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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LUIS P.,

Defendant and Appellant.

B257980

(Los Angeles County  
Super. Ct. No. DK04995)

APPEAL from an order of the Superior Court of Los Angeles County,  
Stephen Marpet, Commissioner. Affirmed.

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

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel,  
Melinda A. Green, Deputy County Counsel, for Plaintiff and Respondent.

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Nineteen-month-old Jayden P. was detained from his mother, whose drug and alcohol abuse impaired her ability to care for him. The juvenile court placed Jayden with his father, Luis P. (father), against whom there were no jurisdictional allegations, and ordered continued supervision of that placement.

Father contends on appeal that the supervision order should be reversed because the juvenile court did not make express findings, as the governing statute requires, and there was no substantial evidence that continued supervision was in Jayden's best interest. We find no abuse of discretion, and thus we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Jayden (born September 2012) is the son of Diana A. (mother) and father. Jayden's half-brother, Luis T., Jr. (Luis Jr.) (born October 2006) is the son of mother and Luis T., Sr. (Luis Sr.).

#### **I.**

#### **Detention**

Jayden and Luis Jr. came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on April 26, 2014, when mother was brought to a hospital emergency room after taking a "morning after" pill when she was 15 or 16 weeks pregnant. Mother acknowledged using alcohol and methamphetamines daily, and she reported that her children were in the care of their maternal grandmother, whom mother said was an alcoholic. Mother tested positive for opiates and amphetamines.

Luis Jr. (then seven years old) reported that mother drank beer every day and spanked him "everywhere." He also reported that mother hit Jayden (then 19 months old) when he did something wrong. Luis Jr. said he sometimes took care of his brother because mother "was sleeping a lot," and there were times when Jayden did not eat because "we did not have baby food." A children's social worker (CSW) observed Jayden to have healing bruises or scars between his eyes and on his thighs. The family had seven prior DCFS referrals dating back to 2009.

DCFS detained both children. At the May 13, 2014 detention hearing, the juvenile court found father to be Jayden's presumed father, and found a prima facie case existed for detaining Jayden from mother.

## **II.**

### **Jurisdiction and Disposition**

#### *A. Reports*

DCFS advised the court that father had one prior conviction dating back to 1997. In 2013, he was arrested for threats with intent to terrorize, but the case was dropped for insufficient evidence.

Mother reported that she and father had lived together for two years. She described father as "very violent" and said they had frequent arguments and incidents of domestic violence. She said father had been arrested for domestic violence, for which he spent time in jail, and that father continued to harass and threaten her. She said father was "minimally" involved in Jayden's life and saw him infrequently. She expressed concerns about father's violent temper.

Father reported that mother had a problem with alcohol the whole time he had known her. He acknowledged some violence in his relationship with mother, but said it was because mother was violent and under the influence of drugs. He said he and mother separated due to an arrest for domestic violence, but he was not convicted. Since then, "I would just try to keep in touch with my son and go see him and she would call me when she needed money or something for my son. I always gave it to her." Father said he had steady employment and lived with his three daughters, ages 22, 16, and 10. He said he hoped mother would get "clean," but until that time wanted his son to be raised by him, not strangers.

Ronnie J., the mother of father's three daughters, said she had never known father to be violent and described him as a good parent. She said her daughters had reported frequent arguments between mother and father, but never mentioned any physical violence.

A CSW reported that father's small three-bedroom home was clean and well-organized. Each daughter had her own bedroom, and father slept in a bed in the dining area. Father's daughters denied that he was violent or abusive. They said they hoped Jayden would be able to live with them until mother resolved her drug and alcohol issues. Father's parents reported they would be willing to provide child care and support to Jayden as they had done for father's three daughters.

DCFS recommended that Jayden and Luis Jr. be declared juvenile court dependents, and that mother and father be offered family reunification services.

*B. Hearing*

On July 29, 2014, the juvenile court sustained two allegations of the petition, as follows: (b-1) Mother has a history of substance abuse and is a current abuser of methamphetamines and alcohol, which renders her incapable of providing regular care of the children; and (b-3) mother used inappropriate physical discipline by striking Luis Jr., placing Luis Jr. and Jayden at risk of physical harm.

Through his attorney, father asked that Jayden be placed with him and jurisdiction terminated. Father said he was willing to facilitate visits between Jayden, mother, and Luis Jr., and said he would make sure Jayden participated in any counseling the court ordered. Mother's attorney asked that the case remain open. Counsel for DCFS did the same, noting as follows: "The court at dispo has the discretion to dispo the case, keep jurisdiction, or not. Mother's participating in our drug court program and the court . . . should keep this case open."

After hearing argument, the court ordered the children removed from mother and placed with their respective fathers. Over father's objection, the court retained jurisdiction over both children, finding continuing jurisdiction to be "in the children's best interest[s]." Finally, the court ordered DCFS to provide both fathers "appropriate family maintenance services . . . to assist them in taking care of their child[ren]," and to provide mother with "appropriate family reunification services."

Father timely appealed.

## CONTENTIONS

Father contends: (1) Because the juvenile court failed to state the basis for its decision to supervise Jayden's placement, the matter should be remanded for appropriate findings; and (2) substantial evidence did not support the juvenile court's order because continuing supervision was not necessary to ensure Jayden's safety and welfare.

## DISCUSSION

### I.

#### Legal Standards

Welfare and Institutions Code section 361.2<sup>1</sup> provides, in relevant part, that when a court orders removal of a child from a custodial parent, the court shall determine whether there is a noncustodial parent who desires to assume custody of the child. If so, 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." (*Id.*, subd. (a).) If the court places the child with the noncustodial parent, it may do any of the following:

- (1) Order that the parent become legal and physical custodian of the child.
- (2) Order that the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months.
- (3) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that services be provided to one or both parents. (*Id.*, subd. (b).)<sup>2</sup>

Section 361.2, subdivision (c) provides that in determining whether to place a child with a formerly noncustodial parent, the juvenile court "shall make a finding either

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<sup>1</sup> All subsequent statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Section 361.2, subdivisions (a) and (b), therefore, "envision[] a two-step process: under subdivision (a), the court examines whether it would be detrimental to temporarily place a child with the nonoffending noncustodial parent; under subdivision (b), the court decides whether that placement should be permanent and whether the court's jurisdiction should be terminated." (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1131.)

in writing or on the record of the basis for its determination under subdivisions (a) and (b).” (§ 361.2, subd. (c).)

The relevant statutes do not expressly state under what circumstances the juvenile court should supervise the placement of a child with a formerly noncustodial parent. However, “there is an implicit acknowledgement in section 361.2, subdivision (a) that the juvenile court must assess *whether there is a need for its supervision.*” (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1496 (*Sarah M.*), italics added.)<sup>3</sup> The *Sarah M.* court explained this standard as follows: “A need-for-supervision standard appears reasonable. While placement of the child with the formerly noncustodial parent may not be detrimental, there may be some concern that: this parent will turn around and relinquish the child to the other parent after the termination order; or this new custodial parent may need services. Also, the formerly noncustodial parent may not want long-term custody. Alternatively, the court may anticipate that with the appropriate reunification services, the child will be able to return to the home of the original custodial parent. It is also possible that . . . the court may see a need to provide services short of reunification for the child’s best interests. Thus, supervision may be appropriate in lieu of or before terminating jurisdiction.” (*Id.* at pp. 1496-1497; see also *In re Austin P.*, *supra*, 118 Cal.App.4th at pp. 1134-1135 [in exercising discretion under section 361.2, juvenile court must decide “whether there is a need for ongoing supervision”].)

The juvenile court’s exercise of discretion with regard to continuing supervision should be informed “by the statutory context within which its decision . . . [is] made. . . . When making such a determination, as in any dependency case, *‘the court’s focus and primary consideration must always be the best interests of the child.’* [Citations.]” (*In re*

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<sup>3</sup> The need-for-supervision standard implicit in section 361.2 is consistent with the express terms of section 366.21, subdivision (e), which says (with regard to status review hearings): “If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine *whether supervision is still necessary.* The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.” (Italics added.)

*Jaden E.* (2014) 229 Cal.App.4th 1277, 1288-1289 [addressing termination of services to formerly custodial parent under section 361.2], italics added.)

“ ‘The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion.’ (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.) The reviewing court will not reverse the court’s order in the absence of a clear abuse of discretion. (*Id.* at p. 1104.)” (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651-652.)

## II.

### **Substantial Evidence Supported the Juvenile Court’s Finding That Continued Supervision Was in Jayden’s Best Interests**

Father contends the juvenile court failed to make the express findings required by section 361.2, and thus that the dispositional order must be reversed for further proceedings. We disagree. The appellate record reflects that after acknowledging father’s request to terminate jurisdiction, the court said it would retain jurisdiction over Jayden and specifically found that “*it’s in the children’s best interest[s] to keep jurisdiction.*” (Italics added.) It thus satisfied the statutory requirement to make findings “in writing or on the record” that continued supervision was appropriate.

Father also contends that the dispositional order must be reversed because it was not supported by substantial evidence. Again, we disagree. Mother described father as having a violent temper, and both parents admitted their relationship had been violent. Further, the contact between father and Jayden prior to detention had been limited: Mother said father was “minimally” involved in Jayden’s life and saw him infrequently. Father made a similar statement; he said he “tr[ie]d to keep in touch with my son,” but did not describe regular visitation. In view of the limited relationship between father and child, the strained relationship between mother and father, and the allegation that father had a violent temper, the juvenile court did not abuse its discretion by concluding that continuing juvenile court supervision was in Jayden’s best interests. (See *In re Austin P.*, *supra*, 118 Cal.App.4th at p. 1134 [substantial evidence showed the need for continuing

supervision where contact between father and child prior to detention had been “sporadic” and court wanted to “monitor the conflict among the adults”].)

**DISPOSITION**

The dispositional order is affirmed.

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EDMON, P. J.

We concur:

ALDRICH, J.

EGERTON, J.\*

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