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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re CH.B. et al., Persons  
Coming Under the Juvenile  
Court Law.

B269425  
(Los Angeles County  
Super. Ct. No. DK13006)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County, Marguerite D. Downing, Judge. Affirmed.

Toni Taylor Buck, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Sarah Vesecky Deputy County Counsel, for Plaintiff and Respondent.

\* \* \* \* \*

C.B. (father), the noncustodial parent of three children at issue in this appeal, challenges the juvenile court's decision to exercise and retain jurisdiction over his three children after awarding him custody of them pursuant to Welfare and Institutions Code section 361.2, subdivision (a).<sup>1</sup> We find substantial evidence supported the court's decision and affirm.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

Father has three children with mother C.F. (mother): Ch.B. (born in September 2006), Ct.B. (born in January 2008), and Cn.B. (born in December 2008). Mother has a fourth child, C.M. (born in June 2014), with a different father, F.M. Only father and his three children are involved in this appeal.

Father resides in Las Vegas. At the time of the events leading to the instant case, mother, F.M., and the four children resided in Los Angeles. The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in December 2014 after F.M. drove recklessly and was arrested for evading police while his daughter C.M. was not properly restrained in a car seat. When law enforcement contacted mother, she revealed F.M. took C.M. from her during a

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<sup>1</sup> Undesignated statutory citations are to the Welfare and Institutions Code.

domestic violence incident in which F.M. threw a phone at mother's face.

Further investigation revealed mother and F.M. had engaged in ongoing domestic violence before and after this incident that sometimes occurred in the presence of the children. In statements to DCFS, mother admitted this domestic violence had occurred in front of the children. Mother had obtained two restraining orders against F.M., one in August 2014 and one in March 2015. Yet, she and F.M. admitted she allowed F.M. to have contact with her and the children in violation of those orders. F.M. reported and mother also admitted she used marijuana and consumed alcohol.

Father had limited contact with his children. He and mother had worked out a visitation schedule for the children to have extended visits with him in Las Vegas during the summer and holidays. He initially had no concerns about their safety and well-being, although he was unaware of the domestic violence issues. As time passed, he became concerned about the children's safety and felt he had been misled as to the extent of the problems. He loved his children dearly, he did not want them exposed to this lifestyle, and he wanted to take full custody of them. Mother believed father should have custody of their children and, one week prior to the filing of the dependency petition here, she executed a notarized letter giving him sole custody. Mother and father then formalized this arrangement with a stipulation and order filed in the Nevada courts awarding father sole legal and physical custody and granting mother supervised visits.

DCFS obtained orders to remove the children from mother and filed a dependency petition pursuant to section 300,

subdivisions (a) and (b) for all four children based on mother and F.M.'s history of domestic violence, mother's violation of the restraining orders, mother's substance abuse, and F.M.'s endangerment of C.M. when he was arrested. Father was not named in the petition.<sup>2</sup> The juvenile court found a prima facie case to exercise jurisdiction and detained the four children, placing father's three children with him in Las Vegas and allowing him to monitor their visits with mother.

In its jurisdiction/disposition report, DCFS initially recommended the court grant father custody of the children, terminate jurisdiction with a family law order, and grant mother monitored visitation. DCFS also recommended mother submit to random drug testing and participate in a host of programs, including anger management, domestic violence, parenting, and individual therapy. DCFS reported the following statements from the children: Ch.B. stated he loved his mother and father, but F.M. was mean to him and his brother and he did not want to be around F.M. Ct.B. stated he loved his mother and wanted to go back home, but F.M. was mean to him and his brother and he did not want F.M. there. Cn.B. stated she loved her mother and wanted to return home but said F.M. called mother mean names and is not nice to her.

In a supplemental report submitted two months later, DCFS reported further statements from the children. A social worker asked them where they wanted to live. Ch.B. responded he liked seeing his baby sister and missed her (referring to C.M.). He asked the social worker if he would get to choose where he

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<sup>2</sup> Father had a 20-year-old conviction for battery against an ex-girlfriend, but DCFS did not raise it as an issue.

would live, and the social worker said there could be no guarantee about what would happen. Ch.B. went into a “deep stare” and did not answer, prompting the social worker to express concern about his emotional state. For Ct.B., before the social worker could finish the question of where he wanted to live, he “blurted out” “mom.” He said he liked seeing his baby sister (C.M.) and being with his mother. Cn.B. said she wanted to live with mother “because I want to see my baby sister [C.M.] and my grandparents. I just want to live with my mommy. I miss her.” The social worker observed C.M. playing happily with her siblings. In light of these responses and mother’s compliance with her court-ordered programs, DCFS changed its recommendation. It still recommended father be granted custody, but it withdrew its request to terminate jurisdiction and instead recommended father receive family maintenance services and mother receive enhancement services.

At the December 17, 2015 jurisdiction/disposition hearing, father’s attorney stated father was “submitting as to jurisdiction; however, I’m going to ask to be heard at the disposition hearing.” The court slightly amended the petition to delete the allegation that mother was a current abuser of marijuana, but otherwise sustained the allegations as pled. For disposition, mother testified about her recent programs and sobriety and asked the court to return her children to her that day. Her counsel also requested the court return the children to her, noting the children all expressed a desire to be with her. If the court did not return the children, her counsel requested unmonitored weekend and overnight visitation.

The children’s counsel requested the court maintain jurisdiction over the children because they expressed a desire to

be reunited with mother and that she be given unmonitored visitation, given mother's progress in her programs.

DCFS requested the court maintain jurisdiction because the children expressed a desire to return to their mother at some point, but it requested visits be monitored.

Because father was nonoffending, father's counsel requested the court terminate jurisdiction and liberalize mother's visitation. His counsel pointed out that the court would still have jurisdiction over C.M., so mother would still be subject to DCFS supervision. His counsel also noted DCFS could not provide services in Nevada, so father would have to take time off work to bring the children to California to meet with DCFS. Father requested transportation funds if the court decided to maintain jurisdiction.

For disposition, the court removed the children and placed them with father, but opted to retain jurisdiction because the children wanted to return to their mother. Although the court commended father for "stepping up to the plate," it believed "home for these children is with their mother." The court was also concerned that if they were placed with father permanently, they would be cut off from their half sister C.M. The court ordered DCFS to provide mother enhancement services and unmonitored visits with the children and ordered DCFS to provide transportation assistance to father. It ordered mother to submit to random drug testing. Father appealed.

## **DISCUSSION**

### **1. *Preliminary Issues***

Father's primary contention on appeal appears to be whether the court properly *maintained* jurisdiction over the children rather than terminating jurisdiction at disposition. But

we must address several preliminary issues before reaching that question. First, father appears to challenge the juvenile court's *initial* exercise of jurisdiction, and DCFS contends he has not properly appealed that ruling. Second, even if father properly appealed that ruling, DCFS contends he acquiesced to initial jurisdiction, so he has waived any challenge on appeal. And third, even if father did not waive his jurisdictional challenge, DCFS argues substantial evidence supported the court's initial exercise of jurisdiction. We agree with the latter two points.

A. *Scope of Appeal*

In father's notice of appeal, he identified the jurisdiction/disposition hearing date of December 17, 2015, and hand-wrote the following on the first page: "Any & all appealable findings & orders made at the Disposition hearing (including but not limited to the court's decision to retain jurisdiction)." On the second page, he checked a box indicating the order appealed from was made under "**Section 360** (declaration of dependency)" and a box indicating "Other orders." He did *not* check a box to indicate the appeal was "with review of section 300 jurisdictional findings." He again indicated the date of the hearing was December 17, 2015.

Although ambiguous, we find the notice of appeal encompassed the court's initial jurisdictional finding. "The notice of appeal must be liberally construed. The notice is sufficient if it identifies the particular judgment or order being appealed." (Cal. Rules of Court, rule 8.100(a)(2).) Father's notice identified the jurisdiction/disposition hearing date and sought to appeal "all appealable findings & orders" made at that hearing, which reasonably encompassed the court's decision to exercise jurisdiction. Father's failure to check the box indicating he was

challenging the court's jurisdiction finding under section 300 appears to have been an oversight. Since the court's jurisdictional finding was not directly appealable and could only be challenged in an appeal from the disposition, we interpret the notice of appeal as encompassing the jurisdictional finding. (See *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393, fn. 8.)

*B. Acquiescence and Waiver*

Although father's notice of appeal encompassed the court's initial exercise of jurisdiction, we agree with DCFS that he waived this challenge by submitting on jurisdiction at the jurisdiction/disposition hearing. As noted, at the combined jurisdiction/disposition hearing, father's counsel submitted "as to jurisdiction; however, I'm going to ask to be heard at the disposition hearing." Father then presented no evidence or argument on the question of initial jurisdiction and did not dispute any of the allegations in the petition. As a nonoffending parent, he appears to have anticipated that the court would exercise jurisdiction, so he focused on the issue that directly concerned him—the court's *retention* of jurisdiction after placing the children with him as part of the disposition of the case. He confined his arguments to terminating the court's *continuing* jurisdiction when he asked the court at the hearing to "close this case under [section] 361.2" and claimed "[t]here is no basis . . . for ongoing jurisdiction."

Similarly, father's briefs on appeal reveal his primary concern was with the court's decision to *retain* jurisdiction, not to exercise initial jurisdiction over the children. For example, in his opening brief, he frames his argument as "the juvenile court's decision to *maintain* jurisdiction as to [f]ather's three children was reversible error," even though he attempts to fit that



contention into section 300, not section 361.2, the applicable provision. (Italics added.) In his reply brief, in explaining why he submitted to the court’s jurisdiction, he explains his “intent was that the court *terminate jurisdiction* with the family court orders already in place giving [f]ather sole legal and physical custody of his three children, with supervised visitation to [m]other.” (Italics added.)

Father’s acquiescence here is similar to the mother’s actions in *In re Richard K.* (1994) 25 Cal.App.4th 580 (*Richard K.*) that precluded her from challenging the juvenile court’s disposition on appeal. In that case, the mother submitted on a social worker’s recommended disposition that the children at issue be removed from her custody. (*Id.* at p. 587.) On appeal, the court held mother was precluded from challenging the sufficiency of the evidence supporting the disposition. It reasoned: “[I]t is not uncommon in dependency proceedings for a parent to ‘submit’ on a social services report. [Citations.] By submitting on a particular report or record, the parent agrees to the court’s consideration of such information as the only evidence in the matter. Under such circumstances, the court will not consider any other evidence in deciding whether the allegations are true.” (*Id.* at pp. 588-589, fn. omitted.) In that circumstance, “the court must nevertheless weigh evidence, make appropriate evidentiary findings and apply the relevant law to determine whether the case has been proved. [Citation.] In other words, the parent acquiesces as to the state of the evidence yet preserves the right to challenge it as insufficient to support a particular legal conclusion. [Citation.] Thus, the parent does not waive for appellate purposes his or her right to challenge the propriety of the court’s orders.” (*Id.* at p. 589.)

But the mother did not simply submit on the social worker's *report*; she submitted on the *recommendation*. That "constituted acquiescence in or yielding to the social worker's recommended findings and orders, as distinguished from mere submission on the report itself. This is considerably more than permitting the court to decide an issue on a limited and uncontested record . . . . The mother's submittal on the recommendation dispels any challenge to and, in essence, endorses the court's issuance of the recommended findings and orders." (*Richard K.*, *supra*, 25 Cal.App.4th at p. 589.) Thus, "by submitting on the recommendation without introducing any evidence or offering any argument, the parent waived her right to contest the juvenile court's disposition since it coincided with the social worker's recommendation. He who consents to an act is not wronged by it." (*Id.* at p. 590.)

As in *Richard K.*, father did not simply submit to DCFS's report presenting evidence to support jurisdiction; he submitted to the court's jurisdiction *itself*. By doing so, he acquiesced to the court's exercise of jurisdiction and waived any challenge to that decision on appeal.

### C. *Initial Jurisdiction*

Even if father did not waive his jurisdictional challenge, substantial evidence supported the court's initial exercise of jurisdiction pursuant to section 300, subdivisions (a) and (b). (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438 ["The standard of proof at the jurisdictional stage of a dependency proceeding is a preponderance of the evidence, and we will affirm the court's findings if they are supported by substantial evidence."].) The uncontradicted evidence of mother and F.M.'s ongoing domestic violence in the presence of the children was sufficient on its own

to show there was a substantial risk the children would suffer serious physical harm. (§ 300, subds. (a), (b)(1); see *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [violent confrontations between father and stepmother in presence of children sufficient to show children faced serious risk of physical harm].)

Father does not dispute this; instead, he claims he “was not involved in the abuse allegations and there was no evidence whatsoever that [he] would harm his children in any way while in his care.” That is true, but the court could properly exercise jurisdiction based on mother’s conduct alone. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491 [“[I]t is necessary only for the court to find that one parent’s conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child.”].) Father cites *In re A.G.* (2013) 220 Cal.App.4th 675 (*A.G.*), but it is distinguishable. In that case, the court reversed the juvenile court’s exercise of jurisdiction based on mother’s mental illness because the nonoffending father was living in the home and had demonstrated he could adequately protect the children from any danger mother posed. (*Id.* at p. 684.) At the time of the events leading to DCFS involvement here, the children lived with mother while father lived in Las Vegas and had limited contact with them. Indeed, he was initially unaware of the ongoing domestic violence between mother and F.M. or the children’s exposure to it. Thus, unlike in *A.G.*, the juvenile court could properly exercise jurisdiction in light of the risks mother’s conduct posed to the children.<sup>3</sup>

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<sup>3</sup> Citing *A.G.*, father argues that the juvenile court should have dismissed the petition because he already had a Nevada family law order granting him custody of the children. (*A.G.*, *supra*, 220 Cal.App.4th at p. 686 [“At the adjudication hearing,

## 2. *Retention of Jurisdiction*

As we noted above, father is primarily concerned with the juvenile court's decision to retain jurisdiction over the children at disposition. Because father was a noncustodial parent, the court's decision was governed by section 361.2, subdivision (a), which provides, "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 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."

If the court places the child with the noncustodial parent, it may "[o]rder that the parent become legal and physical custodian

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the juvenile court should have dismissed the petition, staying the order until Father obtained from the family court an award of custody to him and monitored visitation to [m]other.".) But there is no evidence to show when the Nevada proceeding was initiated. At best, the evidence demonstrates father obtained the Nevada order *after* DCFS filed the section 300 petition in this case. If the California proceeding was commenced first, the Uniform Child Custody Jurisdiction and Enforcement Act in Nevada required the Nevada court to stay its proceedings and communicate with the juvenile court in California. (Nev. Rev. Stat. § 125A.355(2).) The California court had the same obligation if the Nevada proceeding was commenced first. (Fam. Code, § 3426, subd. (b).) There is no evidence either court addressed this issue. Thus, we decline to rest our decision on the validity of the Nevada order.

of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.” (§ 361.2, subd. (b)(1).)

Alternatively, the court may “[o]rder that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.” (§ 361.2, subd. (b)(3).) We review the juvenile court’s decision to retain jurisdiction under this provision for substantial evidence. (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1134 (*Austin P.*)).

We find substantial evidence supported the juvenile court’s decision to retain jurisdiction. Like the juvenile court, we commend father for “stepping up to the plate” and providing care for his children during undoubtedly difficult times. Yet, as the court noted, the children considered “home” to be with mother and wanted to reunite with her and their half sister, C.M. The court was properly concerned of the impact permanent separation might have on them, especially given Ch.B. already had exhibited signs of emotional problems following the children’s removal. Mother was progressing in her programs, and the court’s retention of jurisdiction could ensure she continued to do so. The

court also addressed father's travel concerns by ordering he receive transportation assistance. Under these circumstances, we cannot disturb the juvenile court's decision. (See *Austin P.*, *supra*, 118 Cal.App.4th at p. 1135 [retention of jurisdiction necessary in part because child wanted to be reunited with mother and mother had made good progress with reunification plan].)

**DISPOSITION**

The juvenile court's orders are affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.