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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re R.H., Persons Coming  
Under the Juvenile Court Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.H.,

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Defendant and Appellant.

B285566

(Los Angeles County  
Super. Ct. No. DK22053)

APPEAL from an order of the Superior Court of Los Angeles County, Natalie P. Stone, Judge. Affirmed in part, dismissed in part.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

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## **INTRODUCTION**

Father appeals the juvenile court's disposition order removing his infant son from his custody. Father argues that the court should have ordered informal supervision and that there were less restrictive means available to safeguard the child short of removal. We conclude the court did not abuse its discretion in ordering formal supervision because father did not request informal supervision and he continued to display poor parenting judgment. We dismiss the portion of the appeal about the removal order as moot.

### ***FACTS AND PROCEDURAL BACKGROUND***

#### **1. Mother's Drug Use and the Child's Premature Birth**

Just prior to the child's birth, the parents moved in together after dating for several months. Mother had been abusing illicit substances for several years and had a manic borderline personality disorder diagnosis.

In March 2017, the child was born significantly underweight, more than 12 weeks pre-term, and with cocaine in his blood. Mother had received no prenatal care, and tested positive for benzodiazepines, opiates, and cocaine when the child was born. Mother initially surrendered the baby at birth but changed her mind several days later.

The parents visited the baby in the hospital together, sometimes late at night. During one of their visits, mother appeared intoxicated and unstable, stumbling around the neonatal intensive care unit (NICU). The hospital expressed frustration that the parents were difficult to contact regarding the child's care and prospective transfer to another hospital for heart surgery.

## **2. Detention and the Initial Section 300 Petitions**

Shortly after the child's birth in March 2017, the Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300 petition alleging that mother was unable to provide for the child and that she had surrendered him to the hospital where he was born.<sup>1</sup> On April 27 DCFS sought and obtained authorization to remove the child from the parents' custody. The infant was detained in the hospital.

DCFS filed a first amended petition on May 2, 2017, alleging that mother's current and extensive history of drug use, and her mental and emotional problems rendered her incapable of providing regular care for the baby. That same day, the juvenile court detained the child from mother. The court ordered the child released to father upon the child's discharge from the hospital, on the condition the child and father resided with the paternal grandparents.

## **3. Father's Failure to Protect the Child**

After further investigation, DCFS determined that father also posed a risk of harm to the child. Father had a history of domestic violence and engaging in violent confrontations. Father initially denied substance abuse but later admitted to using medical marijuana following a positive test. After DCFS told father that it had a problem with his use of medical marijuana, his use declined significantly.

Despite living with mother and having been with mother when she went into labor while she was using cocaine, father denied knowing of mother's substance abuse and mental health

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

issues. Hospital staff noted that mother's drug use was apparent at birth. One of mother's family members explained the physical change mother underwent when using drugs and stated that there was "no way" father did not know mother was using drugs.

Even though father told DCFS that he wanted custody of the child and would not remain in a relationship with mother unless she ceased using, evidence indicated that the parents remained together and mother was still abusing drugs. On May 19, 2017, DCFS asked the parents to submit to a drug test. Both stated they were out of town and agreed to drug test on May 25, 2017. Mother tested positive for cocaine at that drug test.

#### **4. Second Amended Petition and Detention from Father**

DCFS filed a second amended petition on May 9, 2017. That petition retained the allegations of the first amended petition and added two additional counts pursuant to section 300, subdivision (b). These new counts alleged that father posed a risk of harm to the child because of his history of domestic violence and illicit drug use.

On May 9, 2017, DCFS filed an ex parte application recommending the child not be released to father based on new information, and the court detained the child from father.

#### **5. Jurisdiction and Disposition**

On June 7, 2017, mother executed a waiver of rights and agreed to plead no contest to the allegations of the Second Amended Petition. The juvenile court conducted the adjudication and disposition hearing that same day. The court received DCFS's reports into evidence without objection. Father argued that allegations against him should be dismissed and that he should be considered a non-offending parent. The child's counsel

argued that father knew or reasonably should have known of mother's drug use and that he had not fully acknowledged his role causing the child harm. DCFS argued that the allegations should be sustained, including the father's failure to protect the child.

The court sustained the section 300, subdivision (b) allegations regarding mother's substance abuse and mental health issues. The court amended the allegations to state that "father knew or reasonably should have known of the mother's substance abuse and failed to protect the child" and that "father's failure to protect endanger[ed] the child's physical health and safety and place[d] the child at risk of physical harm." The juvenile court struck the remaining allegations.

The juvenile court reasoned that father had to have known about mother's drug use because the parents were living together and seeing each other daily, mother was "a very extensive drug user," and mother's physical appearance exhibited her drug abuse. Based on mother's positive May drug test and the parents being out of town together, the court deduced that father remained in a relationship with mother even though she continued to use drugs.

The court pointed out that when the parties were in court for the initial detention hearing, "father's plan was to bring the baby home from the hospital to his apartment where the mother was living and [he] didn't seem to have any insight into why that was not appropriate." The court explained that father lacked an "understanding of the dangers that the mother's very extensive drug use places the child in and the ability to recognize that and take protective action."

Mother submitted on the issue of removal. Father opposed removal and sought to have the child placed with him. The court removed the child from both parents' custody, and placed him with paternal grandparents. The court permitted father to live in the grandparents' home and have unmonitored visitation.

## **6. Subsequent Placement with Father**

In September 2017, the court placed the child in father's custody and ordered family preservation services.

### ***DISCUSSION***

#### **1. The Court Did Not Err in Ordering Formal Supervision**

Father argues that the juvenile court should have ordered informal supervision. "Once the juvenile court finds jurisdiction under section 300, it must adjudicate the child a dependent unless the severity of the case warrants nothing more than [DCFS]'s supervision of family maintenance services. Under section 360, subdivision (b), if appropriate, the court may, without adjudicating the child a dependent, order that services be provided to keep the family together under the informal supervision of the child welfare agency." (*In re N.M.* (2011) 197 Cal.App.4th 159, 171.) " 'If the court agrees to or orders a program of informal supervision, it does not dismiss the dependency petition or otherwise set it aside. The true finding of jurisdiction remains. It is only the dispositional alternative of declaring the child a dependent that is not made.' " (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1260.)

"Whether to exercise this option under section 360, subdivision (b), is a discretionary call for the juvenile court to make; it may opt to do so, but it need not. "The court has broad discretion to determine what would best serve and protect the

child's interest and to fashion a dispositional order in accord with this discretion.' [Citation.] As an appellate court, we cannot reverse the court's dispositional order absent a clear abuse of discretion." (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 171.)

DCFS argues that father forfeited the informal supervision point. Factual issues, like this one, are forfeited when they are raised for the first time on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, superseded by statute on other grounds as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 962.) We observe that father never requested informal supervision at the disposition hearing. As he raises this argument for the first time on appeal, he effectively forfeited the issue.

Even if we were to address this argument on the merits, there was no abuse of discretion. The court could reasonably infer that father knew of mother's substance abuse during pregnancy because they lived together and mother's drug use was extensive. After the child was born, father failed to maintain consistent contact with the hospital, exposed the child to mother while she was intoxicated, and maintained a relationship with mother despite her continued drug use. The court could reasonably conclude that father's poor judgment, illustrated by these events, continued to pose a substantial risk of harm to the child and that the family required formal supervision.

## **2. The Removal Issue is Moot**

Father argues that the court erred in removing the child from his custody. DCFS requested this Court take judicial notice of the juvenile court's September 6, 2017 order placing the child in father's custody. Pursuant to Code of Civil Procedure section 909 and Evidence Code section 459, we took judicial notice of the

order on February 13, 2018. DCFS argued in its brief that the custody issue has been mooted by this court order. We agree.

“‘[A]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.’ [Citation.]” (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.) Since the child has been returned to father, a reversal of the disposition order will have no “practical, tangible impact on the parties’ conduct or legal status.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490.) The court’s subsequent order thus mooted the custody issue on appeal. (*Ibid.* [“When the court cannot grant effective relief to the parties to an appeal, the appeal must be dismissed.” (Italics omitted.)].)

Father asserts that we should address his disposition order challenge because he will be prejudiced by the removal order if this case proceeds to a selection and implementation hearing under section 366.26. (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769 [“An issue is not moot if the purported error infects the outcome of subsequent proceedings.”].) Given that father does not contest court’s jurisdictional findings, father will not be subject to undue prejudice from our decision not to review the mooted disposition order, which was predicated on the jurisdictional findings.

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### **DISPOSITION**

We affirm the court's disposition order and dismiss the appeal of the removal order.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

ROGAN, J.\*

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