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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOSE B.,

Defendant and Appellant.

B294927  
(Los Angeles County  
Super. Ct. No. 18CCJP05760A-E)

APPEAL from findings and an order of the Superior Court of Los Angeles County. Pete R. Navarro, Juvenile Court Referee. Dismissed in part and affirmed in part.

Landon Villavaso, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, and Brian Mahler, Deputy County  
Counsel, for Plaintiff and Respondent.

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Jose B. (father) challenges the juvenile court's jurisdictional findings and removal order made at the combined jurisdiction/disposition hearing on November 16, 2018. He argues that insufficient evidence supports the juvenile court's findings made pursuant to Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> and that insufficient evidence supports a finding of detriment as required by section 361.2, subdivision (a).

In light of father's submission to counts b-5 and b-6 of the section 300 petition, we dismiss father's jurisdictional appeal. Regarding his challenge that the juvenile court failed to make the requisite finding of detriment, we conclude that father's appeal fails because he did not meet the statutory prerequisite; he never requested that the children be placed with him at the combined jurisdiction/disposition hearing. (§ 361.2, subd. (a).) Alternatively, he did not object to the juvenile court's order, thereby forfeiting any objection on appeal. Accordingly, we affirm the juvenile court's dispositional order.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

## FACTUAL AND PROCEDURAL BACKGROUND

### *The Family*

This family consists of father, Bridget A. (mother),<sup>2</sup> and their five children: Christian B. (Christian, born Dec. 2001), Joseph B. (Joseph, born Aug. 2005), Nicholas B. (Nicholas, born Nov. 2007), Bryan B. (Bryan, born Aug. 2009), and Mason B. (Mason, born Apr. 2014). All five children resided with mother in the home of mother's adult child (and the children's half-sibling) Juan M. (Juan). Father lived in a separate home and had been visiting the children on weekends until sometime in mid-2018.

### *Prior Child Welfare History*

The family was the subject of the juvenile court's jurisdiction in two prior dependency matters. In September 2010, the juvenile court assumed jurisdiction over the four oldest children based on allegations of domestic violence and substance abuse by both parents. In October 2011, the juvenile court terminated jurisdiction with a family law order that gave the parents joint legal and physical custody and established mother's home as the children's primary residence. In May 2015, the juvenile court assumed jurisdiction over all five children based on allegations of domestic violence between the parents, mother's substance abuse, and father's physical abuse of Christian. In September 2017, the juvenile court terminated jurisdiction with a family law order giving the parents joint legal custody and mother sole physical custody of the children, with father having unmonitored visitation rights.

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<sup>2</sup> Mother is not a party to this appeal.

*Detention Report (Sept. 11, 2018)*

On July 31, 2018, the Department of Children and Family Services (DCFS) received a referral alleging general neglect of the children by mother. Mother had a history of drug use, and it was unknown if she was currently using methamphetamine or other drugs. Mother also had given Christian marijuana and allowed him to use marijuana in the home and keep drug paraphernalia in his bedroom. And, Christian had not attended school since last year. Finally, there was insufficient food in the home, and both Nicholas and Bryan were underweight.

In August 2018, DCFS investigated and substantiated the referral. An inspection of the family home revealed that Christian had drug paraphernalia in his bedroom. Bryan disclosed that he had observed Christian smoking marijuana from a “bong” in the home and that mother knew about Christian’s drug use. Mother also tested positive for drugs on two occasions, including positive tests for amphetamine and methamphetamine, opiates, cannabinoids, and codeine. Despite earlier denials of drug use, mother eventually admitted that she had relapsed and needed treatment for drug use.

*Original Section 300 Petition; Detention Hearing*

On September 10, 2018, DCFS filed a section 300 petition on behalf of the children. The petition alleged two counts (b-1 & b-2) based upon mother’s neglectful conduct.

At the September 11, 2018, detention hearing, father was not present; mother did not know his whereabouts, saying that her last contact with him was two months ago. The juvenile court detained the children from both parents, granted monitored visits to mother, and ordered services for the children.

*Jurisdiction/Disposition Report (Oct. 25, 2018)*

DCFS learned additional information about Christian's drug use. Christian reported that both parents were initially upset about his marijuana use, but later started purchasing and providing marijuana for him, buying the drug from dispensaries. According to Christian, mother had provided him with marijuana on five occasions, and father had provided him with marijuana on two occasions. Juan confirmed that father had taken Christian to dispensaries without mother's knowledge, with the last occasion occurring in May or June 2018. In turn, father denied ever purchasing marijuana for Christian.

DCFS also learned new information about father's visitation with the children. After the juvenile court terminated jurisdiction in the second dependency matter, the children regularly visited with father, until his visits stopped sometime in mid-2018. According to Juan, father's visits became infrequent because he was spending his weekends with his girlfriend. This caused the children to suffer emotional harm, as they were used to father picking them up for weekend visits. As a result, mother unilaterally decided to end all visits between father and the children. Father claimed that he went to family court to enforce his visitation rights, which is where he learned about this dependency case.

During DCFS's investigation, father expressed a willingness and desire to have the children in his care. He informed DCFS that he had satisfied all prior court-ordered services and had found value in them. In considering release of the children to father, DCFS asked that father submit to an on-demand drug test; it yielded negative results. Also, DCFS conducted an assessment of father's home, which was free from

visible hazards and had sufficient food, beverages, and working appliances. DCFS recommended that the juvenile court continue the matter “to further explore release as to the father pending the Jurisdiction/Disposition hearing.”

*First Amended Section 300 Petition (Oct. 12, 2018)*

On October 12, 2018, DCFS filed a first amended section 300 petition on behalf of the children. The amended petition contained the counts from the original petition and added that the children had been placed at substantial risk of serious physical harm based on (1) mother’s purchase of marijuana for Christian on five occasions for its use by the child (count b-3), and (2) father’s purchase of marijuana for Christian on two occasions for its use by the child (count b-4).

*Last Minute Information for the Court (Oct. 25, 2018)*

DCFS noted that it was submitting this last minute information to the juvenile court to “address [DCFS’s] efforts to explore the release of the children to father.” Father agreed to a gradual transition of the children into his home to give the children an opportunity to adjust to a new home environment and to father’s parenting style.

DCFS also reported that father had provided Joseph and Christian with alcohol and then allowed them to drive a vehicle while they were under the influence; Mason was in the back seat while Joseph and Christian drove. DCFS also reported that father took Christian to a marijuana dispensary and provided Christian with marijuana.

DCFS recommended that the five children be removed from mother’s custody and that Christian be removed from father’s custody. DCFS also recommended that “[r]esponsibility for the

care, custody, and control and conduct of the children be vested with DCFS for placement in suitable out of home care.”

*Adjudication (Oct. 25, 2018)*

At the adjudication hearing, both parents were present. The juvenile court arraigned both parents on the amended section 300 petition, denied father’s request for the children to be released to him, ordered the children to remain detained from both parents, and ordered DCFS to provide reunification services.

*Supplemental Report (Nov. 16, 2018)*

In mid-November 2018, DCFS interviewed Joseph, Christian, and father. According to the three of them, father took all of the children on a camping trip earlier in 2018. They took two cars for the trip, driving between Long Beach and a forest campsite. The first car contained Christian, Bryan, and the paternal grandmother, and the second car contained father and the other three children. Christian stated that he drove the first car the entire way from Long Beach to the campsite, while Joseph and father claimed that Christian only drove within the campsite when collecting firewood. Christian and Joseph also stated that father had provided alcohol to Joseph, specifically serving him Jack Daniels with Coca Cola. Father denied serving alcohol to Joseph, stating that he only brought two large beer bottles for himself.

Mother was concerned about releasing the children to father; she believed that his motivation was monetary gain. Christian stated that he did not want to live with father because of what father had done in the past and “personal stuff” that made him mad. Joseph stated that he was not scared of father and wanted to live with him. Likewise, Nicholas and Bryan were not afraid of father; they wanted more visits with him.

*Second Amended Section 300 Petition (Nov. 15, 2018)*

On November 15, 2018, DCFS filed a second amended section 300 petition on behalf of the children. In addition to the allegations set forth in the first amended section 300 petition, the second amended petition alleged that the children were at substantial risk of suffering serious physical harm based upon (1) father providing liquor to Joseph at a time when the child was only 12 years old (count b-5), and (2) father allowing Christian to operate a vehicle, even though he knew that the child did not have a driver's license (count b-6).

*Combined Jurisdiction/Disposition Hearing (Nov. 16, 2018)*

At the combined jurisdiction/disposition hearing, the juvenile court noted that "[t]he attorneys [had] been working hard all day trying to settle this matter" and asked if they "were able to reach an agreement." DCFS replied in the affirmative, asserting that it had submitted the second amended section 300 petition and father's waiver to the juvenile court and that mother's waiver was still pending. Father's counsel clarified that he was not actually "preparing a waiver" for father, but he did not "plan to argue" with respect to jurisdiction. Mother's counsel indicated that he had submitted mother's waiver, in which she was pleading no contest to the second amended petition.

After arraigning the parents on the second amended petition, DCFS indicated that the parties had agreed to the following: (1) Mother would plead no contest to counts b-1 and b-3, as amended by interlineation; (2) DCFS would request dismissal of counts b-2 and b-4; and (3) father would "submit[]" to counts b-5 and b-6. After concurring with other counsel regarding the dismissal of counts b-2 and b-4, father's counsel stated the following: "Your honor, my client is submitting to



counts b-5 and b-6. He does admit to providing liquor to [Joseph]. And he does admit to allowing Christian to operate a vehicle. And he just would like the court to know that he takes responsibility, and he understands he made a mistake. [¶] Submitted.”

The juvenile court then adjudicated the second amended petition “[p]ursuant to submission by the father and waivers by the mother.” Specifically, the juvenile court sustained counts b-1 and b-3, as amended by interlineation, dismissed counts b-2 and b-4, and sustained counts b-5 and b-6 as pleaded.

The juvenile court then turned to disposition. Mother and the children asked that the children be placed in mother’s custody, with all of them residing in the family home with Juan. Father requested “unmonitored visits”; notably, father did not request that the children be placed in his custody if removed from mother. DCFS asked that the juvenile court remove the children from both parents’ custody and grant monitored visitation.

After entertaining oral argument, the juvenile court declared the children dependents of the court, removed them from parental custody, placed the children with DCFS for suitable placement, and ordered family reunification services for both parents, including monitored visitation.

#### *Appeal*

Father timely appealed.

### **DISCUSSION**

#### *I. Jurisdictional Appeal*

Father argues that the juvenile court erred when it sustained counts b-5 and b-6 of the section 300 petition because substantial evidence does not support the findings that he placed the children at substantial risk of suffering physical harm when

he (1) provided liquor to Joseph (count b-5), and (2) allowed Christian to operate a vehicle even though he knew that the child did not have a driver's license (count b-6). DCFS asserts that father's jurisdictional appeal should be dismissed on the grounds of waiver. We agree with DCFS.

A parent's agreement to a negotiated jurisdictional settlement in which the parent submits to certain findings constitutes "an implied waiver of his right to appeal the sufficiency of the evidence to support [those] jurisdictional finding[s]." (*In re N.M.* (2011) 197 Cal.App.4th 159, 168.) This type of "submission" is different from when a parent merely submits on the record, which would still require the juvenile court to "weigh evidence, make appropriate evidentiary findings and apply relevant law to determine whether the case has been proved. . . ." (*In re A.A.* (2016) 243 Cal.App.4th 1220, 1236.)

Here, at the combined jurisdiction and disposition hearing, father agreed to a negotiated jurisdictional settlement, pursuant to which he submitted to counts b-5 and b-6 in exchange for DCFS requesting dismissal of count b-4, which alleged that his purchase of marijuana for Christian placed all of the children at risk of harm. As father's counsel stated after DCFS presented the terms of the settlement to the juvenile court: "Your honor, my client is submitting to counts b-5 and b-6. He does admit to providing liquor to [Joseph]. And he does admit to allowing Christian to operate a vehicle. And he just would like the court to know that he takes responsibility, and he understands he made a mistake. [¶] Submitted."

Father's submission "dispels any challenge to and, in essence, endorses the court's issuance of the recommended findings and orders." (*In re Richard K.* (1994) 25 Cal.App.4th

580, 589.) It follows that we dismiss father's jurisdictional appeal.

## II. *Dispositional Appeal*

Father argues that the juvenile court erred when finding that "there was sufficient evidence to support a detriment finding regarding [him] pursuant to section 361.2."

### A. Section 361.2 does not apply

First, as pointed out by DCFS, section 361.2 does not apply to this matter because father did not request custody of the children upon their removal from mother.

Section 361.2 provides, in relevant part, that when a juvenile court removes a child from a parent under section 361, it "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." (§ 361.2, subd. (a).)

Although father qualified as a noncustodial parent at the time of the events that gave rise to this dependency matter, he did not request custody of them upon their removal from mother.<sup>3</sup>

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<sup>3</sup> For this reason, among others, *In re Marquis D.* (1995) 38 Cal.App.4th 1813 is readily distinguishable. In that case, the father, who was noncustodial at the time of the events giving rise to the dependency case, requested that the children be placed with him. (*Id.* at p. 1825.) Because he requested that the children be placed with him, it was incumbent upon the juvenile court to determine whether placement with him would have been

Rather, father's only request at the dispositional hearing was for the juvenile court to grant him unmonitored visitation with the children. Accordingly, the juvenile court did not make, and had no reason to make, a detriment finding with respect to father under section 361.2, subdivision (a).

B. Father forfeited any presumed challenge to the dispositional order removing the children from his physical custody

Even if we deemed father's appeal to constitute a challenge to the juvenile court's order removing the children from his physical custody, father has forfeited the issue on appeal.

"A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court. [Citations.] Forfeiture . . . applies in juvenile dependency litigation and is intended to prevent a party from standing by silently until the conclusion of the proceedings." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221–222.) "[T]he failure to object to a disposition order on a specific ground generally forfeits a parent's right to pursue that issue on appeal." (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345.)

At the dispositional hearing, father only requested that the juvenile court grant him unmonitored visitation with the children. He never asked for physical custody, and he did not object when the children were removed from his physical custody.

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detrimental within the meaning of section 361.2, subdivision (a). And, on the appellate record in that case, it was unclear whether the juvenile court "even considered . . . whether placing the children with [him] would [have been] detrimental to them within the meaning of section 361.2, subdivision (a)." (*In re Marquis D.*, *supra*, at p. 1825.)

It follows that his challenge to the removal order has been forfeited on appeal.

**DISPOSITION**

Father's appeal from the juvenile court's jurisdictional findings is dismissed. The juvenile court's dispositional order is affirmed.

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

We concur:

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

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