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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re H.G. et al., Persons Coming
Under the Juvenile Court Law.

B283701

(Los Angeles County
Super. Ct. No. DK19678)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Kristen H. Byrdsong, Commissioner. Affirmed.

David A. Hamilton, under appointment by the Court of Appeal, for Defendant and Appellant.

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

In this juvenile dependency case, defendant and appellant M.G. (Father) challenges the juvenile court's denial of visitation with his three children prior to the disposition hearing and the April 5, 2017 dispositional order denying Father custody of the children under Welfare and Institutions Code section 361.2, subdivision (a).¹ We affirm.²

BACKGROUND

Detention

Mother³ and Father had three children (two daughters, H.G. and M.G., and one son, O.G.) during the time they were living together on and off between 2002 and 2007. Mother took the children when the couple separated, and Father had no contact with them for over nine years.

On September 23, 2016, the children were detained by the Los Angeles County Department of Children and Family Services

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² Father also contends the juvenile court failed to make the requisite findings pursuant to the Indian Child Welfare Act, 25 United States Code section 1902 (ICWA). However, the juvenile court's minute order from the January 18, 2018 review hearing—of which we have taken judicial notice—reveals that the court found the ICWA notices were proper and the ICWA does not apply to this case. Respondent asserts the issue is therefore moot, and in his reply brief, Father concedes that any error in failing to make the requisite findings and orders regarding the ICWA at the disposition hearing should be considered harmless. We agree that the issue is moot.

³ Mother is not a party to this appeal.

(DCFS or the Department) based on allegations of general neglect after Mother and the children had become homeless. The section 300 petition filed September 28, 2016, alleged risk of harm to the children based on Mother's apparent mental and emotional problems, the family's homelessness, Mother's inability to provide regular care for the children, and Mother's failure to follow up with O.G.'s Regional Center services.

The jurisdiction/disposition report

The dependency investigator (DI) interviewed the children on November 21, 2016. H.G. said she had not seen her father since she was five years old, and most of her memories were of him physically abusing her, M.G., and her mother. H.G. reported that Father would hit Mother and pull her hair. The child told the DI she did not have a relationship with her father, nor did she want one. M.G. was very young when she last saw Father, and reported not seeing or hearing from him in about nine years. M.G. remembered and had heard from her sister that Father was mean and abusive toward Mother and physically abused H.G. M.G. told the DI that Father " 'pulled our hair and would hit us.' " O.G. reported he did not even know who his father was.

Father was located sometime after the detention hearing and interviewed on October 27, 2016. He reported H.G., M.G., and O.G. were the youngest of his eight children. After the relationship with Mother ended in approximately 2007, Father said he tried to provide Mother with child support, but she refused his help. She had altogether stopped letting him see the children two years earlier in 2014. Father knew that Mother had obtained a restraining order against him, but did not know if the order included the children or if it was still in place. At some point Father had become aware that Mother had been diagnosed with bipolar disorder and psychosis. Father admitted he had

been addicted to drugs for about 22 years, but reported he had been clean for five years after he had stopped using on his own. Father also disclosed he had served 18 months in prison, but had since been pardoned.

Father told the DI the children did not need to be in foster care because he was willing to take custody of them and provide them a safe, permanent home. When informed that H.G. and M.G. did not want to visit or live with him, Father was not happy but was amenable to the suggestion of conjoint therapy. He said he was willing to work with DCFS and the court and comply with court-ordered services in order to develop a relationship with his children.

However, in a phone call with the social worker on November 15, 2016, Father demanded that DCFS place the children in his home immediately. The DI explained that H.G. and M.G. did not want any contact with him, and O.G. was reluctant to visit Father because he did not know him. Father became irate and began to scream at the social worker. He demanded paperwork to “sign off on my parental rights for [M.G.] and [H.G.]” The DI explained that the children may have received incorrect information about Father and asked him if he was still willing to participate in conjoint therapy to assist the bonding process. Father’s voice grew louder as he continued to berate the social worker and demand paperwork to relinquish his parental rights. Finally, the social worker was forced to hang up the phone.

Reporting that Mother “endangers the physical and emotional well being of the children,” and Father had been neglectful by failing to provide for the children’s medical, education, physical, or emotional needs, the Department recommended that the juvenile court order removal of the

children from both parents and declare the children dependents of the court.

The jurisdiction hearing on December 2, 2016

Father made his first appearance in the dependency proceedings at the jurisdiction hearing on December 2, 2016. Acknowledging a “strained relationship” with the children, Father requested visitation in a therapeutic setting. The juvenile court noted that the children were shaking their heads, and one of the girls asserted, “I don’t want to see him.” The other girl declared, “I don’t—[I’d] rather spend the rest of my days in foster care until my mom finds a house than to live with that man.” The court responded, “Sweetie, you don’t have to cry. You don’t have to see him if you don’t want to. The court is not going to force you to have visits if you don’t want to; okay?” Observing that the children were crying, shaking their heads, and “shaking with fear at the thought of having to see [Father],” the court found that visits with Father at that time would be detrimental to all three children, and denied Father’s request for visitation.

The February 9 and March 14, 2017 hearings

On February 9, 2017, the juvenile court ordered visitation between Father and the children to proceed in a therapeutic setting. But in the March 14, 2017 Last Minute Information for the Court, the Department reported that H.G. and M.G. were still refusing to have any contact with Father and would become stressed when asked about visits with their father. O.G. also did not want visits with Father, whom he had never known. DCFS reported that all three children were enrolled in therapy and the girls had had their first appointment on March 8, 2017.

At the March 14, 2017 jurisdictional hearing, the juvenile court found the allegations true by a preponderance of the evidence and sustained the petition. Pursuant to Father’s

request, the juvenile court set the matter for a contested disposition, but denied visitation as well as Father's custody request, "[b]ased on the children's statements of physical abuse, based on their visibly shaken reaction when they saw the father, based on the fact that Father also failed to provide for the children's medical, physical, emotional, and educational needs."

April 5, 2017 contested disposition hearing

In its April 5, 2017 Last Minute Information for the Court, DCFS reported that all three children remained adamant that they did not want to reside with Father. O.G. stated he does not know his father, and H.G. and M.G. reported hating Father "for all the things he put Mother through" and because they had no relationship with him due to his nine-year absence from their lives. Both girls became "stressed, anxious and depressed" at the mere mention of Father's name or when asked about visiting Father.

At the April 5, 2017 disposition hearing, the juvenile court found "by clear and convincing evidence that remaining in home of parents would pose substantial danger to the children's physical health, safety, protection, and emotional well-being." The court made a detriment finding as to placing the children in Father's home "at this time," citing the girls' reports that Father had abused them and Mother, Father's efforts to force visitation, his confrontations with caseworkers, and his threats to sign away his parental rights when the girls refused to see him. The court also noted that since their first appearance in court, the children "were shaking uncontrollably, crying uncontrollably. They had a visceral reaction and felt physically ill [at] the thought of having to visit with Father." Such a visceral physical reaction, the court declared, "is not simply an issue of [the children] feeling a level of discomfort or not knowing [Father]."

The court ordered the Department to provide reunification services to both parents. In accordance with the case plan, the court ordered Father to participate in conjoint counseling with the children when deemed appropriate, to address his anger management issues, and to have monitored visits with the children in a DCFS office, subject to liberalization at the Department's discretion.

Father appealed from the juvenile court's findings and orders made during the April 5, 2017 disposition hearing.

DISCUSSION

1. Predisposition Visitation Orders

Father contends the juvenile court erred by denying him visits with the children prior to the disposition hearing. However, to the extent Father directly challenges the juvenile court's predisposition visitation orders, the court's disposition order allowing visits between Father and the children supersedes those orders and renders the challenge moot.

"In general, it is a court's duty to decide '“ ‘actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.’ ” ’ [Citation.] '[T]he critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error.' (*In re N.S.* (2016) 245 Cal.App.4th 53, 60.)" (*In re David B.* (2017) 12 Cal.App.5th 633, 644.)

Although the juvenile court denied Father visits with the children from the December 2, 2016 jurisdiction hearing until the April 5, 2017 disposition hearing, the court's disposition order specified monitored visits between Father and the children at a

DCFS office with the option to liberalize at the Department's discretion. Thus, even if we were to conclude the juvenile court erred in denying Father visits with the children before the disposition hearing, the disposition order allowing visitation plainly superseded the prior orders, and there is no effective relief available from this court. (See *In re Julien H.* (2016) 3 Cal.App.5th 1084, 1088, fn. 7 [father's challenge to predetention removal and detention orders was moot because those orders were superseded by the disposition orders and no effectual relief could be provided by reviewing court]; see also *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1420.)

2. Placement Under Section 361.2, Subdivision (a)

a. Applicable law

In a case such as this where the juvenile court has removed a child from one parent's custody and the noncustodial parent then requests custody of that child, section 361.2, subdivision (a) provides that the juvenile 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." (*In re A.A.* (2012) 203 Cal.App.4th 597, 605.) At the contested disposition hearing here, the juvenile court denied Father's section 361.2 request for custody of his three children on the basis of its finding that release to Father's custody at that time would be detrimental to the children.

We review the juvenile court's section 361.2 detriment finding for substantial evidence. The juvenile court's "ruling under section 361.2, subdivision (a) that a child should not be placed with a noncustodial, nonoffending parent requires a finding of detriment by clear and convincing evidence." (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.) In making its ruling, the juvenile court considers all the evidence, both for and

against placement with the noncustodial parent. (See *In re Liam L.* (2015) 240 Cal.App.4th 1068, 1088; *In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262–1263.) “We review the record in the light most favorable to the court’s order to determine whether there is substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that the children would suffer such detriment. [Citations.] Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt.” (*In re Luke M., supra*, 107 Cal.App.4th at p. 1426.) “‘Issues of fact and credibility are questions for the trial court and not the reviewing court. The power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact.’” (*In re A.F.* (2016) 3 Cal.App.5th 283, 289.)

b. Substantial evidence supports the juvenile court’s detriment finding and denial of Father’s request for custody under section 361.2, subdivision (a)

Father argues that because he had no opportunity to repair the relationship and build bonds with his children, the error in denying visitation prior to disposition resulted in the continued estrangement between Father and the children. That estrangement then became the basis for the court’s erroneous detriment finding under section 361.2. Because the mere lack of contact between a child and a nonoffending, noncustodial parent is not a proper ground for a detriment finding (*In re K.B.* (2015) 239 Cal.App.4th 972, 981), Father maintains there was no substantial evidence of detriment, and the juvenile court erred in denying placement of the children with him under section 361.2, subdivision (a). We disagree.

Father frames this issue as one of prejudice to him in being denied his parental rights first to visitation and then to custody of his children. But whether Father was prejudiced by previous visitation orders and denial of custody was not the issue before the juvenile court at disposition. The court's task was not to balance Father's and the children's interests, but rather, to determine whether placement with Father "would be detrimental to the safety, protection, or physical or emotional well-being of the child[ren]." (§ 361.2, subd. (a).) In this regard, there was overwhelming evidence that the children were terrified of their father, and their only memory of him was as a perpetrator of abuse before he abandoned them. After a nine-year absence, Father aggressively sought to force visitation and demand custody without regard to what would be best for the children. Children, however, "are not simply chattels belonging to the parent, but have fundamental interests of their own that may diverge from the interests of the parent." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419.)

Although the denial of visitation over the four months between Father's appearance in the case and the disposition hearing delayed the development of a positive relationship that might ultimately support placement of the children with Father, we reject his contention that the only evidence supporting the court's detriment finding was the lack of contact. To the contrary, the uncontroverted evidence of Father's own conduct as documented in the reports before the court, as well as the court's observations of the children's demeanor in court proceedings provides overwhelming support for the juvenile court's conclusion that placement with Father at the time of the disposition would have been physically and emotionally detrimental to all three children.

Prior to Father's first appearance in the case, he had barely seen his children in over nine years,⁴ much less been involved in their lives in any way, despite being aware that Mother's mental health issues could have placed the children at risk. In addition, Mother and the two older children reported that when they did live with Father between 2002 and 2007, he had physically abused the children and Mother. Father did not deny any of the allegations of abandonment, physical abuse, or financial and emotional neglect of these children. Nor did he express any regret or accept responsibility for his nine-year absence or his prior abusive behavior. Father does acknowledge that a child's emotional trauma due to fear of being returned to the custody of an abusive parent should be addressed before returning the child to parental custody. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 900.) Nevertheless, he suggests that the issues the children had with him would have been resolved and a positive relationship developed in the four months between his first appearance in the case and the disposition hearing, if only the court had immediately ordered visits.

Father's contention stands the dependency scheme on its head. "The purpose of the dependency statutes is to provide for the protection and safety of a minor who comes under the jurisdiction of the juvenile court and, *when consistent with the minor's welfare*, to preserve the minor's family ties. (§ 202, subd.

⁴ Father reported seeing Mother and the children one time at a park two or three years before these proceedings. Although he stopped and tried to hand Mother money for the children, he left when Mother became aggressive. There is no indication Father interacted with the children on that occasion.

(a.).” (*In re Joseph B.*, *supra*, 42 Cal.App.4th at p. 900, italics added.) Thus, while the state may not interfere with a parent’s liberty interest in the care, custody, and companionship of a child absent a compelling state interest, the welfare of a child is one compelling interest which the state has a duty to protect, and which will override parental custody rights. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.) In challenging the juvenile court’s findings and orders here, Father ignores these principles and fails to appreciate that building a relationship and overcoming the children’s fear based on his nine-year absence and their memories of abuse would take time and could not be accomplished in just a few visits.⁵

⁵ At the conclusion of the disposition hearing, the juvenile court told Father that he could improve his relationship with the children if he followed the case plan, cooperated with the Department, and adopted a more positive, constructive attitude. Father seems to have taken the court’s advice to heart. At the January 18, 2018 review hearing, the juvenile court continued reunification services for Father, based on its findings that “there is a substantial probability that the child[ren] will be returned to the physical custody and safely maintained in the home of the identified Father within 18 months of the date the child[ren were] taken from the physical custody of the identified Father. [¶] The Court further finds that the identified Father [has] consistently and regularly contacted and visited the child[ren], [has] made significant progress in resolving the problems that led to the child[ren]’s removal from the home, and [has] demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child[ren]’s safety, protection, physical and emotional well-being, and special needs, if applicable.”

The juvenile court recognized this, and our review of the record compels the conclusion that substantial evidence supports the court's detriment finding and its denial of Father's request for custody under section 361.2, subdivision (a).

DISPOSITION

The April 5, 2017 order is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.