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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re M.R., et al., Persons  
Coming Under the Juvenile  
Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KYLE R.,

Defendant and Appellant.

B277605 c/w B280402

(Los Angeles County  
Super. Ct. No. DK16695)

CONSOLIDATED APPEAL from a judgment and orders of  
the Superior Court of Los Angeles County, Philip Soto, Judge.  
Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Kim Nemoy, Principal Deputy  
County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

Father appeals the juvenile court's jurisdictional findings and dispositional order removing his then-eight-year-old daughter and then-three-year-old son from his custody and placing the children in foster care. Father argues that he posed no present threat of harm to the children, and that his drug abuse and domestic violence were too remote in time to support jurisdiction. Father contends the court erred in not placing the children with his suggested non-relative extended family member for placement. Father filed a separate appeal from an order issued at the six-month review hearing, arguing that the Department of Children and Family Services (DCFS) unjustifiably failed to evaluate his proposed caretaker for the children. We consolidated the two appeals and now affirm the juvenile court's orders.

### FACTS AND PROCEDURAL BACKGROUND<sup>1</sup>

#### ***1. Parents' History of Drug Use, Domestic Violence, and Prior DCFS Referrals***

Mother and father had a ten-year-long relationship, which ended in 2014 when mother left father due to his drug use. The parents have two children, a daughter born in 2007 (daughter) and a son (son) born in 2012. Both are involved in this dependency case. Mother also has a teenage daughter, Sophia, who has a different father and is not involved in the dependency proceedings. Several months before the section 300 petition was filed, Sophia stopped living with mother and moved in with the maternal grandmother.

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<sup>1</sup> Because this case involves two consolidated appeals and the family has a long history with DCFS, we necessarily provide significant factual detail in this section of the opinion.

The parents have a long history of DCFS referrals and criminal conduct. Father has convictions for entering a noncommercial dwelling in 2006, disturbing the peace in 2007, theft in 2007, driving under the influence three times in 2010 and 2011, violating probation in 2011, using a controlled substance in 2011, and possession of marijuana for sale in 2011.

In 2007, DCFS received a referral alleging general neglect by the parents. When the department investigated, mother admitted that she and father had used methamphetamine recently. Mother also reported that father had kicked multiple dents into her car while she was trying to leave their residence with Sophia. Mother stated that on another occasion, father bit mother's arm in anger and left a mark. DCFS implemented a safety plan for Sophia and closed the referral, concluding that the allegations of general neglect were substantiated against father.

In 2011, police arrested father for a DUI while daughter was in the car. Although charges were never filed, father appeared to be under the influence of drugs. DCFS again implemented a safety plan and closed the referral. Two months later, DCFS investigated another allegation of drug abuse by the parents. Both parents were arrested and mother admitted to being under the influence of heroin. The children were with the maternal grandmother during the arrests. DCFS closed the referral as inconclusive for general neglect. Several months later, DCFS investigated another referral alleging that mother fell asleep after using heroin while the children were in her care. Daughter allegedly climbed up to the stove and started a fire while mother was sleeping. No one was hurt. DCFS closed this referral as unfounded.

Drug use was commonplace during the parents' relationship. When father was on drugs, he committed acts of domestic violence against mother. Daughter recalled seeing her parents fight once in front of her. Mother also echoed that father once pushed and hit her in front of the children. Sophia also reported that father hit her when he was high.

Sophia reported that although she had never seen her parents take drugs, she had seen them high on many occasions. Daughter reported to DCFS that she had seen father on drugs when he lived with the family, and witnessed him sleep all day and then stay up all night when on drugs. Daughter also came home from school once to find the house torn apart and father lying on the floor. On another occasion, mother left son in father's care and father left the infant home alone.

In the spring of 2014, one month after mother left him, father returned home to Oregon and entered a drug rehabilitation program. He successfully completed it sometime thereafter. At the time of the jurisdiction and disposition hearing, father had been sober for more than a year and was employed for close to ten months at a treatment center where he completed his drug program and for several months at a sober living facility.<sup>2</sup> Father received an hourly salary and rent-free living quarters at the sober living facility in exchange for his work.

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<sup>2</sup> Father entered drug treatment around April 2014, a month or so after mother left him. Father completed the program by June 2015, at which time he moved into the sobriety house. It is unclear from the record when father returned to California from Oregon. During the dependency proceedings, it appears father was residing in Orange County.

Despite his apparent success in maintaining sobriety, father only saw the children four times in the two years prior to the filing of the petition. Father explained that he would send mother money when mother needed it, but she was hard to reach since she kept changing her phone number.

## **2. *Detention of the Children from Mother and Jurisdictional Allegations***

On April 21, 2016, law enforcement stopped mother while she was driving with daughter and son in the car. During the stop, police concluded that mother was under the influence of drugs and in possession of two syringes of methamphetamines. Police also discovered that mother was driving a stolen vehicle and had multiple stolen social security cards and checkbooks. Police arrested mother for identity theft and took the children into custody. Mother then told a DCFS social worker that she had injected methamphetamines earlier that day and she had relapsed due to feeling overwhelmed by her finances, lack of family support, and single parenting duties. Mother reported that she and the children were living at a sober living facility, but would not provide DCFS with the address. Both children were dirty but otherwise healthy when detained by police. It appeared that the family was homeless.

On April 26, 2016, the juvenile court detained the children and DCFS placed them in foster care. That same day, DCFS filed a Welfare and Institutions Code, section 300 petition. As amended, the petition alleged jurisdiction under subdivision (b)(1) based on mother's history of drug use and her driving the children while under the influence of methamphetamine, and under subdivisions (a) and (b)(1) based on father's 2011 violent altercations with mother in the presence of the children and

father's extensive history of drug use, specifically for being under the influence of drugs while caring for the children in 2011.<sup>3</sup>

### ***3. The Children's Placement, Parental Efforts and Visitation***

The maternal grandmother wanted custody of daughter and son, as she was already caring for their half-sibling Sophia. DCFS determined that maternal grandmother's home did not have enough space for the children and denied placement with her.

Father wanted custody of the children, but the sobriety home where father lived did not allow children to live with him. Also, daughter did not want to live with father because she feared that he would take her to the paternal grandmother's house. Daughter had previously stated to family that the paternal grandmother sexually abused her while bathing her. Daughter also told DCFS that the paternal grandmother had hurt her, and she did not want to see or talk to the paternal grandmother.

Father proposed having the children placed temporarily with a family friend, Jonnie, until he moved into his own home. Sophia voiced concerns that because Jonnie was the paternal grandmother's best friend, she would not protect daughter from her grandmother. Sophia, mother, and the maternal grandmother acknowledged father's progress and stability, and thought he would be able to care for the children, but felt concerned that he would not be able to protect the children from the paternal grandmother. Father did not believe daughter's allegations and the paternal grandmother denied the sexual abuse allegations, saying that mother brainwashed daughter into

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<sup>3</sup> All subsequent statutory references are to the Welfare and Institutions Code.

believing it. By the time of the jurisdiction and disposition hearing, DCFS had not evaluated Jonnie, the family friend, for placement.

Following detention, the children were placed together in a foster home. They visited with mother for two hours on Sundays at McDonalds, with the foster parents monitoring visitation. Father's visits were arranged around his work schedule. The couple of visits the children had with father caused daughter anxiety and son distress. Daughter began pulling her hair and biting her nails, and son acted aggressively following visits with father. DCFS recommended suspending father's visits until daughter received individual therapy for her anxiety.

Father willingly engaged in drug testing, and stated he would continue going to his drug rehabilitation meetings and had a sponsor. Mother made efforts to enroll in treatment.

#### **4. *Jurisdiction and Disposition Hearing***

On June 7, 2016, the juvenile court held the jurisdiction and disposition hearing. At the outset, mother waived her rights and pleaded no contest to the allegations against her. Based on mother's plea, the court found the B-1 and B-2 counts true against mother. As father disputed the allegations against him, the court accepted DCFS's detention report, jurisdiction disposition report with attachments, and last minute information for the court reports with attachments as evidence. Father introduced into evidence four strong letters of support from his two employers, a coworker, and a friend, describing his positive character traits and success in attaining and maintaining sobriety.

Father argued for dismissal of the counts against him. He asserted that he was sober and that his prior domestic violence

and drug abuse did not present a current risk of serious physical harm to the children. Father noted that even mother acknowledged in statements to DCFS that his prior violence was a product of drug abuse, which he contended was no longer a problem.

DCFS argued that father “at best can prove . . . that currently he started to clean up his act. Those letters prove nothing. Those people weren’t verified by any social workers. And at best, even if the court does believe them, again, it’s a fresh start for this non-custodial parent who hasn’t been a part of [the children’s lives].” The children’s attorney joined in DCFS’s arguments.

Based on the evidence received and mother’s no contest plea, the court sustained all jurisdictional allegations against both parents.

As to disposition, father argued that the court should release the children to his custody as he made arrangements for a family friend, Jonnie, to care for them. Father requested to call Jonnie to testify about the fitness of her home for placement. Father made an offer of proof that Jonnie would testify about her ability to protect the children from the paternal grandmother, who had reportedly sexually abused the daughter. Father offered that Jonnie would state she did not live in the same county as the paternal grandmother and would ensure that there was no contact with her. Father asserted that DCFS failed to investigate Jonnie’s home based on the statement from Sophia that Jonnie was the paternal grandmother’s best friend. Father offered Jonnie’s live testimony so that the court could evaluate her credibility in refuting this statement.



Over father's objection, the juvenile court denied the request to hear live testimony from Jonnie but received her statement by stipulation. The court explained it could not place the children with Jonnie, regardless of her testimony, as her home had yet to be inspected by social workers. Father's counsel argued that DCFS approval was not necessary, where the court releases the children to the home of parent and the family friend only takes temporary care of the children.

The court removed the children from parental custody. The court emphasized that even if there was not a current risk of serious physical harm to support section 300 jurisdiction against father, placing the children in father's custody would be emotionally detrimental to the children under section 361.2. The court commended father on his reformation efforts but admonished him that his work did not erase the damage his previous domestic violence and substance abuse had caused the family. The court ordered that there be no contact between the children and the paternal grandmother. The court ordered monitored visitation, random drug testing, and anger management/conflict resolution counseling for father. Father alone timely appealed from the jurisdictional and disposition orders.

### **5. *The Family's Progress***

In August 2016, DCFS placed son in the home of the maternal grandmother after the foster parents asked that he be removed due to his behavioral problems. Daughter remained in the foster home.

Daughter participated in therapy to decrease her depressive and anxious behaviors. Daughter's therapist attributed the negative feelings to daughter's interactions with

mother. Daughter was also affected by mother's failure to show for visitation and son's removal from the foster home. The foster family agency confirmed that both children exhibited negative behaviors after visits with mother. Even though son moved to the maternal grandmother's home, daughter remained adamant that she continue to live with the foster parents because she felt safe and secure in their home.

Mother enrolled in drug treatment. She appeared motivated to reunify, but had trouble complying with treatment and probation requirements. She reacted negatively when anyone confronted her about her behavior.

Father only visited the children twice, once in May and once in July 2016. The foster family agency reported in October 2016 that father had not had any contact with daughter. Although the foster family agency had documented phone calls between mother and daughter, no such call log existed for father. DCFS provided father referrals and left him messages asking about his progress in programs, but father seldom returned calls. In November, he stated he was enrolled in parenting classes and planned to enroll in counseling, but needed referrals for agencies in Orange County, where he resided. DCFS called father in December before the six-month hearing but he did not return the call.

In late November 2016, son was removed from the maternal grandmother's home because DCFS received a referral alleging that half-sibling Sophia was sexually abused by an aunt's boyfriend who lived in the grandmother's home. By the time of the six-month review hearing in December 2016, both daughter and son resided at different non-familial foster homes.

## **6. *Six-Month Review Hearing***

On December 12, 2016, the court held the six-month review hearing. Father did not attend. Father's counsel reminded the court that, at counsel's request, the court had ordered DCFS to assess Jonnie for placement six months ago. Counsel reported Jonnie had not been evaluated. Counsel renewed his request. In response, daughter's attorney said that daughter wished to remain in her current foster home and objected to Jonnie's assessment as a placement option.

The court found the parents in partial compliance with their case plans and ordered DCFS to provide further reunification services, a weekly visitation schedule, and all visits between mother and daughter in a therapeutic setting. The court ordered DCFS to make efforts to place the children in the same foster home. The court again ordered Jonnie, as well as a relative named Irma, to be assessed for placement. Though the reporter's transcript makes clear that the court ordered assessments of both homes, only Irma's name appears on the court's orders. The court continued the matter for a non-appearance progress report on January 12, 2017, at which time DCFS was to submit a supplemental report. Father timely appealed from this order as well.

## DISCUSSION

On appeal, father challenges (1) jurisdiction, (2) the court's decision to place the children in foster care, and (3) DCFS's failure to evaluate Jonnie for placement both prior to the jurisdiction/disposition hearing and during the six months that followed. We address his points in turn.

**1. *Jurisdiction Was Proper Based on Mother's Conduct; Substantial Evidence Supports the Disposition Order***

“Because the juvenile court assumes jurisdiction of the child, not the parents, jurisdiction may exist based on the conduct of one parent only. As a result, we need not consider jurisdictional findings based on the other parent's conduct.” (*In re A.R.* (2014) 228 Cal.App.4th 1146, 1150.) Ordinarily, when jurisdiction is properly based on one parent's conduct, we decline to consider whether it was also properly based on the other parent's conduct. (*Ibid.*)

Here, the juvenile court properly found jurisdiction over the children based on mother's drug use while caring for the children. Father does not challenge the court's jurisdictional findings as to mother. Since jurisdiction is properly based on mother's conduct, we need not analyze the court's jurisdictional findings as to father.

Father argues that we must consider the jurisdictional findings regarding his drug use and violence because these findings “produced the dispositional orders regarding counseling and drug testing.” We note that father does not challenge the court's dispositional orders regarding counseling and drug testing outside of this argument regarding his desire for us to consider jurisdictional findings.

Nonetheless, we conclude that the court did not abuse its discretion in ordering father to participate in drug and domestic violence programs. Under section 362, “[t]he juvenile court may direct any reasonable orders to the parents or guardians of the child who is the subject of any [dependency] proceedings . . . as the court deems necessary and proper to carry out this section,” including orders to participate in a counseling or education program.” (§ 362, subd. (d).) “[A] dispositional order may reach both parents, including a nonoffending parent [as long as it is] ‘reasonable’ and ‘designed to eliminate [the] conditions that led to the court’s’” jurisdictional finding. (*In re D.M.* (2015) 242 Cal.App.4th 634, 639, citing § 362, subd. (d).)

Our standard of review is limited. “The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion. [Citations.] The court’s determination in this regard will not be reversed absent a clear abuse of discretion.’ [Citation.]” (*In re Corrine W.* (2009) 45 Cal.4th 522, 532.)

Here, there was substantial evidence of father’s long history of drug abuse and domestic violence toward mother. Even though apparently father had not hit mother during their two-year separation, father had never received treatment for domestic violence and the violence had remained unaddressed. The court reasonably could have concluded that drug treatment was necessary, regardless of father’s recent sobriety, since the court had not supervised father’s previous treatment, and that additional treatment was necessary. Ongoing testing and treatment is supported by father’s decade-long drug history. Substantial evidence supported the court’s dispositional orders

and thus father is not prejudiced by our declination to review the court's jurisdictional findings as to him. (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839 [Where substantial evidence supports the order, there is no abuse of discretion.].)

**2.     *The Court Did Not Err in Not Placing the Children in Father's Custody***

Father asserts the court erred in removing the children from his custody. "Section 361.2 establishes the procedures a court must follow for placing a dependent child following removal from the custodial parent pursuant to section 361. [Citation.] When a court orders removal of a minor under section 361, the court first must determine whether there is a parent who wants to assume custody who was not residing with the minor at the time the events that brought the minor within the provisions of section 300 occurred." (*In re Z.K.* (2011) 201 Cal.App.4th 51, 70.) 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." (§ 361.2, subd. (a).)

The detriment finding must be based on clear and convincing evidence. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 700.) The juvenile court must "make a finding either in writing or on the record of the basis for its determination . . . ." (§ 361.2, subd. (c).) "We review the record in the light most favorable to the court's order to determine whether there is substantial evidence from which a reasonable trier of fact could find clear and convincing evidence . . . that the children would suffer such detriment." (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.)

Here, the court expressed concern regarding father's history of domestic violence and drug use and the danger created

by his possible relapse. The court further found that “Father has been out of the home and away from the children according to the children and the mother, [and] was a non-custodial parent. There’s a detriment finding being made by this court that even if those things [the drug abuse and domestic violence] aren’t a current risk, they are grounds for believing that he is a detriment to the children if returned. The children are so upset. From Exhibit No. 3, the [eight-year-old daughter] doesn’t even want to visit with the father. She’s so worried and nervous about what the father is going to do. She’s afraid that the father will take her and her sibling away from the mother and never return them and never let them see the mother again. This is a current risk of emotional detriment to . . . the children. . . And that’s ground under [section] 361.2 not to return to the father.”

We conclude that substantial evidence supported the court’s decision. Father had only seen the children four times in the preceding two years, had previously battered mother in front of them, and on one occasion been noticeably under the influence while caring for them. Evidence supported the court’s finding that placing the children in father’s care would likely be detrimental to their emotional wellbeing. The daughter suffered anxiety caused by her fear that the father might take custody when placement was still at issue. Following visitation with father, daughter began pulling her hair and biting her nails. Daughter asked the foster mother to monitor visits with father as she did not trust the maternal grandmother as a monitor. The foster mother noted that during visitation the children appeared very happy to see their older half-sibling, Sophia, but were uncomfortable around father and the maternal grandmother.

Son also appeared distressed by visitation with father in May 2016, and he acted aggressively after father left.

Daughter repeatedly asserted that she was comfortable and wanted to remain in the foster parent's home until she could return to mother's home. Daughter stated that she did not want to live with father and worried about what would happen if he did. She was concerned that father "would take her away." Daughter told DCFS: "I do not want to go with my dad because he will just drop us off at my grandmother's house. She hurt me. I do not want to see or talk to her again."

Father did not believe the daughter's steadfast assertion that the paternal grandmother had sexually abused her. Father told DCFS that mother did not like the paternal grandmother, and he believed mother was "brainwashing" daughter about the abuse allegations. The juvenile court could have reasonably found father's comments created an unsupportive environment for daughter and raised doubts about whether father would protect daughter from the paternal grandmother.

Father asserts the court erred in refusing to hear Jonnie's live testimony to evaluate father's arrangements for the children to remain in his custody and by requiring DCFS to evaluate Jonnie's home before considering her for placement. Father's argument ignores the juvenile court's factual findings of detriment the children would suffer in his care. That father would have made arrangements for the children to live with Jonnie as he could not reside with them in his sobriety home does not abate the risk of emotional damage described above as father would essentially be in control. As the trial court explained, father must reestablish a relationship with the children through visitation and prove through domestic violence and drug



rehabilitation programs that he is fit to take custody. His sobriety alone, while worthy of acknowledgment, was not in itself sufficient to establish that he was able to care for the children.

We need not address whether the court erred in taking only stipulated testimony. The trial court reasonably concluded that it was not practical to place the children with Jonnie without DCFS's evaluation of Jonnie and her living accommodations.<sup>4</sup> We also observe that on this record, the trial court reasonably concluded based on daughter's statements that she would suffer emotional detriment in father's custody. This finding foreclosed father taking custody at the time of the jurisdiction and disposition hearing, and thus barred the children living with Jonnie while under father's custody. Notably, at this hearing, father did not request evaluation of placement with Jonnie under section 362.7; his arguments were limited to father taking custody and making arrangements for the children to live with Jonnie. (§ 362.7 [nonrelative extended family member home evaluation].) If potential placement with Jonnie is presented again, the juvenile court may very well decide to hear live testimony from Jonnie.

Father also contends the juvenile court appeared to reverse the burden of proof when it stated: "This child is worried that Jonnie and the grandmother are still too close with one another. And unless and until we are able to disprove that and make sure they are not, they are a risk." As we have explained, substantial evidence supports the court's decision. The phrasing of a single sentence at the hearing does not negate the evidence in support

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<sup>4</sup> As we discuss below, DCFS failed to comply with the court order for such an assessment and the juvenile court has recently remedied this by again ordering DCFS to comply.

of its ruling, nor suggest an alteration of the domestic violence proof.

**3. *Father's Six-Month Review Hearing Appeal is Moot***

Father claims he was prejudiced by DCFS's refusal to assess Jonnie for placement prior to the date of six-month review hearing. DCFS's failure to comply with the court order is inexplicable in light of the current record. But we do not review DCFS's inaction directly, only in terms of whether the court erred. Father points to no such error.

At the six-month review hearing, father's attorney questioned why DCFS failed to assess Jonnie, but counsel made no request for an order to show cause or other form of relief. Father's counsel only asked the juvenile court to reimpose its previous order, which the court did.<sup>5</sup>

We conclude that the appeal of the six-month review order is moot because this court can provide no other remedy to father. He suggests no reasonable relief that we can provide. His suggestion that we reverse the jurisdictional finding because DCFS failed to assess Jonnie fundamentally confuses the purposes of these two procedures.

As an appellate court, we decide only actual controversies. We review trial court decisions and do not provide advisory opinions on moot or abstract questions. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316; *In re Marquis H.* (2013) 212 Cal.App.4th 718, 724.) "When no effective relief can be

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<sup>5</sup> Although the order regarding Jonnie's assessment does not appear in the court's minutes or in the attorney order, the Reporter's Transcript clearly documents the juvenile court's order to assess Jonnie's home.

granted, an appeal is moot and will be dismissed.” (*In re Jessica K.*, at p. 1315.) Here, there is no relief this court can order.

**DISPOSITION**

We affirm the juvenile court’s judgment and orders.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

GRIMES, J.