mother sole legal and physical custody of the children with monitored visitation for Father.

Here, Father’s only argument is that the court erred in the November 4, 2015 removal order by applying section 361, subdivision (c), which only applies to custodial parents, and not to Father, a noncustodial parent. Importantly, Father does not allege that the factual findings underlying the November 4, 2015 removal order were erroneous or unsupported by substantial evidence. Nor does he argue that he is entitled to custody of the children. Accordingly, the sole issue before us—whether to strike reference to section 361, subdivision (c), applied in a moot, superseded order—is no longer of

³ On June 10, 2016, appellant filed a request for judicial notice of the juvenile court’s February 2, 2016 minute order terminating its jurisdiction, which we granted.

consequence to the parties, and any ruling by this court would have no practical effect upon them. We, therefore, dismiss the appeal.

DISPOSITION

The appeal is dismissed.

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ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.