

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

In re RYAN G., a Person Coming  
Under the Juvenile Court Law.

B282647

(Los Angeles County  
Super. Ct. No. DK11516)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

CESAR G.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Julie Fox Blackshaw, Judge. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephanie Jo Reagan, Deputy County Counsel for Plaintiff and Respondent.

Cesar G. (father) appeals from the judgment of the juvenile court, entered after his son Ryan G. (Ryan) was adjudicated a dependent of the court. Father challenges the findings underlying the dispositional orders as unsupported by substantial evidence. He also contends that the court was required to afford him unmonitored visitation absent a finding of detriment to the child. Finding no merit to father's contentions, we affirm the judgment.

### **BACKGROUND**

On November 7, 2016, the Department of Children and Family Services (the Department) filed a petition to bring Ryan (born Oct. 2016) within the jurisdiction of the juvenile court, pursuant to Welfare & Institutions Code section 300, subdivision (b).<sup>1</sup> In addition the Department sought an order detaining Ryan from parents' custody.

---

<sup>1</sup> As later sustained, the petition alleged as follows: "[The child's mother] has a 12 year history of substance abuse, including amphetamine, methamphetamine, marijuana and alcohol, and is a current user of marijuana, which renders the mother incapable of providing regular care and supervision of the child. The mother abused illicit drugs during the mother's pregnancy with the child. On 07/01/2016, the mother had a positive toxicology screen for marijuana, while the mother was pregnant with the child. The child's father . . . knew, or reasonably should have known, of the mother's substance abuse and failed to protect the child in that the father allowed the mother to reside in the child's home and have unlimited access to the child. The child's [four] siblings [born in 2007, 2010, 2013, and 2015 respectively] are current dependents of the Juvenile Court and receiving Permanent Placement Services due to the mother's substance abuse. The child is of such young age requiring constant care and supervision and the mother's substance abuse interferes with providing regular care and supervision of the child. The mother's substance abuse, and the

On January 27, 2017, the juvenile court sustained the petition, adjudged Ryan a dependent of the court and entered dispositional orders. Father filed a timely notice of appeal from the disposition.

### **Evidence presented<sup>2</sup>**

When Ryan was born, the Department was notified and a dependency investigator (DI) was sent to the hospital to assess the safety of the child due to the substance abuse history of Ryan's mother Jennifer V. (mother) and her involvement in dependency proceedings for her other children. Mother was permitted to take Ryan home and the DI continued the investigation.

The detention hearing was held November 7, 2016, the day the petition was filed. The Department's report prepared for the hearing contained the following information: At the hospital, a nurse reported that Ryan was healthy, that mother had tested negative for drugs that day, but had tested positive for marijuana in July 2016, during the pregnancy.

The DI met with mother and father at the hospital and explained that the Department had received a referral to assess Ryan's safety. Father appeared to be confused and tired, claiming that he had slept only a few hours and felt irritated. He

---

father's failure to protect the child, endangers the child's physical health and safety and places the child at risk of serious physical harm, damage, danger and failure to protect."

All further statutory references are to the Welfare & Institutions Code.

<sup>2</sup> At the jurisdiction and disposition hearing, the juvenile court admitted into evidence all reports and attachments filed by the Department; and the court took judicial notice of its prior findings and orders.

added that he was a first-time father, had no prior involvement with the Department, and although he knew that mother had other children, he denied knowing about her prior involvement with the Department. Father expressed love for his son, said he would do anything for Ryan, and that he wanted to be responsible emotionally and financially. Father was employed as a mechanic and repairman in a body shop, and claimed to have purchased a stroller, a car seat, and some clothes for Ryan. Father said he lived with his mother (PGM), although he could not remember her address. Father denied any history of substance abuse, child abuse, or domestic violence, as well as any criminal history. Later, after the Department ran a criminal background check on father it was revealed that father had several juvenile and adult arrests, one for assault and another for failure to appear after a written promise to do so, as well as a 2011 conviction of second degree burglary, and felony probation.

Mother told the DI that father appeared involved with the baby; that she had been enrolled in a treatment program for a month; and she denied having told father about her four children or a history with the Department. When mother was ready to be discharged from the hospital, it was agreed that the interview would continue at mother's home. When the DI arrived, mother had returned to the hospital where Ryan had been readmitted due to high jaundice levels.

The next day, the Department social worker (CSW) contacted PGM, who denied that father had ever been involved with drugs, but acknowledged that he had a criminal record and had been on probation. PGM added that she had known mother since mother's relationship with Manuel L. (Manuel), the father of mother's fourth child, and she knew that father and mother were dating. PGM lived in a one-bedroom apartment with two adult sons and one minor son. She agreed that if her home were

to be considered for Ryan's placement, she would submit to a Live Scan and fingerprinting, and would ask her two adult sons to do so as well.

On October 18, 2016, the CSW was informed by the hospital social worker that the doctor's notes reflected that the parents did not stay at the hospital when Ryan was readmitted. While they were there, parents exhibited strange behavior: father appeared agitated, pacing around the unit; and both parents appeared to be jittery and grumpy. Neither parent wanted to wait to speak with the doctor, and they left the hospital abruptly. When the doctor telephoned mother, she sounded strange and out of breath, and father kept interrupting their conversation. There was nothing in the notes however, to indicate that the doctor believed they were under the influence of anything.

The CSW telephoned father and when there was no answer, left a voicemail for him to call. The CSW then called mother, who answered and said she was with father. CSW asked both of them to submit to drug testing. Mother agreed but father refused to test that day, asking why he should submit to testing. He added that he would not test without a court order, and then abruptly hung up the phone. Mother then called back saying father now agreed to test that day. Both parents' tests were negative for drugs.

Father told the CSW that he and mother met at a restaurant; that they did not have a relationship; and that he planned not to have one with her now that he had learned a lot about her, and did not like what was happening. Father denied asking mother whether she had other children. When asked about having his mother submit to a Live Scan, father replied he did not want to involve his family in this matter and he would rent an apartment if necessary. With regard to his strange

behavior at the hospital, father said that he was very tired, the nurses told him that the doctor would call with an update, and that Ryan was responding to treatment but would remain at the hospital for observation.

The next day the CSW contacted PGM, who said that father had told her not to “say or do anything” because he was working on getting custody. PGM reaffirmed that she was willing to have Ryan in her home, but when she was reminded of the need for Live Scans, she said in Spanish, “Neither I nor my family have to be investigated, I raised my child alone and never in the Court, and I am going to do what my son tells me to do so call him.” She then abruptly hung up the phone.

CSW then tried to contact father. She left a voicemail message asking him to contact her and requesting that he submit to a Live Scan as soon as possible. She also sent father a text message. The CSW again tried to contact PGM, but the call went directly to voicemail. CSW requested a callback.

On October 25, 2016, the CSW spoke with Maria L. (Maria), mother of Manuel, and grandmother of mother’s fourth child. Maria told the CSW that Manuel and father had grown up together in the neighborhood, attended elementary and high school together, and were friends. Maria said that mother met father before she met Manuel, and Maria thought mother may have been “with” both men. Maria suspected there was a slight possibility that Ryan was her biological grandson, and thought a paternity test should be conducted. She had no contact information for Manuel.

The CSW noted the inconsistency between the reports from PGM and Maria who both suggested father and mother were involved in an ongoing relationship, and father’s claim that he met mother at a restaurant, was not involved in a relationship with her, and had no knowledge of mother’s family

circumstances. The CSW also noted that around the time that Ryan was conceived, mother had tested positive for amphetamine, methamphetamine, and marijuana. The CSW concluded that mother and father were not forthcoming about their relationship, and she was concerned about father's lack of cooperation with the Department.

On October 28, 2016, the Department obtained a warrant for Ryan's detention. The CSW and other social workers and law enforcement attempted to serve the warrant at the gated apartment complex which housed mother's residential drug treatment program. They found the area dark and unclean, with used condoms on the ground. When no one responded to the CSW's repeated knocks on mother's door, the CSW telephoned mother who said she was with father and Ryan at the Department of Social Services and would return home in 45 minutes. When mother asked to meet the CSW on another day, the CSW insisted on meeting that day. Mother failed to arrive at the promised time, and when the CSW called her, mother said she was stuck in traffic, but would arrive within another hour. When mother and father arrived, the detention warrant was served and Ryan was taken into custody. Ryan was placed in the care of Alejandro M. (caretaker), the paternal grandfather of mother's third child. The Department had not been able to assess the suitability of father's family due to PGM's lack of cooperation.

At the detention hearing both parents denied the allegations of the petition. Father and mother both asked that Ryan be released to mother, and Ryan's counsel agreed. Father asked that that Ryan be released to him if he could not be released to mother. The Department recommended that Ryan remain placed in the home of the non-related extended family member. The Department noted father and PGM's failure to

cooperate, and father's failure to disclose the circumstances regarding his relationship with mother.

The juvenile court ordered Ryan detained, and due to the termination of reunification with her other children and her failure to fully participate in court-ordered programs, denied mother's request to release Ryan to her. Father's request was also denied, as the court did not believe father's claim of ignorance of mother's drug issues, and found that father had failed to cooperate or be open with the Department. The court concluded that it had no reason to believe that father would protect Ryan or recognize that there was a serious problem. The court ordered drug testing for both parents, monitored visits for mother, not to be monitored by father, and unmonitored three-hour day visits for father, granting discretion in the Department to liberalize visitation. The court advised father: "See how those [visits] go. If they are good, then that would be a basis for me to consider releasing Ryan to your care at our next hearing." The court also warned father: "As a start, cooperation with the Department is important. . . . I will need to see some commitment . . . to comply with your program . . . and also to cooperate with the Department so that we can have some kind of verification and understanding that actually you can provide a safe home for the child."

On January 20, 2017, the Department filed its jurisdiction/disposition report for the January 27, 2017 adjudication hearing. The CSW reported that mother had failed to submit to random drug testing since October 2016. Her last known phone number was disconnected, she had not contacted the Department, and her drug program administrators were unresponsive to the CSW's inquiries.

Caretaker reported that mother visited Ryan regularly, acted appropriately with him, and did not appear to be under the



influence of drugs, as far as he knew. After Thanksgiving 2016, father slowly stopped visiting, possibly due to a misunderstanding. Caretaker, who did not know that father was allowed unmonitored visits, refused to allow father to leave with Ryan, which made father angry. Prior to the misunderstanding, father acted appropriately and was engaged and loving with the child during visits.

The Department's calls to father to work out a visitation schedule had not been returned by the time the jurisdiction report was filed. The DI was unable to reach either parent despite attempts to call over three days during the first week of January. CSW was therefore unable to interview either parent.

PGM expressed the belief that Ryan was not father's biological son, and stated she would not, nor would she ask other family members to undergo a home assessment with fingerprinting, unless the relationship were proven with DNA. With regard to PGM's knowledge of any ongoing relationship between father and mother, she stated: "I didn't even know my son and her were having a relationship until one day all of a sudden my son started seeing her outside the apartment. Next thing I knew she was pregnant and she told my son it was his baby. I saw her and my son together when she was pregnant with Ryan right outside my home. My son knew I didn't like her and I didn't want her in my house. So whenever he brought her over, she stayed outside the apartment or my son would see her outside."

The Department expressed concern about father's evasive behavior and his criminal history which included an arrest for assault. Another concern was father's undisclosed long friendship with Manuel (the father of mother's fourth child) and Manuel's admission in his son's dependency proceedings that

Manuel used methamphetamine and marijuana with his friends.<sup>3</sup> The Department also expressed concern about father's failure to visit Ryan, to contact the Department, or to make himself available for drug testing.

At the January 27, 2017 jurisdiction and disposition hearing the juvenile court admitted all the Department's reports into evidence. Mother submitted evidence of her participation in a drug program through December 2016, and Father offered no evidence. The matter was submitted after argument of counsel. The court sustained the petition as alleged, declared Ryan a dependent of the juvenile court, and issued a dispositional order removing Ryan from parents and placing him in the care, custody and control of the Department. The court ordered reunification services and monitored visits for both parents, and signed the Department's proposed case plan.

## **DISCUSSION**

### **I. Removal order**

Father challenges the dispositional order, arguing that the court's jurisdictional and dispositional findings were not supported by substantial evidence.

The juvenile court's finding that Ryan is a person described in section 300 must be supported by a preponderance of the evidence, whereas dispositional findings supporting the removal of the child from the custody of a parent must be by clear and convincing evidence. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248; §§ 355, 361, subds. (c), (d).) "In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports

---

<sup>3</sup> In the prior dependency proceedings Manuel tested positive for amphetamine, methamphetamine, and cannabinoids.

them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” [Citation.]” [Citation.]’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Despite acknowledging that the substantial evidence test is the appropriate standard of review, father begins his argument by summarizing evidence in a light *favoring* his contention that the court should not have removed Ryan from his custody and care, and by summarizing (as evidence) his own counsel’s arguments against removal. Then father faults the juvenile court’s refusal to believe father’s assertion that he was unaware that mother used illicit drugs during her pregnancy. Father construes the court’s statement that it was troubled by father’s denial of misconduct as suggesting that the court relied solely on this factor to support its finding that father would fail to protect his child. Father also contends that the juvenile court should have considered alternatives to removal, such as imposing stringent conditions of supervision.

It is father’s burden to show that the order is not supported by substantial evidence. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.) His showing that other evidence might have supported a contrary conclusion fails to satisfy this burden as we may not

“evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts.” (*Ibid.*)

We thus begin our review by accepting the juvenile court’s credibility assessment. The court disbelieved father’s claim he had no continuing relationship with mother and that he was ignorant of her substance abuse. The court’s disbelief was supported by substantial evidence: Maria reported that Manuel and father grew up together and were friends. Mother knew father before she met Manuel, and Maria believed father and mother were involved in an ongoing relationship. Manuel had previously admitted having used methamphetamine and marijuana with his friends, and during his son’s dependency proceedings had tested positive for amphetamine, methamphetamine, and cannabinoids. PGM also knew mother and thought that father and mother were involved in an ongoing relationship. PGM was aware that father had been seeing mother before mother became pregnant and PGM saw mother and father together during mother’s pregnancy. Mother tested positive for cannabinoids nearly six months into her pregnancy with Ryan. From the foregoing, the court could reasonably conclude that father, mother, and Manuel were well acquainted with one another and each other’s lifestyles.

Substantial evidence also supports a finding that removal was the only means to protect Ryan. Father suggests that the court should have released Ryan to him under “stringent conditions of supervision with a warning that failure to comply would result in a loss of custody.” Compliance with such strict conditions would require cooperation with the Department. Father had demonstrated an inability or unwillingness to cooperate with or to be open and forthcoming with the Department. Indeed father’s lack of appreciation of the risk that mother presented to Ryan was demonstrated by his incredible

claim of ignorance regarding mother's substance abuse and the dependency court's jurisdiction over her other four children. Father's criminal background check revealed an arrest for assault, a felony probation, and a warrant for failing to appear after a written promise to do so. In addition, father's home had not been approved by the Department due to PGM's refusal to cooperate. Under these circumstances it does not appear that more court orders or warnings would have been adequate to protect Ryan.

Throughout father's arguments he quotes comments from the court from which he infers a motive to punish father rather than to protect Ryan. We infer no such motive and conclude that substantial evidence supports the court's findings.

## **II. Visitation order**

Father contends that no evidence was presented which would indicate that Ryan's physical safety or emotional well-being would be threatened by unmonitored visits.

Dependency law requires that during the reunification period, "[v]isitation shall be as frequent as possible, consistent with the well-being of the child"; however, "[n]o visitation order shall jeopardize the safety of the child." (§ 362.1, subd. (a)(1)(A), (1)(B), (1)(C).) The "law affords the juvenile court great discretion in deciding issues relating to parent-child visitation, which discretion we will not disturb on appeal unless the juvenile court has exceeded the bounds of reason. [Citation.]" (*In re S.H.* (2011) 197 Cal.App.4th 1542, 1557-1558, citing *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

As we presume the court's order is correct, father bears the burden to show otherwise. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1066.) That burden is not satisfied simply by pointing to evidence that would support a different result. (See *In re Stephanie M.*, *supra*, 7 Cal.4th at p. 319.) Moreover, it is not

enough to show error; he must also show that the error resulted in a miscarriage of justice. (*Robert L.*, at pp. 1066-1067.)

Father contends that the juvenile court must order unmonitored visitation unless it finds that it would be detrimental to the child. Further, father suggests that the court must make such a finding by clear and convincing evidence. In the absence of authority to support this proposition, father relies on *In re C.C.* (2009) 172 Cal.App.4th 1481 (*In re C.C.*); however, as respondent points out, that case involved a *denial of all* visitation. (*Id.* at pp. 1491-1492.) The *In re C.C.* court did not hold that unmonitored visits were mandatory absent a finding of detriment. Moreover, although the *In re C.C.* court exercised its discretion to reach the issues before it, the court stated that restoration of *monitored* visits would render the visitation issue moot. (*Id.* at pp. 1488-1489, 1493.) Another court pointed out that the stringent test implied by the holding in *In re C.C.* could be almost always be avoided by reimagining a visitation ban as an order for *supervised* visitation. (*In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1102.)

We thus find no support for father's attempt to equate an order for monitored visits with a denial of visitation. We agree with respondent that section 362.1 implies no presumption favoring unmonitored visits. We do not infer restrictions on monitored visits beyond the statute's requirements that all visits be "as frequent as possible, consistent with the well-being of the child" and "shall [not] jeopardize the safety of the child." (§ 362.1, subd. (a)(1)(A) & (B).)

Here, the court ordered three hours of visitation per week, with discretion in the Department to liberalize. There was no objection to the frequency. There was no evidence that monitored visits, as opposed to unmonitored visits, would jeopardize Ryan's safety. On the other hand, in sustaining the petition, the juvenile

court found that father failed to protect Ryan, endangering his safety and placing him at risk of harm. As we concluded in section I that the court's findings were supported by substantial evidence, we do not find the court's visitation order to have exceeded the bounds of reason. Moreover, as father has made no effort to demonstrate a miscarriage of justice, he has failed to meet his burden to show an abuse of discretion.

**DISPOSITION**

The judgment of the juvenile court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
ASHMANN-GERST