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

In re KATTIE V., a Person Coming
Under the Juvenile Court Law.

B279329

(Los Angeles County
Super. Ct. No. CK90187)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

FERNANDO V.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Julie Blackshaw, Judge. Affirmed.

Serobian Law and Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel for Plaintiff and Respondent.

Fernando V. (father) appeals from a judgment declaring his daughter Kattie V. (born Nov. 2015) a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (j).¹ Father contends that substantial evidence did not support the juvenile court's findings and that the court abused its discretion in failing to terminate jurisdiction with family law custody and visitation orders. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family

The family includes father, Mayra M. (mother), and Kattie, who was 10 months old at the time these proceedings were initiated.²

Mother has seven children: Frank E. (age 14); Daniel E. (age 13); Robert G. (age 8); Anthony G. (age 6); Isaac G. (age 4); Fernando V. (age 3) and Kattie, who is the subject of this proceeding. At the time this proceeding was initiated, Kattie was the only child remaining in mother's care. Mother had failed to reunify with her older children due to her 15-year history of substance abuse.

Father has three children. Fernando V. and Kattie are his children with mother. His third child, Ashley R., resides with her mother. Fernando was adopted by his foster parents in 2015. At the time this proceeding was initiated, Kattie was residing with mother and father.

Prior petitions and investigations

On October 4, 2011, the Los Angeles County Department of Children and Family Services (DCFS) filed a section 300 petition on behalf of mother's children Frank, Daniel, Robert, Anthony

¹ All further statutory references are to the Welfare & Institutions Code.

² Mother is not a party to this appeal.

and Isaac alleging that the children were at risk due to their parents' history of illicit drug use, including mother's recent use of methamphetamine and marijuana, and the parents' engagement in violent altercations in the children's presence. The petition was sustained and the children were declared dependents of the court. Mother did not reunify with the children. The juvenile court granted legal guardianship of Frank, Daniel, Robert, Anthony and Isaac to their maternal grandmother.

On January 16, 2013, DCFS received a referral alleging that father neglected Ashley. Father was allegedly using drugs, affiliated with a gang, and possessed a firearm. Father's drug test was negative. The referral was deemed unfounded.

On October 27, 2013, DCFS received a referral alleging that mother and father were neglecting their then newborn, Fernando. Fernando was born prematurely and mother had tested positive for amphetamine and methamphetamine at the child's birth. The referral was substantiated, and DCFS filed a petition on Fernando's behalf alleging the newborn was at risk due to mother's 15-year history of illicit drug use. On February 14, 2014, the juvenile court sustained the petition, declared Fernando a dependent of the court, and ordered the child released to father with family maintenance services. Mother was denied reunification services.

On April 1, 2014, DCFS filed a petition pursuant to section 342 on behalf of Fernando, alleging that he was at risk due to father's unwillingness or inability to provide parental care. The petition alleged that on March 28, 2014, father requested that Fernando be removed from his care. On December 19, 2014, the juvenile court terminated reunification services for father. On July 16, 2015, Fernando's adoption by his foster parents was finalized.

Investigation regarding Kattie

Mother gave birth to Kattie in November 2015.

On June 20, 2016, DCFS received a referral alleging that mother neglected Kattie. The reporting party stated that mother was using marijuana and had smoked and snorted cocaine while holding Kattie in her arms. Paternal grandmother, with whom mother and father were living, stated that mother used drugs and that she had ordered mother to leave her home.

When the investigating social worker spoke with paternal aunt by telephone the day of the referral, paternal aunt stated that paternal grandmother had allowed mother, father, and Kattie to reside with her. Paternal grandmother reported observing mother using cocaine while caring for Kattie.

The social worker met with father, Kattie, and maternal grandmother at the maternal grandmother's home. Mother was not allowed in the home due to maternal grandmother's legal guardianship of mother's older children.

Father said that paternal grandmother had ordered him, mother, and Kattie to leave her home after a dispute over owed rent. Father denied that he and mother used drugs. He planned to stay at maternal grandmother's home with Kattie that night.

The social worker interviewed paternal grandmother, who reported her argument with mother and father began over a rent dispute. The argument escalated when mother threatened to harm paternal grandmother. Mother and father were then ordered to leave paternal grandmother's home. She discovered a Ziploc bag full of marijuana in mother's dresser drawer. Paternal grandmother claimed to have observed mother snorting cocaine while holding Kattie.

Paternal grandmother reported that she was Kattie's primary caregiver. Mother and father did not bathe Kattie, dress her in clean clothes, feed her, or supervise her. Paternal

grandmother did not want mother in her home but requested that Kattie be placed with her.

After paternal aunt gave father and Kattie permission to reside in her home, father planned to remain there until he could find suitable housing. He and mother planned to live separately so that mother could participate in a drug rehabilitation program. Father acknowledged that mother had a drug abuse problem. He was aware of mother's history with DCFS. He stated he would do whatever was necessary to keep Kattie safe and agreed to submit to a drug test that day.

On June 21, 2016, the social worker followed up with paternal aunt who reported that father seemed to have a bond with Kattie and was affectionate and attentive to her. However, paternal aunt expressed concern over father's failure to deal with mother's substance abuse problems. Paternal aunt did not have concerns over Kattie's safety as long as mother stayed away.

In a subsequent interview, father admitted that Fernando was detained from mother in 2013 and placed in his care, but that their parental rights to that child were terminated. Father stated that mother failed to comply with court orders and that he was unable to provide Fernando with the basic necessities of life.

Father had worked for the same company for the last few years. Mother had been acting as a stay-at-home mother for Kattie. Father stated that paternal aunt and paternal grandmother were willing to divide childcare duties while he worked. Father intended to file for custody of Kattie in the family law court, with supervised visits for mother.

The social worker met with mother, who admitted to a history of substance abuse but denied that she still used drugs. The social worker mentioned the safety plan that father had developed, and mother agreed that she would comply. Mother also agreed to complete a substance abuse program, and to have

her visits with the child monitored by paternal aunt or father. She agreed to submit to a drug test the next day and to participate in individual counseling.

The next day when the social worker attempted to contact mother to remind her about the drug test, the call went to voicemail. The social worker was unable to contact mother despite several attempts over the next few days. Father reported that mother failed to submit to the drug test. He also stated that mother would not oppose his request for custody of Kattie through the family law court.

Father was unable to gain custody of Kattie through the family law court due to the complexity of the forms and the filing fee. Father attempted to attend a workshop but it was full. Although father again tried to file for custody, he was unable to afford the \$400 filing fee. He filed a fee waiver request which was denied.

On August 25, 2016, the social worker was unsuccessful in her attempt to contact the paternal aunt and paternal grandmother to determine whether father had been complying with the safety plan. When the social worker spoke with father, he stated that he was living full time with paternal grandmother to reduce costs and that paternal grandmother was providing childcare to Kattie while he worked. Kattie was up to date with well-baby exams and immunizations.

On September 15, 2016, the social worker met with both parents to discuss the progress of the investigation. The social worker explained that Kattie was at high risk due to mother's failure to reunify with six prior children, mother's current failure to test for drugs and failure to enroll in a drug treatment program. Mother responded that she understood the risks and was willing to provide consent that DCFS detain the child and release her to father's care and supervision. Father stated that

he wanted to avoid juvenile court involvement. He had tried his best to obtain custody through the family court, but was unable to pay the fee. The social worker advised the parents that juvenile court supervision would benefit the family.

Section 300 petition and detention

On September 20, 2016, DCFS filed a petition pursuant to section 300, subdivisions (b) and (j), on behalf of Kattie.

Allegations b-1 and j-1 stated:

“The child[’s] mother . . . has an eighteen-year history of substance abuse, including amphetamine and methamphetamine, and is a current abuser of marijuana, which renders the mother incapable of providing regular care for the child. On prior occasions, the mother was under the influence of marijuana while the child was in the mother’s care and supervision. The child is of such a young age, requiring constant care and supervision, and the mother’s substance abuse interferes with providing regular care and supervision of the child. The child’s father . . . failed to protect the child when he knew of the mother’s substance abuse. The father allowed the mother to reside in the child’s home and to have unlimited access to the child. The child’s siblings . . . were dependents of the juvenile court, and received Permanent Placement services, due to mother’s substance abuse. The mother’s substance abuse, and the father’s failure to protect the child, endangers the child’s physical health and safety, and places the child at risk of serious physical harm, damage and failure to protect.”

The allegation under b-2 stated:

“The child[’s] mother . . . established a detrimental and endangering home environment for the child in that the mother possessed marijuana in the child’s home within access of the child. The child’s father . . . failed to protect the child when he

knew, or reasonably should have known, of the mother possessing marijuana in the child's home within access of the child. Such a detrimental and endangering home environment established for the child by the mother, and the father's failure to protect the child, endangers the child's physical health and safety, and places the child at risk of serious physical harm, damage, danger and failure to protect."

Following a September 20, 2016 detention hearing, the juvenile court detained the child from mother and released her to father's custody. The court ordered the parents to continue drug testing for DCFS and mother was granted monitored visits with a DCFS-approved monitor.

Jurisdiction report

On November 16, 2016, DCFS filed a jurisdiction/disposition report. Kattie remained released to father and was doing well.

The dependency investigator was not able to interview or contact mother who had failed to respond to the investigator's phone calls and written correspondence.

Father was interviewed on October 12, 2016. Father admitted he learned of mother's substance abuse when she tested positive at the birth of their son, Fernando. Mother disclosed to father that her older children were taken from her due to her drug use. Father observed that mother's drug use was exacerbated because her children were taken away from her. However, father denied that mother engaged in any drug use while in his or Kattie's presence. Father also denied knowing that mother stored marijuana in the family home, although he believed that mother used marijuana for a sleeping disorder.

Prior to the dependency action, mother took care of Kattie while father was at work. He described mother as a good mother who was attentive to Kattie's needs. Father admitted that he lost

custody of Fernando in 2014 after the child was released to him. Father stated that Fernando “was a handful; he needed a lot of attention.” Father could not pay his rent at the time and was off work for an injury, so he thought it was best for Fernando to be placed elsewhere. Father believed the separation from Fernando would be temporary, but he failed to reunify with the child.

Father reported that he was unsure where mother was living, but she showed up at his home approximately three times per week unannounced, asking to visit with Kattie.

Jurisdiction/disposition hearing

The jurisdiction hearing took place on November 16, 2016. The juvenile court took the DCFS reports into evidence and heard arguments of counsel.

The juvenile court found by a preponderance of the evidence that all the counts of the section 300 petition were true as alleged and that Kattie was a person described by section 300, subdivisions (b) and (j). The court explained to father: “You were aware of the mother’s extensive history with respect to the siblings. The activities that brought the siblings under the jurisdiction of the court continued with Kattie. I do believe that you did fail to protect her.”

The court proceeded to disposition. Father’s counsel requested that the court fashion a family law order allowing monitored visits for mother and terminate the case. Father’s counsel argued that father had done nothing since the date of detention to endanger the minor. If the juvenile court chose to continue jurisdiction, father’s counsel requested that the only order be family preservation.

Counsel for Kattie argued that the family would benefit from court intervention and services, especially because father’s relationship with mother was ongoing. Counsel for DCFS

requested that jurisdiction remain and that father participate in family maintenance services. Counsel explained:

“In our jurisdiction disposition report a concern that is outlined is that, although mother has yet to make an appearance in this case before the court, she’s still in contact with the father. It appears she has shown up unannounced to the home . . . asking to visit with Kattie. At this time the department would submit that it would be in Kattie’s best interest to ensure that jurisdiction maintains in order for the father to have the support not only from any services but also from the department social workers to ensure that Kattie is safe and that the mother understands what the court’s orders are.”

The court retained jurisdiction over Kattie. It found by clear and convincing evidence that there remained a substantial danger to the safety of the child if returned to the home of mother. Mother was granted monitored visits, not to be monitored by father. The child was ordered to remain in the home of father with family maintenance services, including Alanon. The court explained to father that it would be helpful for father to “understand about the issues confronted by mother and her sobriety.”

On November 22, 2016, father filed a notice of appeal.

DISCUSSION

I. Father’s challenge to jurisdiction is not justiciable

The juvenile court sustained allegations against both mother and father. Father does not challenge the juvenile court’s specific factual findings as to mother.³

³ Father attempts to argue that he is challenging the jurisdictional findings based on the conduct of both mother and himself. This is an inaccurate description of father’s position. Father does not challenge the juvenile court’s finding that

“[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minor] within one of the statutory definitions of a dependent. [Citations.]’ [Citation.]” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 308 (*Briana*).) For this reason, where there are jurisdictional findings against both parents and only one parent contests jurisdiction, an appellate court may decline to address the evidentiary support for jurisdictional findings as to the appealing parent. (*Ibid.*; see also *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 (*I.A.*).)

As the *I.A.* court explained:

“Because he does not challenge the jurisdictional findings involving Mother’s drug abuse . . . any decision we might render on the allegations involving Father will not result in a reversal of the court’s order asserting jurisdiction. The juvenile court will still be entitled to assert jurisdiction over the minor on the basis of the unchallenged allegations. Further, the court will still be permitted to exercise personal jurisdiction over Father and adjudicate his parental rights, if any, since that jurisdiction is derivative of the court’s jurisdiction over the minor and is unrelated to Father’s role in

mother’s drug abuse renders her incapable of providing care for the child, or that she established a detrimental home environment by possessing drugs in the child’s home within access of the child. Father does not challenge the finding that the child’s siblings received permanent placement services due to the mother’s substance abuse. Father only challenges the juvenile court’s finding that there was no evidence that Kattie currently faced a substantial risk of harm or that father failed to protect the child. Father cannot avoid the law regarding the justiciability of jurisdictional findings by mischaracterizing his own position.

creating the conditions justifying the court's assertion of dependency jurisdiction.

“Under these circumstances, the issues Father’s appeal raises are “abstract or academic questions of law” [citation], since we cannot render any relief to Father that would have a practical, tangible impact on his position in the dependency proceeding. Even if we found no adequate evidentiary support for the juvenile court’s findings with respect to his conduct, we would not reverse the court’s jurisdictional and dispositional orders nor vacate the court’s assertion of personal jurisdiction over his parental rights.”

(*I.A.*, *supra*, 201 Cal.App.4th at p. 1492.)

An appellate court may address the merits of the jurisdictional findings against one parent where “the finding (1) serves as a basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have consequences for [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*)). In contrast to *I.A.*, the *Drake M.* court decided to consider the merits of the father’s appeal, because at issue was a single jurisdictional finding regarding father’s use of medical marijuana. Because the single jurisdictional finding was the difference between father being an “offending” or a “nonoffending” parent, the appellate court addressed the merits of the appeal. (*Ibid.*)⁴ There was no

⁴ We note that in *In re R.T.* (2017) 3 Cal.5th 622, the Supreme Court recently determined that section 300, subdivision (b) does not require a determination of parental fault. Thus, the

evidence that the father had a substance abuse problem or that the father was unable to supervise or protect his child. (*Id.* at p. 767-769). The jurisdictional finding regarding the father was therefore reversed. (*Id.* at p. 771.)

Father argues that the court's jurisdictional findings as to father could impact future proceedings in this matter.⁵ However, father does not explain how the findings may impact such future proceedings. The allegations that father failed to protect Kattie from mother's drug abuse, and failed to protect Kattie when he knew, or should have known, that there were drugs in the home, have not had an impact on father's parental relationship with Kattie. She is released to him and continues to reside in his care. Any change in the present arrangement would arise from future events which prompt the court to change Kattie's living situation.

Father has failed to show that the present matter fits within the narrow exception created by *Drake M.* Mother did not appeal the jurisdictional findings, thus jurisdiction will remain over Kattie regardless of father's appeal. There is no effective relief that this court can provide. (*I.A., supra*, 201 Cal.App.4th at p. 1491; *In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554).

II. Substantial evidence supports the juvenile court's decision to assert jurisdiction

Even if father's claim were justiciable, we would find that substantial evidence supports the juvenile court's determination

question of whether a parent is offending or non-offending is not relevant to a court's decision to assert jurisdiction over a child.

⁵ We reject father's argument that references to the prior dependency matter with regard to Fernando "throughout the record" are relevant to his argument. Father's failure to reunify with Fernando was not alleged in the section 300 petition and was not a basis for jurisdiction in this matter.

that Kattie was at substantial risk of harm due to father's failure to protect her from mother's drug abuse.

A. Standard of review

When reviewing a juvenile court's jurisdictional finding, we use the substantial evidence standard of review. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393 (*Savannah M.*)) Under this standard, we look to the entire record to support the findings of the juvenile court. (*In re A.M.* (2010) 187 Cal.App.4th 1380, 1387 (*A.M.*)) We review the record in the light most favorable to the judgment and affirm the order even if there is evidence supporting a contrary finding. (*Id.* at pp. 1387-1388.)

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]" (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

B. Substantial evidence supported a finding of jurisdiction under section 300, subdivisions (b) and (j)

Father argues that the basic factual predicate behind section 300, subdivision (b), and section 300, subdivision (j), is the same. Specifically, father argues that both subdivisions require that "circumstances at the time of the hearing subject the minor to the defined risk of harm." [Citation.]" (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022 (*J.N.*)) Thus, father argues, past harm, standing alone, does not support the exercise of dependency jurisdiction. (*Ibid.*) Father argues that DCFS failed to meet its burden of proving that, at the time of the jurisdictional hearing, Kattie currently faced a substantial risk of harm. (See *Savannah*

M., *supra*, 131 Cal.App.4th at p. 1396.) While father acknowledges that Kattie was at risk of harm when DCFS first received a referral that mother was using drugs while caring for the child, father argues that he immediately offered a safety plan and separated from mother. Father argues that the record shows he protected Kattie by following the safety plan, separating from mother, and not allowing mother unsupervised visits with Kattie. Thus, mother's drug abuse no longer posed a risk of harm to Kattie.

We disagree, and find substantial evidence supports the juvenile court's finding that substantial evidence of harm existed at the time of the jurisdictional hearing. We look to the entire record to support the findings of the juvenile court (*A.M.*, *supra*, 187 Cal.App.4th at p. 1387), and consider the "totality of the circumstances" to assess the risk of harm to the child (*In re I.J.* (2013) 56 Cal.4th 766, 774). We note that when evaluating a current risk based on past conduct, a court may consider, among other things, "evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim." (*J.N.*, *supra*, 181 Cal.App.4th at pp. 1025-1026.)

First, mother and father's older child, Fernando, was declared a dependent of the court under section 300, subdivision (b) due to mother's 15-year history of illicit drug use and current use of drugs. Although Fernando was released to father, father was unable to care for the child and asked that the child be removed from his care. Fernando's adoption was finalized in 2015.

Further, there was evidence that father had not fully come to terms with mother's substance abuse problems and the potential harm to Kattie. Despite knowing of mother's history of

substance abuse problems, father allowed mother to provide childcare to Kattie while he worked. Although father claimed that mother was not under the influence of drugs at the child's home, paternal grandmother reported observing mother snorting cocaine while holding the child. Father diminished the gravity of mother's drug abuse problem and shifted blame to DCFS, stating that mother's drug use was exacerbated when her older children were removed from her. Father admitted that mother still presented herself at his home unannounced asking to visit Kattie, and that he maintained contact with mother. This evidence supports the juvenile court's finding that, at the time of the jurisdictional hearing, Kattie remained at substantial risk of harm.

The cases cited by father are distinguishable. In *In re A.G.* (2013) 220 Cal.App.4th 675, the juvenile court erred in sustaining a petition alleging that mother was mentally ill and unable to care for her children where the evidence showed that father had always been, and remained, capable of caring for the children. (*Id.* at p. 677.) In particular, the evidence showed that father had "ensured that there was adult supervision, other than [m]other, of the minors at all times." (*Id.* at p. 684.) Here, in contrast, the evidence showed that despite his knowledge of mother's substance abuse problems, father left Kattie alone in the care of mother.

In *In re Phoenix B.* (1990) 218 Cal.App.3d 787, the juvenile court properly dismissed a case when the father came forward to care for the child after the mother's mental breakdown left her unable to do so. The parents had no prior history with DCFS and there were no allegations of substance abuse. Thus, in contrast to the matter before us, there were no allegations that the father had failed to protect the child by leaving her in her mother's care. (*Id.* at pp. 789-791.)

In *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717, the juvenile court improperly sustained a petition pursuant to section 300, subdivisions (a) and (b) where the allegations of domestic violence occurred two, or possibly seven, years prior to the filing of the petition, there was no evidence that the children were exposed to the violence, and the parents were separated. (*Id.* at p. 717.) Here, the acts prompting the filing of the petition occurred much more recently, and there was evidence that Kattie remained at risk.

Finally, in *In re Jennifer P.* (1985) 174 Cal.App.3d 322, the juvenile court erred in taking jurisdiction over a minor where the father had sexually molested the child. The parents had divorced two years previously, and the molestations occurred during court-ordered visits between the child and the father. As soon as evidence of the molestations came to light, the mother immediately took steps to prevent the father from having any contact with the child, including pursuing a criminal action against him. (*Id.* at p. 327.) Here, despite his knowledge of mother's drug use and inability to care for her older children, father allowed mother to care for the child.

The evidence supports the juvenile court's finding that father was aware of mother's extensive history of drug abuse and the consequences to mother's older children. The court did not err in determining that he failed to protect Kattie from the same harm, and that she remained at substantial risk.

III. The juvenile court did not abuse its discretion in maintaining jurisdiction

Father argues that the juvenile court abused its discretion in failing to terminate jurisdiction with a family law custody order at disposition. Section 362.4 allows the juvenile court to terminate its jurisdiction and to issue "an order determining the custody of, or visitation with, the child." (§362.4). Father argues

that there was no reason to continue jurisdiction when the law permitted the juvenile court to accomplish its desired result with a family law custody order.⁶

The juvenile court has broad discretion to determine a dispositional order that is in the child's best interest. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) When the child is placed in the custody of one parent, the juvenile court has several choices. "It may provide services to the previously custodial parent, to the parent who is assuming custody, to both parents, or it may instead bypass the provision of services and terminate jurisdiction. [Citation.]" (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651.)⁷

A reviewing court will not reverse the juvenile court's dispositional order absent a clear abuse of discretion. (*In re Gabriel L.*, *supra*, 172 Cal.App.4th at p. 652.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319). The trial court did not exceed the bounds of reason by maintaining jurisdiction of Kattie.

As explained above, both mother and father had a history with DCFS. Father was aware of mother's substance abuse and yet failed to protect Kattie. Father did not appear to fully

⁶ Father asserts that the "sole reason" DCFS filed the petition was because father failed to file a petition for custody in family court. The record does not support this statement, nor was it the trial court's reason for asserting jurisdiction over the child.

⁷ The *Gabriel L.* court noted that "the court's discretion to order services is the same whether the child is placed with a previously noncustodial parent or is returned to one parent." (*Gabriel L.*, *supra*, 172 Cal. App.4th at p. 651.)

understand the severity of mother's drug abuse problem, and maintained contact with her despite their alleged separation.

In addition, father failed to reunify with his older child, Fernando, who was removed from mother's custody due to mother's substance abuse and initially placed in his care. Although Fernando, like Kattie, was placed in father's care, father asked that Fernando be removed from his care just two months later.

Under the circumstances, it was well within reason for the court to conclude that it should retain jurisdiction of Kattie and provide father with family preservation services in order to successfully reunify with Kattie. No error occurred.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
CHAVEZ

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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