

Filed 10/11/19 In re A.B. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re A.B., a Person Coming  
Under the Juvenile Court Law.

B295800  
(Los Angeles County  
Super. Ct. No.  
18CCJP08038A)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

M.B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Pete R. Navarro, Commissioner. Affirmed.

Annie Greenleaf, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Olivia Raquel Ramirez, Senior Deputy County Counsel, for Plaintiff and Respondent.

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In this juvenile dependency appeal, appellant M.B. (father) challenges the juvenile court's disposition order removing his five-year-old daughter A.B. (daughter) from his custody and care. Although father does not challenge the juvenile court's jurisdictional finding that his drug abuse put daughter at substantial risk of harm, father claims substantial evidence does not support the removal order. Father points to evidence he never used drugs in daughter's presence, twice tested negative for illicit substances in the weeks preceding adjudication and disposition, his mother (paternal grandmother) consistently and appropriately cared for daughter, and the court could have avoided removal by ordering daughter to remain with paternal grandmother and father to continue testing negative. As discussed below, however, we conclude substantial evidence supports the juvenile court's decision to remove daughter from father's custody and care. Accordingly, we affirm.

## **BACKGROUND**

### **1. The Family and Previous Dependency Proceedings**

At the time these proceedings began, daughter was five years old and lived with paternal grandmother, with whom she had lived for over one year. Paternal grandmother was daughter's primary caregiver. Father visited daughter regularly at paternal grandmother's home. Daughter's mother E.L.

(mother) had two younger children, a one-year-old daughter and a newborn son. Father was not the father of mother's younger children. Mother and father had lived together for approximately five years before parting ways in 2016.

Prior to this case, daughter and her parents had been the subjects of earlier dependency proceedings stemming from the parents' drug use. Most recently in September 2018, just a few months before these proceedings began, respondent the Los Angeles County Department of Children and Family Services (Department) opened a voluntary family maintenance case following allegations of general neglect by both mother and father due to their drug use. The allegations against father were substantiated. The allegations against mother were inconclusive. The Department offered services to mother, but she failed to utilize them and instead took illegal drugs to self-medicate. It is unclear whether father also was offered services. When these proceedings began, the voluntary family maintenance case was still open.

## **2. Dependency Petition and Detention**

Mother's newborn son was born in December 2018. At the time of his birth, both he and mother tested positive for amphetamine. As a result, on December 18, 2018, the Department filed a Welfare and Institutions Code section 300 petition on behalf of the newborn, daughter, and her younger half-sister.<sup>1</sup> The petition alleged two counts, both of which concerned mother's drug use. At the time the petition was filed, father's whereabouts were unknown, and he was not named in the petition. At the detention hearing held the next day, the

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

juvenile court ordered daughter detained and placed with paternal grandmother under Department supervision.

### **3. Further Investigation**

The Department continued its investigation and eventually found father. In early January 2019, father told a Department social worker he was homeless and had minimal contact with mother. He had seen her approximately two months earlier. Father said he knew mother did drugs, but he had never done drugs with her. Father stated mother introduced him to drugs a few years earlier, and she was the reason he used drugs. Although father denied currently using drugs, he said his drug of choice was methamphetamine, which he had used approximately one month before. Father stated he had completed a rehabilitation program two years earlier but recently had relapsed. Father denied using drugs around daughter. He told the social worker he was willing to submit to drug testing and to accept services. He wanted full custody of daughter.

The social worker also spoke with mother. Mother said father gave her drugs, including methamphetamine, and he was the reason she used drugs. She told the social worker she and father “both used drugs together for a while.” Mother also said father never provided anything for daughter. Instead, paternal grandmother helped mother care for daughter. A Department social worker similarly reported “mother had [daughter] live with her [paternal grandmother] for over a year and the [paternal grandmother] is the one taking care of the child.”

Paternal grandmother also spoke with the social worker. She said mother would call “and tell me that [daughter] did not want to be with her, if it was okay for her to bring [daughter] to my house and I always said Yes.” Paternal grandmother said

father visited daughter every other day at paternal grandmother's apartment. Sometimes father brought things for daughter like fruit, toys, or clothes. Paternal grandmother said she did not know if father worked or where he lived or if he did drugs. She had never seen him on drugs. A paternal aunt similarly told the social worker she did not know what father did "out there," but he visited daughter periodically. The paternal aunt believed father "is a good father to [daughter]."

Daughter told the social worker father was nice to her and visited her at paternal grandmother's home. Daughter liked living with paternal grandmother, who was willing and able to adopt daughter.

The Department asked father to submit to drug testing on five dates between June 2018 and January 2019. He failed to appear for four of those tests but, on January 17, 2019, his test results were negative. It is not clear why the Department asked father to drug test as early as June 2018 (i.e., months before both these proceedings and the September 2018 voluntary family maintenance case began) or whether the Department was in contact with father when, at the start of these proceedings, father's whereabouts were unknown.

#### **4. Amended Petition**

On February 5, 2019, less than two months after the initial petition had been filed, the Department filed an amended petition. In addition to the original two counts involving mother's alleged drug use, the amended petition included one new count. The new count, count b-3, alleged father "has a history of substance abuse and is a current abuser of methamphetamine, which renders [him] incapable of providing [daughter] with regular care and supervision. [Daughter] is of such a young age

that [she] requires constant care and supervision and the father's substance abuse inhibits the father's ability to provide constant care and supervision. Such substance abuse by the father endangers [daughter's] physical health and safety and places [daughter] at risk of serious physical harm, damage and danger."

At the hearing held the next day, the juvenile court continued daughter's detention under Department supervision. Father's counsel asked the court to grant the Department discretion to permit father to reside at paternal grandmother's home with daughter. The court declined to make an order, stating it would consider the request at the adjudication hearing, which was only one week away. The court ordered the Department to facilitate drug testing for father and provide case appropriate referrals for both mother and father.

## **5. Adjudication and Disposition**

Approximately one week later, on February 15, 2019, the adjudication and disposition hearing was held. Prior to the hearing, the Department submitted a last minute information for the court. The Department reported that on January 15, 2019, and again on February 8, 2019, a Department social worker provided father with case appropriate referrals. The Department also reported father had been referred to a "substance abuse navigator" on January 16, 2019, and had an appointment scheduled. However, father did not show up for his appointment. Finally, the Department stated father had submitted to a drug test a few days earlier on February 8, 2019, the results of which were negative.

At the hearing, father's counsel urged the juvenile court to dismiss count b-3, the single count involving father. Counsel argued the evidence did not establish a nexus between father's

drug use and any risk of harm to daughter. As to father's drug testing, counsel noted father's two most recent tests were negative and the one he missed earlier in January 2019 was due to "an identification issue." Moreover, counsel continued, the court should disregard father's three missed drug tests in 2018 because at those times it was not clear the Department was even in contact with father. On the other hand, daughter's attorney noted the potency of methamphetamine as well as daughter's young age and urged the juvenile court to sustain the petition. Counsel for the Department agreed and stated, "[I]t's a concern that [father] would be using [drugs] and exposing his child to some sort of risk without the court intervening and taking jurisdiction."

After hearing argument, the juvenile court sustained the three counts of the petition and declared daughter a dependent of the court. The court stated, "Parents undoubtedly love their children, but their priority appears to be getting loaded, simple as that."

The court then moved to disposition. Father's counsel asked the court "to make a home of parents order on the condition that [daughter] remain . . . with [paternal grandmother] who the child currently resides with. Essentially, he wants to be able to move back in the home. He has been testing negative for the Department, so that would clearly be on the condition that he would continue to test negative for the Department." Counsel argued the Department had not shown by clear and convincing evidence that it was necessary to remove daughter from father. Counsel explained removal was not necessary because the court could order daughter remain with paternal grandmother as well as require father to continue drug

testing with negative results. Father's counsel also objected to any requirement that father participate in a parenting class or in individual counseling.

The juvenile court found by clear and convincing evidence there was a "substantial danger if the children were to be returned to the home of the parents to their physical health, safety, protection and physical emotional, well-being. There are no reasonable means by which to protect such developmental removal from the parents' home. Reasonable efforts have been made to prevent removal." The court ordered "the care, custody, and control be placed under the supervision of [the Department] for suitable placement of [daughter] to remain in the care of the paternal grandmother." In connection with its removal order, the juvenile court referenced section 361, subdivisions (a)(1), (c), and (d), and section 362, subdivision (a).

The court ordered father to complete a drug and alcohol program that included drug testing, a parenting program, and individual counseling. The court ordered monitored visits for father, but granted the Department "discretion to liberalize father's visits upon confirmation of compliance with the case plan, particularly the drug related components." The juvenile court ordered the Department to assess whether the two younger children also could be placed with paternal grandmother.

Father appealed the juvenile court's February 15, 2019 findings and orders.



## DISCUSSION

On appeal, father challenges only the juvenile court's order removing daughter from his custody and care.

### 1. Removal under Section 361, subdivision (d)

#### a. *Applicable Law*

The parties agree section 361, subdivision (d) applies here. That subdivision addresses removal of a child from the physical custody of a parent with whom the child was not residing at the time the petition was filed. Specifically, section 361, subdivision (d) states: "A dependent child shall not be taken from the physical custody of his or her parents, . . . with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent . . . to live with the child or otherwise exercise the parent's . . . right to physical custody, and there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's . . . physical custody." Thus, before removing daughter from father's custody and care here, the juvenile court had to determine both that (1) there was a substantial danger to the physical health, safety, protection, or physical or emotional well-being of daughter if she were in father's custody and (2) there were no reasonable options short of removal to protect daughter.

The court's " " "jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. [Citation.] [Citation.] " "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the

child.’ [Citation.] The court may consider a parent’s past conduct as well as present circumstances.” ’ ” (*In re A.F.* (2016) 3 Cal.App.5th 283, 292; *In re A.S.* (2011) 202 Cal.App.4th 237, 247.)

**b.     *Standard of Review***

We review the juvenile court’s removal order under the substantial evidence standard of review. (*In re A.F.*, *supra*, 3 Cal.App.5th at p. 292.) Although the parties agree the substantial evidence standard applies, they quibble over exactly what that standard means.

When applying the substantial evidence standard of review, “ ‘ “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.” ’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Under this standard, our review “ ‘begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.’ ” (*In re David H.* (2008) 165 Cal.App.4th 1626, 1633.) “We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.” (*In re*

*Dakota H.* (2005) 132 Cal.App.4th 212, 228.) “[I]nconsistencies and conflicts in the evidence go to credibility of witnesses and weight of the evidence, which are matters for the trial court.” (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1149.)

“‘However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, “[w]hile substantial evidence may consist of inferences, such inferences must be ‘a product of logic and reason’ and ‘must rest on the evidence’ [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].” [Citation.] “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” ’ ” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) “‘[I]f the word “substantial” [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with “any” evidence. It must be reasonable . . . , credible, and of solid value.’ ” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633; *In re I.C.* (2018) 4 Cal.5th 869, 892.)

**c.     *Substantial evidence supports the removal order.***

Although father argues otherwise, we conclude substantial evidence supports the juvenile court’s order removing daughter from father’s custody and care. Initially, the juvenile court’s jurisdictional finding as to father is *prima facie* evidence that removal from father was necessary. (*In re A.F.*, *supra*, 3 Cal.App.5th at p. 292; *In re A.S.*, *supra*, 202 Cal.App.4th at p. 247.) In addition, father is an admitted and longstanding

methamphetamine user, whose drug abuse issues have not been resolved. Because daughter is a child of tender years (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 [children six years old or younger are considered children of “ ‘tender years’ ”]), a presumption arises that father’s drug abuse puts daughter at an inherent and substantial risk of harm (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767). Finally, although daughter appeared safe and happy in paternal grandmother’s care, daughter enjoyed father’s visits, and father had never harmed daughter, there simply is no evidence father has the ability to care for daughter, has ever tried to care for daughter, or actually has cared for daughter. As far as the record reveals, father’s involvement with daughter consisted of visits at paternal grandmother’s home, which sometimes included him bringing small gifts for daughter. No one, including paternal grandmother, knew what father did outside of those visits. It reasonably can be inferred that father either abandoned his parental role or is unable to fulfill it.

Father argues the evidence supports a contrary conclusion. He claims his conduct demonstrates his ability to make appropriate decisions for daughter. Father highlights his decision to have paternal grandmother care for daughter in his absence. However, it is not clear father made that decision. Although father did not oppose the arrangement, the record before us indicates mother asked paternal grandmother to take care of daughter when mother was struggling. This is also not a case similar to those father cites where one parent was incarcerated or participating in an in-patient program, thus necessitating alternative childcare. Here, as the juvenile court stated, the parents seemed to have prioritized “getting loaded” over caring for daughter. Father also notes the absence of

evidence that he ever exposed daughter to his drug use. Given the record before us, including father's consistent absences from daughter, this fact is not dispositive of daughter's safety in father's care.

Finally, father argues he had proposed a reasonable option short of removal that the juvenile court should have adopted. Father proposed daughter stay in his custody as long as daughter remained with paternal grandmother and father continued to have clean drug tests. However, father ignores his admitted and unresolved drug abuse as well as the efforts made to assist him and prevent daughter's removal prior to the adjudication and disposition hearing. Those efforts included the Department twice providing father with comprehensive referrals, including drug abuse and counseling services, as well as referring father to a substance abuse navigator. Father did not appear for his appointment with the substance abuse navigator, and the record does not reveal that father had contacted or enrolled in any services. Despite his two recent negative drug tests, at the time of disposition it does not appear father was addressing his admitted drug abuse problem. We conclude substantial evidence supports the juvenile court's decision to remove daughter from father's custody and care.

Assuming father's interpretation of the evidence is reasonable, so too was that of the juvenile court. We do not reweigh the evidence or substitute one reasonable interpretation of the evidence for that adopted by the juvenile court. (*In re David H.*, *supra*, 165 Cal.App.4th at p. 1633; *In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 228.) Accordingly, we find no error in the juvenile court's order removing daughter, a child of tender years, from father, an admitted drug abuser who had not shown

an ability to care for his daughter or taken steps to address his current drug abuse.

**2. Placement under section 361.2, subdivision (a)**

The Department states section 361.2, subdivision (a) also applies here. Father argues that section does not apply. Section 361.2, subdivision (a) addresses the juvenile court's authority to place a child who has been removed from one parent with another parent with whom the child had not been residing. Specifically, section 361.2, subdivision (a) 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."

We do not decide whether section 361.2, subdivision (a) applies here. Instead, assuming it applies, we conclude the juvenile court did not err in refusing to place daughter with father. Having determined the juvenile court properly removed daughter from father's custody and care, we conclude it would be improper and nonsensical for the court then to place daughter with father.

**DISPOSITION**

The February 15, 2019 order is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.