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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re Nathaniel B., et al., Persons Coming Under the Juvenile Court Law.	B294787
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. SANTIAGO B., Defendant and Appellant.	(Los Angeles County Super. Ct. No. 17CCJP01355A-B)

APPEAL from orders of the Superior Court of Los Angeles County, Danette J. Gomez, Judge. Affirmed.

Law Office of Robert McLaughlin and Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Santiago B. (father) appeals from the juvenile court's order terminating dependency jurisdiction over his sons, Nathaniel B. (born in October 2011) and Sebastian B. (born in November 2012). Father contends that the order was improperly issued under Welfare and Institutions Code section 364, which applies when a court asserts jurisdiction over a child not removed from the physical custody of his or her parent, rather than under Welfare and Institutions Code sections 361.2 and 366.21, which govern the placement of a child with a previously noncustodial parent.[1] Respondent Los Angeles County Department of Children and Family Services (DCFS) concedes the error, but maintains it was harmless. Father also appeals the court's exit order awarding sole physical custody to the children's mother, Sylvia S. (mother), and shared legal custody and monitored visitation to father. We conclude father suffered no prejudice from the court's error, and find no abuse of discretion in the court's exit order. Thus, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Father's Previous Appeal

This is father's second appeal. In February 2019, we affirmed the juvenile court's dispositional order removing the children from father's custody and ordering father to participate in sexual abuse counseling. (See *In re Nathaniel B.* (Feb. 21,

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[1] Further unspecified statutory references are to the Welfare and Institutions Code.

2019, B289790 [nonpub. opn.]).)[2] We quote portions of the opinion that are pertinent to this appeal:[3]

"Prior to the dependency proceedings at issue in this appeal, Nathaniel and Sebastian lived with father, father's wife Juana L., Juana's 12-year-old daughter Destinie S., and father and Juana's infant son Rafael B. Nathaniel and Sebastian had regular overnight visits with their mother, Sylvia S. (mother).

"In May 2017, five-year-old Nathaniel told school personnel that father had hit him in the face with a closed fist. [DCFS] spoke to father and Juana, who admitted that father spanked the boys with an open hand, but denied he ever used a fist or left marks or bruises. DCFS counseled the parents about appropriate discipline and closed the referral as unfounded.

"In October 2017, Destinie told a friend that father had touched her inappropriately, and she subsequently told a deputy sheriff that father had touched her breasts and vagina approximately five times, most recently about two weeks earlier. Father was arrested.

"A children's social worker (CSW) interviewed Destinie, who said the sexual abuse began in mid-2016, shortly after father and Juana were married. She described one occasion when she, father, and her youngest brother were playing hide and seek; when father found Destinie, he placed his hand under her blouse and bra and touched her left breast and vagina. When Destinie moved away and told father to stop, he apologized and told

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[2] We take judicial notice of our unpublished opinions. (Evid. Code, §§ 459, subd. (a), 452, subd. (d).)

[3] Section headings in the unpublished opinion have been omitted.

Destinie not to tell anyone. Destinie had recently told her mother about the abuse because she wanted it to stop. Juana immediately confronted father, but when father denied the abuse and father and Juana began arguing, Destinie told Juana she had lied.

"On October 26, 2017, DCFS filed a juvenile dependency petition on behalf of Nathaniel and Sebastian, alleging that father's sexual abuse of Destinie placed the boys at risk of harm. The juvenile court found a prima facie case for detaining Nathaniel and Sebastian from father, and ordered the children released to their mother. However, because mother did not have secure housing, it was agreed that they would continue to live with Juana, with father receiving monitored visits three times per week.

"In November 2017, Nathaniel and Sebastian separately reported that when they misbehaved, father hit them with a belt, and Juana hit them with a hand, a belt, or a chancla (sandal). Nathaniel said father last hit him ' "a few weeks ago," ' and that the belt sometimes left red marks. Nathaniel and Sebastian said father and Juana also hit Destinie. Father denied that he or Juana physically disciplined the children. He said he used to spank them with an open hand, but he had not done so in more than a year. He also denied sexually abusing Destinie, calling her a ' "fibber." '

[¶] . . . [¶]

"Mother reported that she had seen bruises on the children's shoulders and backs, and she knew Sebastian had once suffered a split lip after father hit him in the face. The children had often told her that father and Juana disciplined them physically, including by hitting them with shoes, most recently

about a month earlier. Mother had not reported the abuse because she did not believe DCFS would do anything about it and did not want the children to get in more trouble. At the end of visits, Nathaniel would tell mother he did not want to go back to father's home, but mother had continued to allow the children to live with father because she did not have stable housing.

[¶] . . . [¶]

"DCFS filed the operative third amended petition on January 26, 2018. It alleged jurisdiction over Nathaniel and Sebastian pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), (d), and (g), as follows:

(1) Father physically abused Nathaniel and Sebastian by striking them with a belt, placing them at risk of physical and emotional harm, and mother failed to protect the children from father's physical abuse (a-1, b-2).

(2) Juana physically abused Nathaniel and Sebastian by striking them with a belt and shoe, placing them at risk of physical and emotional harm, and mother and father failed to protect the children from Juana's physical abuse (a-2, b-3).

(3) Father sexually abused Destinie, placing Nathaniel and Sebastian at risk of harm (b-1, d-1).

(4) Mother has failed to provide the children with the necessities of life and is not able to secure appropriate housing for the children (b-4, g-1).

"On January 30, 2018, DCFS filed a section 385 request asking the court to remove the children from mother's custody because the children could no longer live with Juana, and mother did not have housing. The following day, however, DCFS advised the court that mother was living with the maternal grandmother;

the court therefore denied the section 385 request and ordered the children placed with mother in maternal grandmother's home.

"Following a contested hearing on March 19 and 20, 2018, the juvenile court sustained the physical abuse allegations (a-1, a-2, b-2, b-3), but dismissed the allegations of sexual abuse (b-1, d-1) and failure to support (b-4, g-1). The court explained that there was substantial credible evidence that Nathaniel and Sebastian had been physically abused by both father and Juana; and although Destinie had not credibly recanted her sexual abuse allegation, the court found no evidence that Nathaniel and Sebastian were at risk of sexual abuse by father.

"As to disposition, the court removed the children from father and placed them with mother under DCFS supervision. It further ordered that mother be provided family preservation services and participate in a parenting class; and that father have regular monitored visits with the children and participate in individual and sexual abuse counseling." (*In re Nathaniel B.*, *supra*, B289790.)

Father appealed the juvenile court's March 20, 2018 dispositional order. In our February 21, 2019 opinion, we affirmed, concluding that the trial court had not abused its discretion by (1) ordering the children removed from father's physical custody, and (2) requiring him to participate in sexual abuse counseling. We explained as follows:

"The record in the present case contains substantial evidence that Nathaniel and Sebastian could not safely remain in father's care. As we have said, Nathaniel and Sebastian, who were six and five years old, reported that when they misbehaved, father and Juana regularly hit them with objects, leaving red

marks on the children's bodies. Destinie confirmed the boys' reports, telling DCFS that father and Juana hit her, Nathaniel, and Sebastian with a hand, a shoe, or a belt when the children did not listen. Mother made similar statements, saying that the children reported that father and Juana hit them with their hands and shoes. Hitting Nathaniel and Sebastian forcefully with objects—even if done with a genuinely disciplinary purpose—was excessive in view of their young ages, and it placed the children at risk of harm.

[¶] . . . [¶]

"The record before the juvenile court included the report of forensic evaluator Yanel Melchor, LCSW, who noted that she had 'significant concerns' about Destinie's recantation. She noted two significant factors. First, Destinie's initial reports of sexual abuse were detailed and consistent with one another, and Melchor believed that the reasons Destinie gave for falsely reporting sexual abuse were not persuasive. Second, Melchor noted that the scientific literature suggests the rates of false reports of sexual abuse are low, and rates of recantation are high, particularly when the abuser is a parent figure, the non-offending caregiver is unsupportive or disbelieving, and the child remains in the home with the non-offending caregiver. In the present case, Melchor said, father was a parental figure, Juana did not believe Destinie's report, and Destinie remained in Juana's home, and thus Destinie's recantation was not surprising. Melchor's report, thus, was substantial evidence that father sexually abused Destinie." (*In re Nathaniel B.*, *supra*, B289790.)

II. Six-Month Status Report

In September 2018, DCFS prepared a Status Review Report for the section 364 review hearing. The children

continued to reside with mother in the maternal grandmother's home. They were observed to be clean, healthy, and well-groomed. Mother was in "full compliance" with the court's orders, but father had "minimal contact" with the children due to his work schedule in the evenings and difficulty finding an appropriate monitor.

Although DCFS had no immediate concerns regarding Nathaniel, who attended therapy once a week, Sebastian had a difficult time adjusting to his new home. On June 14, 2018, a psychiatric response team was called because Sebastian, while holding a piece of wood behind mother, had threatened, " 'I am going to stab you with this. I want you to be dead.' " He was also "hitting, biting, spitting, and using bad language." Because he was deemed to be a danger to himself and others, Sebastian was hospitalized for a week. He was diagnosed with Disruptive Mood Dysregulation Disorder and Disruptive Behavior Disorder, and prescribed medication. Sebastian qualified for intensive mental health services, and in July 2018, he enrolled in wraparound services with a team consisting of five specialists.[4]

In September 2018, Sebastian's therapist reported that Sebastian was doing well in therapy but still adjusting to living

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[4] The "wraparound services" program serves "children and youth with high level mental health and/or urgent mental health needs." DCFS contracts with wraparound service providers to deliver "coordinated, highly individualized" services to address the child's needs and achieve positive outcomes. (*DCFS Child Welfare Policy Website: The Wraparound Services Program* (July 1, 2014) Los Angeles County Department of Children and Family Services <http://policy.dcfs.lacounty.gov/content/Wraparound_Approach.htm> [as of Nov. 15, 2019], as archived at <https://perma.cc/3W6M-R82K>; § 18251, subd. (d).)

with mother after not having had consistent contact with her prior to the DCFS case. The therapist noted there was " 'no attachment between mom and Sebastian.' " A specialist was working with mother and Sebastian to help them form an attachment, and to help mother handle Sebastian's " 'attention seeking' " negative behaviors.

In June, mother had enrolled in a 20-week parenting course due to be completed in November. She found it comforting to be with other parents who were going through similar experiences. They discussed the importance of providing a safe and structured home environment and age-appropriate methods of discipline. Mother stated that wraparound services had been overwhelming at first because so many people were involved, but the team had been a "great support" to her and Sebastian. Mother's priority was " 'keeping my kids safe, having a home for them, and making sure they heal.' "

DCFS noted that "both [children] reported that they are happy and like living with their mother." Furthermore, the report explained: "Although Sebastian does acknowledge that he hits his mother and 'says mean things to her' he reports that he does want to continue to live with her and he says these things when 'she is mean to me like telling me "no" and telling me I have to clean my toys up.' " It appeared Sebastian was having a hard time "adjusting to structure and boundaries put in place by mother."

Finding permanent housing was a continued stressor for mother. While the family still lived in the maternal grandmother's one-bedroom apartment, the landlord complained and threatened to evict them. Sebastian's wraparound services were held in local parks, libraries, and McDonald's restaurants,

and mother tried to keep the children out as much as she could. Mother was linked to various housing resources and received motel vouchers and referrals through DCFS. Her long-term goal was to find affordable and stable housing in Long Beach so the children could remain in their school and with their pediatrician. Mother believed a major obstacle was that she was not a citizen and could not rent an apartment in her own name. While she had friends willing to rent a place for her, they were reluctant to have DCFS involvement and supervision. When asked by the CSW what her plan would be in a "worst case scenario," mother answered, " 'My number one choice would be to ask a friend to allow me and the kids to stay until I get my own place. Number 2 would be a shelter.' "

At the time of the September 2018 report, father had not submitted any evidence that proved his enrollment in sexual abuse counseling and individual counseling, which had been ordered by the court in March 2018. In August, he sought DCFS assistance in finding sexual abuse counseling providers, and received five referrals. In September, he failed to appear for his monthly meeting with the CSW after confirming his attendance that morning.

Although father had been granted monitored visitation a minimum of three times per week, his visitation during the review period was sporadic, and he had trouble finding an appropriate monitor. In June, father's designated monitor, a cousin, was determined not to be appropriate due to his "lackadaisical" monitoring. Father stated he knew no one who was willing to submit to Live Scan fingerprinting to serve as a monitor. DCFS arranged for monitored visits at the DCFS office, but only one or two visits occurred before the children started

school and required a new visitation schedule. Father was affectionate and appropriate with the children, who were visibly happy in his presence. Because Nathaniel was in an afterschool program, it was initially agreed that father would visit with Sebastian at a designated location in Long Beach. However, father requested a last-minute change of location due to his concerns about the safety of the neighborhood. At the time of the report, father had canceled the visitation arrangement until a new location could be secured.

DCFS concluded the children were at "moderate" risk of future abuse and neglect. The report noted that mother's housing status caused her anxiety, but she remained on waitlists for housing placement, and understood the importance of maintaining communication with her case manager. Mother was also "vocal about advocating for her children's mental health needs and keeping them engaged and attending their therapy appointments." She often said she wanted her children " 'to heal from all this' " and " 'do well in school to have a better life one day.' " Mother wanted her case closed but also wanted the children to remain in therapy. She was informed by the wraparound coordinator that if the case closed, Sebastian would be linked to other therapy providers. DCFS recommended that jurisdiction be terminated, mother be granted full physical and joint legal custody, and father be granted joint legal custody and monitored visitation.

III. Last Minute Information

Two last minute information reports filed in October 2018 provided an update on father's progress with his case plan. Father had enrolled and completed a 10-week parenting program. He had also enrolled in sexual abuse counseling for

perpetrators on September 29. Father's visits with the children remained inconsistent and father had not yet secured an appropriate monitor. During a visit with Sebastian in October, father was affectionate and playful, telling Sebastian he loved him. After the visit, Sebastian said he missed his father and wanted to see him more often. Father maintained he had no family or close friend who could monitor his visits, and DCFS referred him to a website for professional monitors.

A September 2018 progress letter from Sebastian's therapist indicated that Sebastian consistently attended weekly therapy sessions, and mother was "supportive of Sebastian's treatment and engages in collateral sessions as needed." Sebastian was "actively working" on "decreasing his poor communication (i.e. crying, screaming, yelling) from 5x a day to 2x a day and decreasing his aggressive behaviors (i.e. hitting, fighting, stabbing, etc.) from 5x a day to 2x a day."

In light of father's "partial compliance and sporadic visits with the children," DCFS maintained its recommendation that jurisdiction be terminated, mother be granted full physical and joint legal custody, and father be granted joint legal custody and monitored visitation.

IV. Section 364 Hearing

At the section 364 judicial review hearing in October 2018, father's counsel indicated father was not in agreement with DCFS's recommendation. Counsel argued that father had been the primary caretaker and custodial parent, had completed parenting classes, and had visited consistently until his monitor was no longer approved in June. Counsel acknowledged father had not visited consistently in the last few months, but explained this was due to problems finding a suitable monitor. Counsel

argued it was in the children's best interest that father have unmonitored visits and joint custody. Mother's counsel and the children's counsel agreed with DCFS's recommendation.

The court observed that father had not completed his case plan and expressed "real concerns," noting that father had only recently completed parenting classes and enrolled in sexual abuse counseling ordered by the court in March 2018. The court also expressed concerns due to father's sporadic visits. The court found "that the conditions which would justify the initial assumption of jurisdiction under [section] 300 no longer exist and are not likely to exist if supervision's withdrawn. Continued supervision of the children is no longer necessary, and jurisdiction of the court is terminated." The court ordered sole physical custody to mother, joint legal custody to both parents, and monitored visitation to father three times a week.

The court signed the final custody order on October 26, 2018 and terminated its jurisdiction. Father timely appealed.

DISCUSSION

Father challenges the juvenile court's order terminating dependency jurisdiction, and its exit order awarding sole physical custody to mother and monitored visitation to father.

I. We Decline to Apply the Forfeiture Doctrine.

Father appeals the juvenile court's order terminating dependency jurisdiction, arguing that the court applied the incorrect legal standard by holding a review hearing pursuant to section 364, rather than sections 361.2 and 366.21. DCFS acknowledges that "[c]ase law supports father's claim" of error, but argues that father forfeited the issue by not raising an objection in the trial court. Father concedes that his trial counsel failed to raise a specific objection in the trial court.

"A party forfeits a claim of error on appeal when he or she fails to raise the objection in the trial court; however, ' "application of the forfeiture rule is not automatic." ' [Citation.]" (*In re D.H.* (2017) 14 Cal.App.5th 719, 728.) An issue may be raised on appeal if " 'it raises only a question of law and can be decided based on undisputed facts.' [Citations.] When the facts are not disputed, the effect or legal significance of those facts is a question of law," which "is not automatically subject to the doctrine of forfeiture." (*In re V.F.* (2007) 157 Cal.App.4th 962, 968; *In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1313—1314.) Courts have declined to apply the forfeiture doctrine where a parent alleges the trial court applied the incorrect legal standard in a dependency proceeding, and there is "no dispute about the standards and procedures that were employed by the court." (*In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1501; *In re V.F.*, at p. 968.)

Here, DCFS concedes that the court's six-month review hearing was conducted under the incorrect statutory framework. Thus, although father failed to raise a specific objection in the juvenile court, we decline to apply the forfeiture doctrine and will exercise our discretion to review the legal issue presented.

II. Standard of Review

We review father's claim of error and applicable legal principles de novo. (*In re V.F.*, *supra*, 157 Cal.App.4th at p. 968; *In re D.H., supra,* 14 Cal.App.5th at p. 728.) We review the court's factual findings for substantial evidence (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1134), and apply a deferential abuse of discretion standard to the court's exercise of discretion in terminating jurisdiction and issuing custody and visitation orders. (*In re V.F.*, at p. 968; see *Bridget A. v. Superior Court*

(2007) 148 Cal.App.4th 285, 300—301 [termination of jurisdiction and custody order]; *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465 [visitation].) Because appellate courts accord broad deference to the juvenile court's exercise of its discretion, we will disturb its decision "only ' "if we find that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did." [Citations.]' " (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

III. No Prejudicial Error in Termination of Jurisdiction

Father appeals the juvenile court's order terminating dependency jurisdiction, arguing that the court applied the incorrect legal standard in holding a section 364 hearing, and under the correct standard, substantial evidence did not support the court's termination of jurisdiction because continued supervision of the children was necessary. DCFS contends that the error was harmless, and substantial evidence supported the court's conclusion.

A. Sections 364, 361.2 and 366.21

We first examine the relationship between sections 364, 361.2, and 366.21. The juvenile court held a six-month review hearing pursuant to section 364, which governs hearings "in which an order is made placing a child under the supervision of the juvenile court pursuant to Section 300 and in which the child is not removed from the physical custody of his or her parent or guardian . . . ." (§ 364, subd. (a).) Section 364 provides that after hearing evidence presented by the social worker, parents, 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 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." (§ 364, subd. (c).)

Both parties agree that the six-month review hearing should have been held pursuant to sections 361.2 and 366.21 because the children were removed from father and placed with mother, a previously noncustodial parent. Section 361.2 provides that a child removed from a parent may be placed with a noncustodial parent who desires to assume custody of the child. (§ 361.2, subd. (a).) The court may order that the previously noncustodial parent have sole physical and legal custody of the child, and provide reasonable visitation to the parent from whom the child was removed. (§ 361.2, subd. (b)(1).) The court may also order that the previously noncustodial parent "assume custody subject to the supervision of the juvenile court," and that "services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child." (§ 361.2, subd. (b)(3).) Section 366.21, subdivision (e)(6) directs that where a child is placed with a previously noncustodial parent under section 361.2, "the court shall determine whether supervision is still necessary" and may terminate supervision and transfer permanent custody to that parent, as provided in section 361.2, subdivision (b)(1).

Here, the court removed the children from father and placed them with mother, a previously noncustodial parent, subject to the court's supervision. (See § 361.2, subd. (a).) The court provided services to both parents and determined at the review hearing that mother should be granted sole physical custody, terminating its jurisdiction. (See § 361.2, subds. (b)(1),

(b)(3); § 366.21, subd. (e)(6).) Thus, the court erred in holding a section 364 review hearing, and the question is whether the error was prejudicial.

B. The Error Was Harmless.

Father contends that because, under section 364, the juvenile court considers whether "the conditions still exist which would justify initial assumption of jurisdiction under Section 300" and, under section 366.21, it considers "whether continued supervision is necessary," the court committed reversible error by applying the incorrect legal standard. Father argues he was prejudiced because under the correct standard in section 366.21, substantial evidence did not support the court's conclusion that continued supervision was no longer necessary.

As a general matter, an error must be prejudicial for reversal to be appropriate. (*In re Celine R.* (2003) 31 Cal.4th 45, 60.) In other words, father must demonstrate that it is "reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*People v. Watson* (1956) 46 Cal.2d 818, 836.) " ' "The fact that the action of the court may have been based upon an erroneous theory of the case, or upon an improper or unsound course of reasoning, cannot determine the question of its propriety. . . . [A] ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion." [Citation.]' [Citation.]" (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1494—1495, disapproved on other grounds by *In re Chantal S.* (1996) 13 Cal.4th 196.)

As an initial matter, we note that during the section 364 hearing, the juvenile court made findings that comported with the standards set forth in section 364 and sections 361.2 and 366.21. As reflected in the reporter's transcript, the court explicitly found that (1) "the conditions which would justify the initial assumption of jurisdiction under [section] 300 no longer exist," and (2) "[c]ontinued supervision of the children is no longer necessary." The language of section 364, in fact, encompasses both standards by requiring that a court "determine whether continued supervision is necessary" and terminate its jurisdiction unless "conditions still exist which would justify initial assumption of jurisdiction." (§ 364, subd. (c).) The juvenile court expressed its judgment that because the children were no longer with father, and well-cared for by mother, continued supervision was no longer necessary and the conditions which justified the initial assumption of jurisdiction no longer existed. Father does not dispute that the court issued a finding that continued supervision was no longer necessary. Nor has father established that the factors to be considered when terminating jurisdiction under section 364 are different from the factors to be considered under section 366.21. (See *In re Maya L.* (2014) 232 Cal.App.4th 81, 99 ["In both instances, the court must 'determine whether continued supervision is necessary' " and the standards are "similar"].) For these reasons, we are not persuaded that the court would have ruled differently absent the error.

The cases father relies on reinforce the conclusion that a court's misapplication of section 364 in terminating jurisdiction is deemed harmless when the evidence supports findings consistent with sections 361.2 and 366.21. (See *In re Janee W.* (2006) 140

Cal.App.4th 1444, 1452 ["Even though the dependency court's findings were phrased in the language of section 364, not section 361.2, if the evidence on the appropriate issue was undisputed and supports a finding that there is no need for continued supervision, we may affirm the order terminating jurisdiction."]; *In re Sarah M.*, *supra*, 233 Cal.App.3d at pp. 1489, 1498, 1500 [although court "should have determined whether supervision was still necessary" under section 361.2, no prejudicial error because child "was no longer at risk" and substantial evidence supported that conclusion]; *In re Maya L.*, *supra*, 232 Cal.App.4th at p. 101 ["Because the court's orders demonstrate it applied the standards set forth in section 366.21, subdivision (e) and 361.2, subdivision (b)(1), any error it may have committed by referencing section 364 was necessarily harmless."].)

In re Austin P. (2004) 118 Cal.App.4th 1124, relied on by father, is distinguishable. There, "substantial evidence showed a need for continuing supervision" under sections 361.2 and 366.21, including ongoing conflict between the parents which the agency felt the need to monitor, the child's relatively recent contact with the father (the previously noncustodial parent), and the child's need for "conjoint therapy with each parent, which would occur only if the matter remained open." (*In re Austin P.*, at p. 1134.) The child in *In re Austin P.* regularly cried and expressed a desire to be with his mother (the original custodial parent), who "had been making good progress with her reunification plan." (*Ibid.*)

In contrast, here, substantial evidence supported the court's conclusion that continued supervision was no longer necessary and termination of jurisdiction was appropriate. Unlike the child in *In re Austin P.*, both Sebastian and Nathaniel reported they were happy and liked living with mother, with

whom they had had overnight visits prior to the dependency proceedings. Despite Sebastian's hospitalization in June 2018 and initial problems adjusting to his new home, by September 2018 Sebastian was doing well in therapy and working to decrease his aggressive behaviors. Sebastian acknowledged that his violent tantrums were a reaction to mother's attempts to impose order and discipline, and he confirmed he wanted to continue living with mother following his hospitalization. Furthermore, mother was in "full compliance" with her case plan and had demonstrated she was capable of being a responsible parent. The children were observed to be healthy and well-groomed in her care. Mother was proactive in advocating for the children's mental health needs and actively engaged in Sebastian's therapy sessions, which would continue even after the court's termination of jurisdiction. Contrary to *In re Austin P.*, Sebastian's continued treatment and wellbeing were not threatened by the termination of jurisdiction.

Although mother had not secured appropriate housing, she consistently maintained that her priority was to provide a home for her children and ensure their safety. She was linked to housing resources, was working with a case manager, remained on housing waitlists, and had a concrete plan to stay with friends or at a shelter if necessary. In short, mother was doing what she could to provide a stable home for her children and care for their needs. Viewing all the evidence " ' "most favorably in support of the trial court's action," ' " as we are required to do, we cannot conclude that no reasonable court would have issued the same order. (See *In re Robert L.*, *supra*, 21 Cal.App.4th at p. 1067.) Because substantial evidence supported the court's conclusion that its supervision was no longer necessary, any error by the

court in misapplying section 364 when it terminated jurisdiction was harmless.

IV. No Abuse of Discretion in Court's Exit Order

Father contends that the juvenile court abused its discretion in granting exclusive physical custody of the children to mother and monitored visitation to father. We disagree.

"Under section 361.2, subdivision (b)(1), the court is authorized to enter what is commonly referred to as a family law or exit order transferring custody of the child to the parent with whom the child was placed and, if appropriate, grant visitation to the parent from whom the child was detained." (*In re Maya L.*, *supra*, 232 Cal.App.4th at p. 101 [citing *In re Ryan K.* (2012) 207 Cal.App.4th 591, 594, fn. 5 & 596].)

"When making a custody determination in any dependency case, the court's focus and primary consideration must always be the best interests of the child. [Citations.] Furthermore, the court is not restrained by 'any preferences or presumptions.' [Citation.] Thus, for example, a finding that neither parent poses any danger to the child does not mean that both are equally entitled to half custody, since joint physical custody may not be in the child's best interests for a variety of reasons. [Citation.]" (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.)

We see no abuse of discretion in the court's exit order, which was authorized by section 361.2, subdivision (b)(1). As explained above, mother demonstrated she was a responsible parent who was making efforts to provide a suitable home for the children. In contrast, father showed only "partial compliance" with his case plan even after six months, and his visits with the children in the months preceding the section 364 hearing had been "sporadic." (Cf. § 366.21, subd. (e)(1) [parent's failure to

"participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental"].) At the time of the review hearing, father was unprepared to assume custody over the children, as he had only recently enrolled in the sexual abuse counseling ordered by the court as part of its dispositional case plan. Father's previous dependency history provided a reasonable basis for the court to be concerned for the children's safety while in his care. In view of these facts, the court did not abuse its discretion in adopting the course of action authorized by section 361.2, subdivision (b)(1). Given father's inconsistent visits, his delay in securing an appropriate monitor, and slow progress in completing his mandated sexual abuse counseling, the court was justified in concluding that a joint custody order and unmonitored visitation would not currently be in the children's best interests.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.