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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re DAVID G., Jr., A Person  
Coming Under Juvenile Court  
Law.

B270578

(Los Angeles County  
Super. Ct. No. DK13184)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DAVID G.,

Defendant and Appellant.

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

Emery El Habiby, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

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After Leticia M. (mother) and her newborn son David G., Jr. (D.G.) tested positive for methamphetamine, the Los Angeles County Department of Children and Family Services (DCFS) took the infant into protective custody and released him to David G., Sr. (father). The juvenile court sustained allegations in the dependency petition against mother under Welfare and Institutions Code sections 300, subdivisions (b) and (j),<sup>1</sup> finding that her substance abuse placed D.G. at substantial risk of harm. The court removed D.G. from mother's custody and placed him with father under the court's continued supervision pursuant to section 361.2, subdivision (b)(3). Father contends the court erred in sustaining the petition because he was capable of caring for D.G. He also argues there was insufficient evidence to support the need for continued supervision. We disagree, and conclude the court's jurisdictional and dispositional orders were proper.

### **FACTUAL AND PROCEDURAL SUMMARY**

On August 31, 2015, a DCFS social worker responded to a referral from Whittier Hospital alleging general neglect of the newborn D.G. Mother delivered D.G. in a car in the parking lot of the hospital in August 2015. Mother was observed to not handle the infant well. She was bouncing D.G. around in her

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

arms, unable to focus, and rolling her eyes in the back of her head. Both mother and D.G. tested positive for methamphetamine and amphetamine. Mother had received prenatal care beginning in the second trimester. In May 2015, she tested positive for methamphetamine and marijuana, but denied using drugs during her pregnancy.

The DCFS social worker interviewed mother, who had been residing intermittently with the maternal grandmother. Mother reported she lost custody over her other child, J.M., who is a dependent of the juvenile court in San Bernardino.<sup>2</sup> Mother admitted to using methamphetamine during the week prior to D.G.'s birth. She could not tell the social worker when she started using illegal drugs, but reported she had been sober until relapsing in May 2015. Mother said she did not obtain prenatal

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<sup>2</sup> In October 2014, San Bernardino County Children and Family Services (CFS) received a referral indicating mother left J.M. in the care of a relative and did not return as promised. Mother could not be contacted and was reported to have a substance abuse problem. J.M. was taken into protective custody. In December 2014, CFS filed a section 300 petition on behalf of J.M. alleging mother had a history of substance abuse and failed to provide adequate care for the child. The petition indicated that the whereabouts of mother and the alleged father were unknown. The San Bernardino juvenile court ordered family reunification services for mother, including counseling, parenting education, an outpatient drug program, and random drug testing. Mother's family reunification services were terminated in July 2015. A hearing to terminate mother's parental rights under section 366.26 was scheduled for November 5, 2015. The record indicates that mother's parental rights were terminated and J.M. was placed for adoption.

care until her second trimester because she and father were trying to decide whether to continue the pregnancy. She reported that she and father had been dating for approximately a year. She stated father did not use illegal drugs and had been supportive by taking her to visits with J.M. and her outpatient drug program. Mother preferred that D.G. be placed in father's care.

Father was interviewed by the social worker, and appeared concerned for D.G.'s wellbeing after learning of the positive toxicology screen. Although father acknowledged he was aware of mother's drug use prior to their relationship, he was unaware of her drug use during the pregnancy and denied ever observing her use drugs. Father expressed his willingness and ability to care for D.G. and to ensure mother complied with the juvenile court's orders. He reported that he resided with his parents, who provided him with support and could help care for D.G. Father denied any use of illegal drugs and agreed to submit to drug testing.

The social worker informed the parents that D.G. would be taken into protective custody and released to father as the nonoffending parent. Father agreed to monitor mother's visits with the child. On September 1, 2015, father disclosed to the social worker that he had used marijuana a week earlier. He was afraid to tell the social worker because he did not want D.G. removed from his care. He denied using any other illegal drugs and agreed to continue testing. The social worker learned that father was convicted of misdemeanor vandalism in 2010.

On September 3, 2015, DCFS filed a juvenile dependency petition on behalf of D.G. Pursuant to section 300, subdivisions (b) and (j), the petition alleged: D.G. was born with a positive

toxicology screen for methamphetamine and amphetamine as the result of unreasonable acts by mother; mother had a history of substance abuse and was a current user of methamphetamine and marijuana; and father had a history of substance abuse and was a current user of marijuana. The alleged substance abuse by mother and father endangered D.G.'s physical health and safety and placed him at risk of serious physical harm and damage.

At the September 3, 2015 detention hearing, the juvenile court found a prima facie case for detaining D.G. from mother and ordered him released to father. The court ordered mother to visit D.G. two to three times per week under DCFS supervision. She was ordered not to breastfeed the infant. The court ordered father not to monitor mother's visits unless he received DCFS approval. DCFS was ordered to refer father and mother for random drug testing. On November 5, 2015, the court continued the jurisdictional hearing and ordered father to continue drug testing.

DCFS continued investigating the case and learned that mother was arrested on April 9, 2015 for possession of a controlled substance, possession of unlawful paraphernalia, being under the influence of a controlled substance, and destroying or concealing evidence. Mother was arrested again on three subsequent occasions for missing court dates relating to her April arrest. Mother failed to comply with court-ordered drug testing, and was not enrolled in a drug rehabilitation program.

Father informed the dependency investigator that when he met mother, he did not know about her drug use. Since they did not live together, he was unaware that she was using methamphetamine during her pregnancy. When asked about mother's behavior, father stated she was "grouchy" but not

aggressive. Father noted that when mother came to his parents' home, she wanted to sleep for several hours and at other times was more active and different from her "normal self." Father stated that he would see lighters in her purse but did not believe she was using drugs. On the day mother went into labor, father said they were together and he did not observe her use any drugs. Father said his relationship with mother was "off and on," but believed they may stay together. When asked how he would protect D.G., father explained that if mother was under the influence of drugs, he would tell her to leave and would be protective of the child.

Father tested positive for marijuana on August 31, 2015. However he tested negative for drugs on September 29, October 6, October 21, November 2, and November 17, 2015. In an interview with a DCFS social worker on October 19, 2015, father stated he had a medical marijuana card that had expired one year before. He denied using any other illicit drugs. The timeline of father's marijuana use is unclear from the interview summary in the jurisdiction/disposition report. Father reportedly stated "the last time he smoked marijuana was in August (2015) before the birth of his child and had not used before that." But when asked about the frequency of his marijuana use, father stated: "I would smoke it after working once or twice a day." Father asserted he had not smoked marijuana since D.G. was placed in his care.

At the December 17, 2015 combined adjudication and dispositional hearing, the court informed the parties that its tentative order was to sustain the allegations against mother, but to dismiss the allegation against father. Both counsel for mother and father submitted on this tentative order. The court then

sustained the allegations against mother pursuant to section 300, subdivisions (b) and (j), finding that her drug use during pregnancy placed D.G. at risk of harm. The court dismissed the count against father on the ground that DCFS failed to meet its burden of showing that father's marijuana use placed D.G. at risk. Regarding disposition, DCFS counsel requested that the court retain jurisdiction to ensure father maintained his sobriety and adequately cared for D.G. Counsel for D.G. joined in this request, noting that father was a young, single parent and would benefit from referrals and assistance in obtaining required services for the child. Father's counsel requested that the court terminate jurisdiction over the matter.

The juvenile court declared D.G. a dependent of the court under section 300, subdivisions (b) and (j), ordered D.G. removed from mother's custody under section 361, subdivision (c), and placed him with father. The court noted that although the allegation against father was dismissed, it found a basis to maintain jurisdiction because "the period of sobriety for the father is very recent compared to the use that is outlined," and commented that D.G. was "of a very young and tender age."<sup>3</sup> The

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<sup>3</sup> With respect to father's marijuana use, the court also stated it "would adopt by reference the facts noted by [DCFS counsel and minor's counsel] with respect to the need . . . to maintain jurisdiction." Earlier in the hearing, DCFS counsel stated "father has a history of substance abuse and is a recent user of marijuana." DCFS counsel also asserted "father was abusing marijuana twice a day up until the time the child was born." Counsel for D.G. stated that although "father did indicate that he had used marijuana occasionally and sometimes he would use it after work," there was no basis to sustain the allegation

court granted father family maintenance services, and ordered that he continue random drug testing and attend Alcoholics Anonymous meetings if he maintains his relationship with mother. The court also ordered enhancement services for mother, including counseling and a drug rehabilitation program. A section 364 review hearing was set for June 16, 2016. The court indicated its intention to terminate jurisdiction on that date if father continued to test negative.

Father filed a timely notice of appeal.

## DISCUSSION

Father raises two arguments on appeal. First, he contends the juvenile court erred in sustaining the dependency petition under section 300 because he was fully capable of caring for D.G. Second, he argues the court's decision to continue supervision pursuant to section 361.2, subdivision (b)(3) was not supported by substantial evidence. We disagree and affirm the court's jurisdictional and dispositional orders for the reasons we next discuss.

### I

Father does not challenge the sufficiency of the evidence to support the juvenile court's jurisdictional findings based on mother's substance abuse. Rather, relying on *In re A.G.* (2013) 220 Cal.App.4th 675, he argues the court should have dismissed the petition based on his ability to assume custody of D.G. and

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against him in the petition because DCFS did not prove that father was a substance abuser.



adequately care for him without the court's supervision.<sup>4</sup> We conclude that *In re A.G.* is inapposite and accordingly affirm the court's jurisdictional findings.

*In re A.G.* involved an appeal by a mother after the juvenile court sustained a petition against her under section 300, subdivision (b) based on her mental health issues. (*In re A.G.*, *supra*, 220 Cal.App.4th at pp. 678-682.) Mother challenged the jurisdictional finding, arguing that because father was nonoffending, resided with the children, and always had been capable of caring for them, there was no need for juvenile court jurisdiction. (*Id.* at p. 677.) The appellate court agreed, concluding DCFS failed to show that mother's condition placed the children at risk: "Father has shown remarkable dedication to the minors and . . . he is able to protect them from any harm from Mother's mental illness. Father ensured that there was adult supervision, other than Mother, of the minors at all times. . . . Mother had been left alone with the minors on one

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<sup>4</sup> DCFS argues that father forfeited his challenge to the court's jurisdictional findings under the doctrine of invited error by submitting on the court's tentative order. However, the principle of invited error applies "where a party, for tactical reasons, persuades the trial court to follow a particular procedure." (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 772.) Here, father's submission on the court's tentative order did not invite the court to follow a particular procedure, nor did it constitute an admission or stipulation to the truth of the allegations. "Submission on a tentative ruling is neutral; it conveys neither agreement nor disagreement with the analysis." (*Mundy v. Lenc* (2012) 203 Cal.App.4th 1401, 1406.) The doctrine of invited error is therefore inapplicable and does not preclude review of father's appeal.

occasion, and no harm to them had been reported.” (*Id.* at p. 684.) As a result, jurisdiction was not proper, and the matter belonged in family court, “where it ultimately ended up after the juvenile court determined the minors were not at risk in Father’s custody and awarded Father custody and Mother monitored visitation.” (*Id.* at p. 686.)

There are significant distinctions between the facts presented in *In re A.G.*, *supra*, 220 Cal.App.4th 675 and the instant case. First, the court in *In re A.G.* found that the children always had been cared for by a responsible parent (the father). (*Id.* at pp. 684-686.) No such finding was made here. D.G. was born with positive toxicology for methamphetamine and amphetamine. Although father knew about mother’s past drug use, he was unable to ensure that she stayed sober during her pregnancy. Mother was arrested for being under the influence of a controlled substance in April 2015 and tested positive for drugs in May 2015. Unlike the father in *In re A.G.* who ensured that his children were protected from their mother, father was unable to protect D.G. from the harm caused by mother’s substance abuse. Second, because the children in *In re A.G.* had not been harmed previously, jurisdiction was based on an alleged substantial risk of future harm under section 300, subdivision (b). (*Id.* at p. 683.) Here, on the other hand, jurisdiction was found under subdivisions (b) and (j) based on the actual harm that D.G. suffered due to mother’s substance abuse.

For these reasons, we find *In re A.G.* inapposite. Father does not otherwise challenge the juvenile court’s jurisdictional findings based on mother’s substance abuse, which, we find, are supported by substantial evidence. (See, e.g., *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1217 [mother’s admitted use of

cocaine and infant's positive toxicology screen at birth for methamphetamine "unquestionably endanger[ed] the health and safety of her unborn child" and thus supported the court's jurisdictional findings[.] Because jurisdiction attaches to the child, not his or her parents, "it is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] . . . For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.]" (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492.) Accordingly, even though the allegation against father based on his marijuana use was dismissed, the unchallenged findings against mother are sufficient to establish jurisdiction over D.G.

## II

Father also contends the juvenile court erroneously retained jurisdiction and continued its supervision over the case under section 361.2, subdivision (b)(3) instead of terminating jurisdiction and awarding him full custody of the child. We disagree.

Section 361.2, subdivision (a) provides that "[w]hen a court orders removal of a child pursuant to Section 361, the court 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.”

Section 361.2, subdivision (b) provides: “If the court places the child with that parent it may do any of the following: [¶] (1) Order that the parent become legal and physical custodian of the child. . . . The court shall then terminate its jurisdiction over the child. . . . [¶] (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. . . . [¶] [or] (3) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent . . . from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents . . . .”

The juvenile court has broad discretion in deciding among the three options in section 361.2, subdivision (b). (See *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651-652; see also *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179.) The determination whether to terminate juvenile court jurisdiction is reviewed for abuse of discretion, and the factual question whether continued court supervision is necessary is reviewed for substantial evidence. (*In re A.J.* (2013) 214 Cal.App.4th 525, 535, fn. 7.)

“In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court’s findings. Evidence is “[s]ubstantial” if it is reasonable, credible and of solid value. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence.

Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. [Citation.]” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.)

Here, the juvenile court chose the third option under section 361.2, subdivision (b)(3)—to place D.G. in father's custody subject to the court's supervision, and to provide services to both parents.<sup>5</sup> Father argues that no substantial evidence supports the court's determination that continued supervision was necessary. Father maintains he was capable of caring for D.G., had a strong support network through the paternal

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<sup>5</sup> DCFS argues section 361.2 is inapplicable because “father was a custodial parent for all intents and purposes,” noting that D.G. was placed in father's custody at the hospital shortly after birth. DCFS maintains the relevant statute is section 362, which allows the court to declare the child a dependent and order family maintenance services without removing the child from his or her home. (§ 362, subds. (c)-(d).) Although the juvenile court did not expressly state which statute governed its orders, the court appears to have applied section 361.2. The court declared D.G. a dependent of the court, removed him from mother's custody under section 361, subdivision (c), and released him to father, “find[ing] that there is a basis for the court to maintain jurisdiction.” Even if we were to apply section 362 as DCFS suggests, our review would be governed by the same substantial evidence standard (see *In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180), and the outcome would not be different. We therefore conclude section 361.2 governed the combined adjudication dispositional hearing in this case.

grandparents, fully cooperated with DCFS, and successfully tested negative for drugs over a four-month period.

Notwithstanding the progress demonstrated by father, substantial evidence showed a need for continuing supervision. First, mother's repeated drug use during her pregnancy posed a serious risk to D.G.'s health. Although father stated that he was willing and able to protect D.G., he appeared unable to determine when mother was under the influence of drugs. Because father indicated he may continue his relationship with mother, the court reasonably found it necessary to continue supervision and order father to attend Alcoholics Anonymous so he could identify when mother was under the influence. Second, even though the court dismissed the substance abuse allegation against father, he admitted that he used to smoke marijuana on a daily basis and tested positive on August 31, 2015. The court accordingly ordered family maintenance services and drug testing so that father could demonstrate a longer period of sobriety as he cared for D.G. who was "of a very young and tender age." Under these circumstances, the court reasonably ordered family maintenance services to ensure father was able to properly care for D.G. (See *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006 [the juvenile court's authority in fashioning a disposition order is not limited to the issues raised by its jurisdictional findings, rather "[t]he 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"].) Finally, the court determined it was in the best interests of D.G. to maintain jurisdiction and provide mother with enhancement services—including counseling and drug rehabilitation—with the hope of ultimately preserving the family unit.

We find no reason to reverse the juvenile court's decision to retain jurisdiction and order services for D.G. and both parents. We are satisfied that the court's continued supervision was in the best interests of D.G. (See *In re B.T.* (2011) 193 Cal.App.4th 685, 692 ["The paramount concern of any dependency proceeding is the child's best interests"]; see also § 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."].)

#### **DISPOSITION**

The orders are affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.