Filed 3/27/15 In re Jesse M. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re JESSE M. et al., Persons Coming Under the Juvenile Court Law.	B255274
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. SABRINA P., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK44703)

APPEAL from orders of the Superior Court of Los Angeles County, Annabelle G. Cortez, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Sabrina P. appeals from the orders of the juvenile court (1) taking jurisdiction over Jesse M. and Karina M. (Welf. & Inst. Code, § 300, subds. (b) & (j)),[1] (2) removing the children from her custody (§ 361, subd. (c)(1)), and (3) terminating jurisdiction (§ 361.2, subd. (b)(1)). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Mother lost custody of four of her children and Karina is detained.*

Reviewing the record according to the usual rules of appellate review (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451), it shows that mother's older children, Ruben O., Michael O., and Liliana P., were removed from her custody in part because of mother's drug abuse. In 2001, the juvenile court sustained a petition alleging mother and the O. father have a long history of domestic violence in the presence of the children and that prior voluntary services did not alleviate the problem. The three children returned to mother's custody in January 2003 after she partially complied with the court's orders to attend parenting and domestic violence counseling. In 2003, the juvenile court sustained a subsequent petition (§ 342) alleging, among other things, that mother hit the maternal grandfather and that mother was a frequent user of illicit drugs, which abuse endangered the children and rendered mother incapable of providing regular care for them. Mother failed to reunify with the three older children and lost custody of them in 2006.

The following month, the family law court gave sole legal and physical custody of then seven-month-old Jesse to his father, Edgar M.[2] Mother was awarded visits with Jesse every other weekend. Two and a half years later, mother gave birth to Karina. Edgar M. is also Karina's father.

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] Edgar M. is not a party to this appeal.

In December 2013, when Karina was five and Jesse was eight years old, the Department of Children and Family Services (the Department) commenced an investigation triggered by a report that Karina's half-sister, Liliana P., claimed mother was gang-affiliated and was selling drugs to "get[] by." Mother's husband was incarcerated. Evicted from her home, mother had moved in with the paternal grandfather. The grandfather's house was messy and dirty.

Karina appeared healthy but had head lice when she was detained. She denied witnessing mother drink alcohol or using drugs, although the Department believed Karina was too young to understand what drugs or alcohol are. Father reported that the child remembers the police coming to mother's house and "knows about dying because of some of the things that happened with her mother's friends." Karina and mother had moved frequently. Karina's teacher reported that the child is "fabulous and smart" and comes to school in clean clothing, but added that Karina "lives in a difficult condition because mother was homeless for a while." The child is often tardy and had eight absences.

At the social worker's request, mother submitted to a drug test and produced a positive result for methamphetamine and amphetamines. Mother had a record of arrests for possession of drug paraphernalia, among other things. Father reported that mother had little contact with Jesse. Jesse stated he did not see his mother as often as monthly.

The Department filed a petition on behalf of Jesse and Karina. As sustained, the petition reads in part that mother "has a history of substance abuse and is a recent abuser of amphetamine and methamphetamine, which periodically renders the mother incapable of providing the children with regular care and supervision. On 1/2/14, and on prior occasions, the mother was under the influence of illicit drugs while the child Karina was in mother's care and supervision. On 1/2/14, the mother had a positive toxicology screen for amphetamine and methamphetamine. The children's siblings . . . received permanent placement services due to the mother's substance

abuse." (§ 300, subds. (b) & (j).) The juvenile court released Jesse and Karina to father.

2. *Jurisdiction*

In its jurisdiction report, the Department revealed that Karina "liked" and "would be fine" living with either mother or father. Jesse suspected Karina was living with him and father *because of mother's drug use*, explaining "my mom used to do it before. *I saw it*." (Italics added.)

Mother's excuse for her recent drug use after three years of sobriety was that she had just lost everything: her apartment and her husband. She admitted struggling with drugs. Father explained that mother, who is 32 years old, has been using since the age of 14. All of her friends and her husband are drug users. Father stated, "I'm telling you this because [mother] will do okay for a while, but she ends up in the same spot again. Her own dad kicked her out of the house. She lost her other kids because of it." He doubted mother would remain clean because she had been clean before and relapsed. He believed mother's motivation for regaining custody of Karina was for the benefits the county pays mother, as she does not work.

Father has a safe home and a steady income. He is a former Marine who works in automobile sales and has been supporting Jesse and paying mother child support for Karina. He lives with his parents who watch the children when he is at work. He takes the children to school. He denied having a criminal history and denied doing drugs. He produced a negative drug test result in February 2014.

Mother voluntarily entered Stepping Stone Recovery Home, a residential drug treatment program, a week before the petition was filed. She was expected to stay anywhere from 30 days to six months. By the time of the jurisdiction report, mother had participated in Alcoholics Anonymous/ Narcotics Anonymous (AA/NA) meetings, self-help group meetings, recovery group sessions, education classes, individual/family group sessions, parenting classes, and individual counseling. She obtained a sponsor, completed the first three of her 12-step program, and produced three negative test-results. The inpatient facility allowed mother to have Karina with her.

In mid-January 2014, the juvenile court ordered the Department to consider releasing Karina to mother. The Department opined in its jurisdiction report that it was not "appropriate to release" Karina to mother because of mother's long and unresolved history of substance abuse, which resulted in the loss of custody of her older children, her recent relapse that put Karina at risk, and because mother did not yet know where she would reside after completing her inpatient program. Although mother was making progress in her inpatient program, her long and unresolved history of substance abuse made the odds of another relapse "great." Father, by comparison, had a safe home that was suitable for the children who reported feeling "safe" and "fine" with him. The Department recommended against releasing Karina to mother's custody and recommended against granting reunification services for mother (§ 361.5, subd. (b)(10) & (11)).[3] The Department also suggested the court terminate jurisdiction and issue a family law order giving father sole physical and legal custody.

At the March 2014 adjudication hearing, the juvenile court sustained the petition, as recited above, finding Karina and Jesse were described by both subdivisions (b) and (j) of section 300.

3. *The disposition*

Mother accused father of using drugs with mother before Karina was detained. He denied mother's allegations. After a discussion off the record, the juvenile court gave the Department discretion to request a drug test from father. At the Department's request, father produced a positive test result for "urine alcohol 0.28 percent," but the sample also revealed the presence of glucose in father's blood. The lab technician

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[3] Section 361.5, subdivision (b) allows the juvenile court to deny services to a parent when the court finds, by clear and convincing evidence, either that the parent failed to reunify with a sibling or half sibling (subd. (b)(10)), or that the parental rights of a parent over a sibling or half sibling were permanently severed (subd. (b)(11)), and in both situations, the parent had not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling.

explained that the urine alcohol level was likely caused by diabetes. Father in fact suffers from diabetes.

Confronted with inconsistencies in her accusations about father's drug use, mother began to cry and explained, "I don't understand why I can't have my daughter with me here." She confirmed that she was in danger of being released from her inpatient program because her CalWORKS funding had been terminated. If Karina were returned to her care, however, the funding would be reinstated. Mother no longer qualified for general relief.

At the disposition hearing, mother testified she attended more group and individual parenting classes. In her program, mother learned how to stay clean, how not to be on the street, and "how not [] to use." She found a good support group and an excellent sponsor. She was on the fourth of 12 steps. After graduation from her residential program, she planned to enroll in the Mid Valley Outpatient program and live with the maternal grandfather. She had been "clean" for 66 days.

At the close of the hearing, the juvenile court adopted the Department's recommendations and removed the children from mother's custody (§ 361, subd. (c)). Finding there was no basis to continue jurisdiction as the children were safe with father, who was nonoffending, the court terminated its jurisdiction with an order awarding father sole legal and physical custody of the children. The court awarded mother visitation, monitored by the paternal grandfather, and stated it would be "including services" "in the rider." The court explained, as mother had begun actively to participate in services, that the best interest of the children would be served by allowing mother to successfully address her substance abuse issues and to then petition the family law court to change the juvenile court's custody and visitation orders. Mother filed her notice of appeal.

CONTENTIONS

Mother contends the juvenile court erred in sustaining the petition, removing the children from her custody, and terminating jurisdiction.

DISCUSSION

1. *Sufficient evidence supports the order declaring the children dependents under section 300.*

"In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, *contradicted or uncontradicted*, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences." (*In re Alexis E.*, *supra*, 171 Cal.App.4th at pp. 450-451, italics added; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216, fn. omitted.)

A child falls within the jurisdiction of the juvenile court under section 300, subdivision (b)(1) if "[t]he child has suffered, *or* there is a substantial risk that the child *will suffer*, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." (Italics added.) There is ample evidence here to support the jurisdictional finding under subdivision (b)(1) of section 300.

Admitting she is a drug abuser, mother contends there is no causal link between her methamphetamine use and harm to Karina and Jesse. She argues that the record contains no evidence that the children were harmed by her drug abuse and there is no reason to believe harm will occur.

"[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only a 'substantial risk' that the child will be abused or neglected. The legislatively declared purpose of these provisions 'is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*' [Citation.] 'The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.' [Citation.]" (*In re I.J.* (2013) 56 Cal.4th 766,

773.) Therefore, "[a]lthough section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations]" (*In re Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1215-1216), "proof of current risk of harm is not required to support the initial exercise of dependency jurisdiction under section 300, subdivision (b), which is satisfied by a showing the child *has suffered or* there is a substantial risk that the child will suffer, serious physical harm or abuse. [Citations.]" (*In re Adam D*. (2010) 183 Cal.App.4th 1250, 1261, italics added.) "The court may consider past events in deciding whether a child presently needs the court's protection. [Citation.] A parent's ' "[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue.' [Citation.]" (*In re Christopher R.*, *supra*, at p. 1216, citing *In re Rocco M*. (1991) 1 Cal.App.4th 814, 824, italics omitted.)

Viewing the evidence as we are required (*In re Alexis E.*, *supra*, 171 Cal.App.4th at pp. 450-451), it supports the jurisdictional finding under subdivision (b) of section 300. Mother admitted she began using drugs at the age of 14, which means she has been, in her words, "on the street" struggling with substance abuse for 18 years. And, she has a history of relapsing. Even with only one child in her custody at the time this petition was sustained, mother started using again. Mother's past conduct is probative of current conditions, and mother's persistent history of relapses gives the juvenile court reason to believe the conduct will continue. (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.)

Mother argues that a parent's use of drugs " 'without more,' does not bring a minor within the jurisdiction of the dependency court. [Citation]." (*In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003.) Yet, the record here contains more. The consequences of mother's drug abuse are drug-related arrests, homelessness, a series of dependencies, and the loss of custody of at least three other children. Mother surrounded herself with drug users, such as her friends and current husband. She has been homeless and moved around frequently. Karina and mother finally moved in with the maternal grandfather, whose house was dirty and messy, and the child contracted

head lice. Karina's teacher described Karina's situation as "difficult." Indeed, the child appears indifferent about returning to mother's care, as she declared herself equally "fine" with either parent. The juvenile court could reasonably infer that Karina's instability and absences from school were caused by mother's drug abuse. The court could also reasonably infer, as the result of mother's drug abuse, that Karina knew about dying and had memories of the police coming to mother's house.

Moreover, the "[e]xercise of dependency court jurisdiction under section 300, subdivision (b), is proper when a child is 'of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] physical health and safety.' [Citation.]" (*In re Christopher R., supra*, 225 Cal.App.4th at p. 1216, quoting from *In re Rocco M., supra*, 1 Cal.App.4th at p. 824.) The appellate court in *Christopher R.* considered the children, who were six years old or younger, to be of " 'tender years.' " (*In re Christopher R.*, at p. 1219.) As we have explained, "the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care [for children of tender years, and that this absence of adequate supervision] result[s] in a substantial risk of physical harm. [Citation.]" (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767.) Rather than to argue she is not a substance abuser,[4] mother argues only that Karina is not young enough to be considered a child of tender years. To the contrary, Karina was five and a half years old at the time of the jurisdiction hearing and hence by definition of "tender years." Thus, mother's substance abuse constitutes prima facie evidence of her inability to care for Karina resulting in a substantial risk of harm to the child. This evidence, added to the evidence delineated above, is more than sufficient to substantiate a finding of risk of

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[4] As mother does not deny it, we need not address whether she is a substance abuser as we defined it in *In re Drake M., supra*, 211 Cal.App.4th at pp. 765-766.)

harm to Karina and to support the finding she is defined by section 300, subdivision (b).[5]

More important, however, *mother used drugs in Jesse's presence*. Mother lost custody of Jesse when he was just seven months old. The juvenile court could reasonably infer from 8-year old Jesse's statement he witnessed mother doing drugs that mother possessed drugs within the child's reach and used in his presence during unsupervised visits. Although, as mother observes, Jesse originally denied witnessing mother use drugs, he also stated he saw her use. The juvenile court was entitled to believe Jesse's later statement and we may not reweigh that decision. (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451.)

Mother lists four cases that she contends support her contention that the children were not at risk merely because of her relapse. All four cases are distinguished because, unlike here, none contained evidence that the children were placed at risk as the result of the parents' drug use. (*In re Destiny S.*, *supra*, 210 Cal.App.4th at pp. 1000-1004 [eleven-year old pre-teen had never seen mother's drug use; child's room was neat and clean; child regularly attended school, had no behavioral or discipline issues, and wanted to return to mother]; *In re Drake M.*, *supra*, 211 Cal.App.4th at pp. 768-769 [marijuana-smoking parent was employed and providing for the child's needs; no evidence child was exposed to drugs, drug paraphernalia, or secondhand smoke]; *In re David M.* (2005) 134 Cal.App.4th 822 [healthy and cared-for child, clean and tidy home, and no evidence of mother's alcohol abuse after detention]; *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 727-728.)

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[5] As the result of our conclusion there is a causal link between mother's drug abuse and the risk of harm to Jesse, we need not decide whether Jesse's age of eight and a half at the time of the jurisdiction hearing fell within the "tender years" for which a " 'finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of harm.' " (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219.)

For the foregoing reasons, the preponderance of the evidence supports the jurisdictional findings and order sustaining the petition under section 300, subdivision (b). (See § 300.2 ["The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection, and physical and emotional well-being of the child."].) We need not address mother's additional contention the evidence is also insufficient to support the findings as to the allegations under section 300, subdivision (j). "The reviewing court may affirm a juvenile court judgment if the evidence supports the decision on any one of several grounds." (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.)

2. *Removal*

a. *Jesse*

Mother argues the juvenile court committed *legal* error when it ordered Jesse removed from mother's custody under section 361, subdivision (c). We agree. "There can be no removal of custody from a parent who does not have custody in the first place. . . . Section 361.5 is a generic statute addressing a basic situation in juvenile dependency actions, i.e., the removal of a child from the *caretaker's* custody and the goal of reunifying the child with the *caretaker* through the provision of reunification services. It does not, by its terms, encompass the situation of the noncustodial parent." (*R.S. v. Superior Court* (2007) 154 Cal.App.4th 1262, 1270.) The family law court already gave father sole physical and legal custody of Jesse to father in 2006. That order remains unchanged. Accordingly, as mother correctly observes, Jesse could not be removed from her custody in 2014 as she did not have custody of him by then. (*Ibid.*) The juvenile court's order removing Jesse from mother's custody is thus a nullity.

However, mother overstates her case when she argues that the erroneous removal order means "[t]here was no legal basis to . . . declare Jesse a dependent." As we have already analyzed, there is sufficient evidence under section 300, subdivision (b) to take jurisdiction over Jesse. Therefore, Jesse was properly declared a dependent. As for

removal, however, Jesse was and remains in the sole physical and legal custody of father.

b. *Karina*

Mother also challenges the order removing Karina from her custody for lack of substantial evidence. We have reviewed the entire record and are unable to locate where mother challenged the removal order under section 361, subdivision (c)(1) in the juvenile court.[6]

Generally, a claim that the evidence is insufficient to support a disposition order is not forfeited even if not raised in the juvenile court. (*In re R. V., Jr*. (2012) 208 Cal.App.4th 837, 848.) However, there is an exception when a parent submits on the Department's recommendation. In *In re Richard K.* (1994) 25 Cal.App.4th 580, the Department recommended that the juvenile court remove the children from their mother's physical custody. (*Id*. at p. 587.) At the dispositional hearing, the mother's attorney submitted the matter on the recommendation of the social worker. The juvenile court followed the social worker's recommendation and ordered the children's removal. (*Id*. at p. 588.) The appellate court rejected the mother's ensuing challenge to the sufficiency of the evidence to support the removal order. It held that the submittal to the social worker's recommendation "amounted to acquiescence" and precluded that parent from later challenging the sufficiency of the evidence to support the order. (*Id.* at p. 589.) The court explained, "by submitting on the [Department's] 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

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6 Mother did argue at the detention hearing on January 21, 2014 that Karina should not be detained and should be placed with her. However, she never raised this at the March 20, 2014 disposition hearing. Moreover, at the detention hearing before a petition is filed, the order detaining a child requires only a prima facie showing (§ 319, subd. (b)), whereas a disposition order pursuant to section 361, subdivision (c)(1) to remove a child from a parent's custody requires a heightened showing of clear and convincing evidence.

recommendation. He who consents to an act is not wronged by it. [Citation.]" (*Id*. at p. 590, fn. omitted.)

Here, when the court continued the disposition hearing, mother's counsel stated mother intended to challenge the Department's recommendations to (1) deny mother reunification services and (2) terminate jurisdiction, "if it does go to home of parent father order." She did not challenge the recommendation Karina be placed in "home of parent father," effectively acquiescing to it. Then, at the disposition hearing, counsel asked to call mother to testify, and as an offer of proof described mother's planned testimony, which did not include evidence or argument concerning the removal recommendation. Notwithstanding the Department analyzed, at the court's request, whether to return Karina to mother's custody, and specifically advised against it, and notwithstanding the Department requested the juvenile court give father sole legal and physical custody of the child and terminate juvenile court jurisdiction, mother did not ask the court to place Karina in her custody and did not present facts or argument that would justify a finding that removal was not warranted, or that there was a less drastic alternative to removal. (§ 361, subd. (c)(1).) Mother's failure to challenge the removal recommendation and her acquiescence in the Department's recommendations that legal and physical custody of the child go to father constitute a forfeiture of the right to challenge the sufficiency of the evidence to support the removal order. (*In re Richard K.*, *supra*, 25 Cal.App.4th at p. 590; see *In re Kevin S*. (1996) 41 Cal.App.4th 882, 886.)

3. *The juvenile court did not abuse its discretion in terminating jurisdiction*.

Section 361.2 gives the juvenile court three options when it places a child with a formerly noncustodial parent: It may (1) order that the parent become the legal and physical custodian of the child, order reasonable visitation by the noncustodial parent, and "then terminate its jurisdiction over the child" (§ 361.2, subd. (b)(1)); (2) order that the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months (*id*., subd. (b)(2)); or it may (3) order that the parent assume custody subject to the supervision of the juvenile court

and order reunification services for one or both parents (*id*., subd. (b)(3)). The court must make a finding on the record of the basis for its determination. (*Id*., subd. (c).)[7]

"The discretion afforded the juvenile court in this area appears very broad." (*In re Sarah M*., *supra*, 233 Cal.App.3d at p. 1496.) However, before terminating its jurisdiction under section 361.2 the court must determine whether supervision is still necessary. (*In re Sarah M*., at p. 1498.) We review the court's determination concerning the necessity of supervision for sufficiency of the evidence. (*Ibid*.)

In re Janee W., *supra*, 140 Cal.App.4th 1444, is analogous. There, the appellate court affirmed the termination of jurisdiction under section 361.2, subdivision (a). (*In re Janee W*., *supra*, at p. 1453.) The court reasoned that the Department's reports were unambiguous in their praise for how well the children were doing in the custody of the previously noncustodial parent, the father. (*Id*. at p. 1452.) There, the father's house was safe and clean; there was always food for the children; neither child exhibited

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[7] Although the juvenile court stated it was holding the disposition hearing under section 364, it appears the court could only have proceeded under section 361.2. Generally speaking, section 364 applies when a dependent child has not been removed from the original custodial home, whereas section 361.2 applies when the juvenile court places a dependent child with a formerly noncustodial parent. (*In re Sarah M*. (1991) 233 Cal.App.3d 1486, 1493 & 1495, disapproved on other grounds in *In re Chantal S*. (1996) 13 Cal.4th 196, 204; compare *In re N. S*. (2002) 97 Cal.App.4th 167, 172 [rejecting *In re Sarah M*.'s narrow reading of § 364]; *In re Janee W*. (2006) 140 Cal.App.4th 1444, 1450-1451.) Here, the court removed Karina from mother's custody and placed her with father, *the previously noncustodial parent*. (*In re Sarah M*., *supra*, at p. 1493.) Therefore, section 361.2 is the governing statute here. Nonetheless, regardless of which statute the juvenile court followed, we conclude the result would have been the same given the similarity in the standards in the two statutes. (*In re Janee W*., *supra*, at pp. 1452-1453.) " ' "No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion." [Citation.]' [Citation.]" (*In re Sarah M*., *supra*, at pp. 1494-1495.)

mental or emotional issues; and the children seemed well adjusted, clean and well groomed in the father's care. (*Ibid.*)

Likewise here, substantial evidence supports the juvenile court's finding that ongoing supervision is unnecessary. Father is nonoffending. He is drug-free. He has a safe home. He even paid mother child support for Karina. Father provides the children with appropriate care; he makes sure they get to school on time; and he has someone to look after them while he is at work. The children have expressed that they are fine and safe in their father's care. Because the children are not at risk with father, they no longer require the protection of the juvenile court. Therefore, the record supports the court's conclusion that there existed no need for supervision and so the court did not abuse its discretion in terminating its jurisdiction.

Mother argues that the juvenile court impliedly concluded that reunification services were still needed because it stated it planned to provide enhancement services in the exit order rider. However, the exit order does not require that mother receive reunification services. Rather, the order explains the reason for supervision of mother's visits with the children. In indicating at the hearing that mother should complete her rehabilitation program, the court was advising mother that she would then be able to petition the family law court for a change in the custody or visitation order.

Mother contends that the court should have kept the case open because "visits were not taking place between mother and her children." The court ordered visitation for mother at a rate of two visits per week, for two to three hours at a time. It appears that the reason for lack of visitation was that mother was not allowed to leave her inpatient program and father resided in Lancaster approximately two hours' drive away. Father otherwise stated he was agreeable to meeting the maternal grandfather halfway after mother left her program.

Mother also argues that keeping the case open and providing her with services would have made a difference. However, the issue for the juvenile court when terminating jurisdiction is whether supervision is necessary. (§ 361.2.) Given the children were safely placed in father's care, supervision was no longer required.

We emphasize that mother has not been prejudiced, nor have her fundamental rights been affected, by the juvenile court's termination order. Mother's parental rights remain intact. (*In re Sarah M., supra*, 233 Cal.App.3d at p. 1494.) Custody orders are modifiable by the family law court. Section 361.2, subdivision (b)(1) provides that "[t]he custody order shall continue unless modified by a subsequent order of the superior court."

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.*

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