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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re BENJAMIN G. et al., Persons  
Coming Under the Juvenile Court  
Law.

B271140

(Los Angeles County  
Super. Ct. No. CK82776)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los  
Angeles County, Marguerite Downing, Judge. Affirmed.

Megan Turkat-Schirn, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Keith Davis, Assistant County Counsel and Stephen D. Watson, Deputy County Counsel for Plaintiff and Respondent.

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## I. INTRODUCTION

The mother, M.M., appeals from the juvenile court's March 17, 2016 order made at the Welfare and Institutions Code section 364 review hearing.<sup>1</sup> She argues the juvenile court erred by denying her request for a home-of-parents order. In addition, the mother challenges the denial of her request to reside with the maternal aunt. We affirm the juvenile court's order at the section 364 hearing.

## II. PROCEDURAL HISTORY

On November 13, 2014, the Los Angeles County Department of Children and Family Services (the department) filed a section 300 petition on behalf of five children: 14-year-old Benjamin G.; 13-year-old Alejandro G.; 10-year-old Aaron G.; 9-year-old Marissa G.; and 5-year-old Joseph G. The petition alleged the mother has a history of illicit drug use and was a current user of methamphetamine. The children had been prior dependents of the juvenile court because of the mother's drug use. In April, May and July 2014, the mother was under the influence of drugs while caring for the children. Further, the petition alleged the home was filthy, cluttered, and unsanitary. At the November 13, 2014 detention hearing, the children were detained from the mother and released to the father.

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

On January 9, 2015, the department filed a first amended petition pursuant to section 300, subdivision (b). The first amended petition alleged the mother had a history of substance abuse and was a recent methamphetamine abuser. It further alleged, on prior occasions in 2014, the mother was under the influence of drugs while caring for the children.

At the January 20, 2015 jurisdiction and disposition hearing, the mother signed a waiver of her rights. The juvenile court sustained the allegations in count b-1 of the first amended petition. The juvenile court found the mother's history of substance abuse and abuse of methamphetamine periodically rendered her unable to provide care and supervision to the children and endangered their physical health and safety. The children were found dependents of the court under section 300, subdivision (b). The children were placed with the father under the department's supervision. The father was granted family maintenance services and ordered to ensure the children attend school and receive all necessary medical care. The mother was granted family enhancement services and monitored visits with the department having discretion to liberalize visitation. The mother was ordered to participate in: a full drug and alcohol program with aftercare; random or on demand drug and alcohol testing; a 12-step program with a court card and sponsor; mental health counseling; and individual counseling.

At the March 17, 2016 section 364 review hearing, the juvenile court denied the mother's request for a home-of-parents order. The juvenile court explained: "This was originally a November, 2014 petition. A case plan was entered in January, and your client enrolled in programming in October. This is the second time that the court has had to open a file, based on

mother's drug use. Her being clean for four months, when she has had years of a drug problem, is not compelling to this court. [¶] Although she may be in substantial compliance, the court is not – is still concerned that the reasons that brought these children [here], are still there. . . . [¶] This is a [section] 364 [hearing] and the court's view is that I have returned these children to a safe parent. Your client is getting enhancement services. [¶] So before I release them to her, I need to see that she completed her program and she has maintained her sobriety out of her program, given her track record. [¶] I am not taking anything from the fact that she has done very well, but she didn't get in a program until nine months after I issued the order, and then she has only been sober for five months, if that much. [¶] So at this point, the children will remain where they are. The department can continue—she has unmonitored days and overnights and weekends. So she can see her kids as much as the caretakers are willing to allow for, but I'm not going to make . . . [a home-of-parents] order. . . . I don't have a problem with her moving into the caretaker's home, but it's not . . . [a home-of-parents] order. So that this is an option.”

### III. FACTS

#### A. Detention Report

The November 13, 2014 detention report stated the mother and father have five children together. The family had prior referrals and a prior dependency case from 2010-2012. In the 2010 dependency case, the juvenile court sustained allegations against the mother for physical abuse of Marissa G., substance abuse, and creating a detrimental home environment by refusing to participate in community homeless services. The juvenile

court also sustained allegations of domestic abuse by the father against the mother.

On August 11, 2014, the department received a referral alleging the mother's home was filthy. The caller claimed the mother left Benjamin in charge of the younger siblings for an entire night. Children's social worker Nicole Ceaser contacted the mother, father and children regarding the referral.

The mother informed Ceaser she had been separated from the father for five years. The father picked up the children every other weekend. She admitted using methamphetamine in April, once in May and another time in July 2014. She relapsed in April 2014 after being "clean" for two years. The mother stated she relapsed because of the stress of having bed bugs in February and March 2014. She reported past domestic violence with the father and had been diagnosed with post-traumatic stress disorder and depression. The mother stated she was participating in parenting and drug education, therapy and domestic violence classes.

The children denied the mother left them alone for long periods of time. The mother would leave the children to go to the store but she was not gone for long. The children denied any physical abuse or drug consumption in the home. The children had poor attendance at school; and Benjamin, Alejandro, Aaron and Joseph were not doing well academically.

The father believed the mother was using drugs. He claimed the mother's behavior had changed over the last two months. The father stated the home was filthy when he picked up the children every other weekend. The children appeared dirty and did not attend school regularly. He stated there was prior domestic violence between him and the mother. The father

reported he completed a domestic violence program and there was no longer an issue of such violence.

#### B. Jurisdiction/Disposition Report

The January 9, 2015 jurisdiction and disposition report indicated the children were residing with their father. The children admitted the mother's home was dirty. They denied the mother or father used drugs or drank alcohol in their presence. The children wanted to go back home to live with their mother.

The father sought full custody of the children. The father lived in a one bedroom, one bathroom home in a residential neighborhood. He stated he was with the mother from 1999 to 2009. The father did not know the mother was using drugs until 2008 or 2009. The mother did not use drugs in the father's presence. The father indicated he offered to help clean the mother's home and has brought cleaning supplies to the home.

The mother stated she relapsed in May 2014 when she used methamphetamine once during the Memorial Day weekend. She used drugs twice during the July 4th weekend. The mother started using methamphetamine when she was 21 years old and had been using drugs on and off. The mother used methamphetamine in the morning and on the weekends when the children were at the father's home. On December 22, 2014, the mother reported she was discharged from the Shields for Families program and needed to get her own apartment.

#### C. Status Review Reports

The July 31, 2015 status review report indicated the three older children, Benjamin, Alejandro and Aaron, resided with the father. The two younger children, Marissa and Joseph, resided

with their paternal aunt. The father made arrangements for the two younger children to live with the paternal aunt in December 2015 because he did not have enough space for all the children.

The three older boys were having difficulty adjusting to living with the father and his rules. Benjamin, who completed eighth grade, did poorly in school and had a bad attitude. He did not get along with his father and fought with his siblings. On the weekends, Benjamin left the home to spend the night with friends without the father's permission. Benjamin admitted using marijuana and was enrolled in an outpatient drug program in July 2015.

Alejandro completed seventh grade and had been in a fight with another student at school. School personnel believed Alejandro was under the influence of marijuana and alcohol during the fight. The school officials responsible for student admissions wanted Alejandro to complete an outpatient drug program before he would be allowed to return. In July 2015, Alejandro enrolled in the same drug treatment program as Benjamin. Alejandro fought with his father and siblings, and had run away from home several times.

Both Benjamin and Alejandro wanted to be with their mother. Aaron, Marissa and Joseph had improved in school. Aaron and Marissa attended a YMCA dance class with the paternal aunt.

The mother had limited contact with the department. During the first seven months of 2015, the mother only had two visits with the children—January 17 and May 10, 2015.

On June 19, 2015, the mother informed the department she was homeless, but she provided the department with her boyfriend's address. On July 10, 2015, the mother went to a

department office to request housing referrals. At the office, the mother made phone calls to the referrals but she did not put her name on the waiting list because she felt frustrated. The mother admitted using drugs 10 days prior but said she no longer wanted to use drugs. The mother was provided bus tokens and given notice of the review hearing date.

The January 29, 2016 status report indicated the mother had enrolled in a drug treatment program on October 25, 2015. The mother was living in transitional housing provided by the drug treatment program. The mother's drug tests were negative and she consistently attended the drug treatment program. The mother was diagnosed with bipolar disorder and substance abuse issues. The mother began unmonitored eight-hour visits with the children as of December 18, 2015.

The father had difficulty with the three older boys' behavioral issues. On August 16, 2015, Alejandro jumped out of the father's moving vehicle while it was traveling 30 miles per hour. Alejandro had scratches and a "road rash," and was treated at the hospital. On November 4, 2015, the father took the three older boys to the Whittier Police Station because they attempted to physically fight him. The father reported the argument occurred because he took away Alejandro's phone as a form of discipline. Alejandro was "tipsy" during the fight. At the police station, an ice pick was discovered in Alejandro's bag. Later that month, Alejandro was expelled from his school for marijuana use.

On November 17, 2015, the parents agreed the three older boys would reside with the maternal aunt. The children continued to have a difficult time adjusting to living away from the mother and wanted to return to her.



The March 15, 2016 interim review report stated the mother participated in her drug treatment program and had 31 drug tests all with negative results. The mother's counselor recommended the mother complete the year-long outpatient program. The mother was only in partial compliance with the juvenile court's orders because she had not enrolled in a 12-step program.

The mother began unmonitored weekend visits with the children on February 12, 2016. The children enjoyed the visits and wanted to live with the mother. The mother proposed she and the children reside with the maternal aunt until the mother secured housing. The mother suggested Aaron and Joseph would sleep on a bunk bed and Benjamin and Alejandro would sleep on a queen-size sofa bed in the living room. The mother, Marissa and the maternal aunt would sleep in the bedroom. The mother's alternative was to obtain motel vouchers through her drug treatment program to stay at a motel until she secured Section 8 housing. The father did not want the youngest children to live with the mother because of her boyfriend. He believed the children would not be safe once the mother's boyfriend was released from jail.

#### D. Testimony at Section 364 Hearing

At the March 17, 2016 section 364 review hearing, the mother offered stipulated testimony that she was attending 12-Step meetings with a sponsor. The mother had ended her relationship with her boyfriend so that it would not interfere with her efforts to reunify with the children. The mother represented that, if the juvenile court order placed the children with the parents, the mother would reside with the maternal aunt, who

was already caring for three of the children. The mother requested a home-of-parents order. The mother contended she was in substantial compliance with the case plan and that she had 35 negative drug tests while in the treatment program. She further argued the children should be placed with her because the unmonitored overnight visits had gone well.

#### IV. DISCUSSION

Section 364, subdivision (c) states: “After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of the evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn. Failure of the parent or guardian to participate regularly in any court ordered treatment program shall constitute prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary.” At the section 364 hearing, the issue before the court is “whether continued supervision is necessary.” (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 304; *In re N.S.* (2002) 97 Cal.App.4th 167, 172.)

We review the juvenile court’s orders made pursuant to section 364 for substantial evidence. (*In re J.F.* (2014) 228 Cal.App.4th 202, 209; *In re N.S., supra*, 97 Cal.App.4th 167, 172.) Substantial evidence is relevant evidence which adequately supports a conclusion. (*In re R.C.* (2012) 210 Cal.App.4th 930,

941; *In re E.B.* (2010) 184 Cal.App.4th 568, 575.) It is evidence which is reasonable in nature, credible, and of solid value. (*Ibid.*) We draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court and adhere to the principle that issues of fact, weight and credibility are the provinces of the juvenile court. (*In re J.F.*, *supra*, 228 Cal.App.4th at p. 209; *In re R.C.*, *supra*, 210 Cal.App.4th at p. 941; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

The mother challenges the juvenile court's denial of her request for an order releasing the children to her custody. She argues the children fared better with her than with the father, who had a troubled relationship with Benjamin and Alejandro. The mother asserts the conditions that led to the children's initial detention no longer existed and that she fully complied with court orders. We disagree.

Substantial evidence supports the finding that "conditions still exist[ed] which would justify initial assumption of jurisdiction under Section 300, or that those conditions [were] likely to exist if supervision [was] withdrawn." (§364, subd. (c).) The mother had a history of methamphetamine use which led in part to a 2010 dependency case. The current case began in August 2014 after the mother relapsed and used drugs three times—in April, May and July 2014. At the time, the mother was in a drug treatment program. But the mother was discharged from the program in October 2014 after failing to participate in the program and not abiding by its housing rules.

At the January 20, 2015 jurisdiction and disposition hearing, the mother was ordered to participate in: a full drug and alcohol program with aftercare; random or on demand drug and alcohol testing; a 12-step program with a court card and

sponsor; mental health counseling; and individual counseling. However, the mother did not enroll in a drug treatment program until October 25, 2015, nine months after the dispositional orders were issued.

At the time of the March 17, 2016 section 364 hearing, the mother had been in the year-long drug treatment program for only five months. Although the mother offered stipulated testimony that she was attending a 12-step program with a sponsor, her claim had not been verified by the department and she had not provided any documentation of her participation in the 12-step program.<sup>2</sup>

The mother argues her history of drug abuse alone is insufficient evidence to support the juvenile court's denial of a home-of-parent order, relying on *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 727 (*Rebecca C.*). But *Rebecca C.* is distinguishable from the present case. In *Rebecca C.*, our colleagues in Division Eight reversed the juvenile court's jurisdictional findings and order made pursuant to section 300, subdivision (b). (*Rebecca C.*, *Supra*, 228 Cal.App.4th at p. 728.) The Court of Appeal found insufficient evidence to support a finding that the mother's substance abuse endangered or caused a risk of harm to her daughter. (*Id.* at p. 727.)

Unlike in *Rebecca C.*, the mother has not challenged the jurisdictional findings that her use of methamphetamine endangered the children's physical health and safety and placed

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<sup>2</sup>In the department's Interim Review Report, signed March 3, 2016, it is indicated that the mother had not enrolled in the 12-step program. If the mother was in fact enrolled as of the March 16, 2016 hearing, it appears she had not spent any appreciable time in the program.

the children at risk of physical harm. Rather, the mother is challenging an order made at the section 364 hearing. Under section 364, the mother's failure to participate in the 12-step program (at least as of the date the department's interim report was signed), was prima facie evidence that the conditions which justified the initial assumption of jurisdiction existed. In any event, as stated above, there was plenty of other evidence (the history of drug use and relapse, substantial delays prior to entry of drug programs, discharge from the drug program for failing to abide by rules), that justified continued supervision and the denial of the mother's request for a home-of-parent order.

Furthermore, there is no merit to the mother's assertion that the juvenile court denied her request to reside with the maternal aunt. To the contrary, the juvenile court allowed the mother the option of living with the maternal aunt. The juvenile court stated: "I don't have a problem with her moving into the caretaker's home, but it's not an [home-of-parents] order. So that this is an option."

V. DISPOSITION

We affirm the findings and order made at the March 17, 2016 section 364 hearing.

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KUMAR, J.\*

We concur:

TURNER, P. J.

KRIEGLER, J.

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