

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B235492
(Los Angeles County
Super. Ct. No. CK 88066)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DARREN D.,

Defendant and Appellant.

Appeal from an order of the Superior Court of Los Angeles County.

Veronica S. McBeth, Judge. Affirmed.

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

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Two brothers, B.D., who was six years old, and C.D., who was three years old, were detained from their mother after she was arrested for possession and use of methamphetamines, which she admitted, and they were released to the care of their non-offending, noncustodial father. Mother did not contest dependency jurisdiction over the children or their placement with father. On appeal, father does not contest the jurisdictional findings but contends the trial court abused its discretion at disposition by not terminating jurisdiction, presumably with a family law order awarding him legal and physical custody, and by ordering that he submit to three random drug tests. We find the trial court did not abuse its discretion but, instead, followed the law in placing the children with their noncustodial parent under the supervision of the Department of Children and Family Services until the court could determine whether continued supervision was necessary; thus, we affirm the disposition orders.

BACKGROUND

Mother and father never married, and after they separated, the children lived with their mother and visited with their father, alternating days and weekend visits. When mother was arrested in May 2011, father was willing to assume temporary custody of the boys but said he would eventually like for them to go back to their mother, once she was clean and sober. Father does construction work, and his wife is in the Navy. The couple recently had a child of their own. The jurisdiction report stated father had been arrested in 2005 for inflicting corporal injury on a spouse, though the case was not prosecuted; in 2005 for driving with a suspended license; and in 2009 for intoxication. Mother told a Department social worker that she and father had used methamphetamines when they were together, but she believed he no longer used drugs. Father denied a history of drug use, and the Department offered no evidence that father was currently using drugs.

The jurisdiction report also stated father reported to the Department on June 20, 2011, that he had no problems with the boys but he would like for mother to get better and get the kids back. The report added, “[T]he father has agreed to keep Court jurisdiction open, so that the mother may receive reunification services in the likely

return of the children to her custody in six months.” The report also stated that father agreed to submit to random drug testing, and the Department recommended the court order father to submit to four random drug tests.

However, at the disposition hearing, father asked the court to terminate jurisdiction with a family law order. Father also objected to the court ordering him to randomly drug test. Father’s position at the disposition hearing and on appeal is that, since the Department did not produce evidence that he currently abused drugs, and since he had provided a safe and stable home for the children since they were detained from their mother, there was no reason to maintain dependency jurisdiction. The court ordered reunification services for mother, family maintenance services for father, and ordered father to complete three random drug tests (not the four tests recommended by the Department).

We find the decision in *In re Austin P.* (2004) 118 Cal.App.4th 1124 (*Austin*) is factually similar to this case and its reasoning persuasive and sound. *Austin* holds that Welfare and Institutions Code section 361.2, subdivision (a) requires a court to place a dependent child in the *temporary* physical custody of a nonoffending, noncustodial parent if doing so will not be detrimental to the child, “*but that the court may not terminate jurisdiction until it analyzes whether ongoing supervision of the child is necessary.*” (*Austin*, at p. 1129.) The court summarized its holding as follows:

“[W]hen a nonoffending noncustodial parent requests custody under [Welfare and Institutions Code] section 361.2, subdivision (a), he or she is requesting sole legal and physical custody of a child. However, the court may not immediately grant that parent sole legal and physical custody. The court must first determine whether it would be detrimental to the child to temporarily place the child in that parent’s physical custody. If there is no showing of detriment, the court must order the Agency to temporarily place the child with the nonoffending noncustodial parent. The court then decides whether there is a need for ongoing supervision. If there is no such need, the court terminates jurisdiction and grants that parent sole legal and physical custody.

If there is a need for ongoing supervision, the court is to continue its jurisdiction.”
(*Austin, supra*, 118 Cal.App.4th at pp. 1134-1135.)

That is exactly what the trial court did in this case. The court did not abuse its discretion, because there was substantial evidence showing a need for continuing supervision. The court concluded the Department should monitor the children’s transition into father’s home since they had never lived with him and instead had always lived with their mother. The court concluded it was in the best interests of the children to have the love and support of both parents and believed that without continuing jurisdiction, mother and the children might not receive the necessary services to enable mother to “change her life and to make herself a fit mother for them again.” The court did not find father had a substance abuse problem. Nonetheless, there was substantial evidence that he had used drugs in the past, and the court was concerned that if any problems developed with the children in father’s home, their placement might be disrupted if the Department suspected he was using drugs. The court found that three clean random drug tests would satisfy the court that father was not currently using drugs, thereby assisting in the long-term plan for the children to remain with their father.

Father is not correct that *In re John M.* (2006) 141 Cal.App.4th 1564 holds the trial court may only deny an award of custody to a nonoffending noncustodial parent if the court finds it would be detrimental to a child. *In re John M.* is quite different from this case. In that case, the trial court found it *would be detrimental* to place a dependent child with his nonoffending noncustodial parent. (*Id.* at p. 1569) The appellate court in *In re John M.* reaffirmed that when a trial court declines to place a child with a nonoffending noncustodial parent, the trial court must make the detriment finding by clear and convincing evidence. (*Ibid.*) In this case, the trial court *granted* father’s request to place the children with father, and therefore, *In re John M.* is not instructive.

DISPOSITION

The disposition orders are affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.