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

In re M.G., a Person Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DON E.,

Defendant and Appellant.

B277863

(Los Angeles County  
Super. Ct. No. DK17807)

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Julia Roberson, Deputy County Counsel for Plaintiff and Respondent.

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Don E. (father), the presumed father of M.G. (the minor) (born in April 2016), appeals the juvenile court's jurisdictional/dispositional order that changed father's visitation from unmonitored to monitored.<sup>1</sup>

Father contends his due process rights were violated when the juvenile court refused to allow him to testify about visitation before it changed his visits from unmonitored to monitored, and he further argues that the error was prejudicial.

Father's argument is unsupported by the record. Father was on notice that the court would be considering the issue of monitored visitation at the August 30, 2016 jurisdictional/dispositional hearing, and before the court announced its ruling, it twice invited the parties to proffer additional evidence. Despite the court's invitation, the parties did not present anything further. It was only *after* the court stated that father's future visits would be monitored that father asked to be heard.

Father having had notice and an opportunity to be heard, there was no due process violation. The juvenile court's order is affirmed.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Detention*

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) due to allegations of general neglect made by the maternal grandmother. On June 6, 2016, mother was stopped by police at

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<sup>1</sup> The order entered at the dispositional hearing is appealable as a final judgment. (*In re Natasha A.* (1996) 42 Cal.App.4th 28, 33-34.)

the corner of 5th Street and San Pedro, known as “Spice Corner.” The officers found three “spice joints,” also known as synthetic weed, in mother’s belongings and noted that mother’s clothing smelled like “spice.” The officers removed two blankets covering mother’s stroller and discovered the two-month-old minor, wrapped in a blanket, covered in sweat and appearing lethargic. Minor’s attire was inappropriate for the hot weather. Mother was booked for child endangerment and minor was transported to County USC Hospital for a medical examination. Minor then was cleared for placement.

*2. Petition.*

On August 2, 2016, DCFS filed a first amended juvenile dependency petition alleging failure to protect under Welfare and Institutions Code section 300, subdivision (b).<sup>2</sup> The amended petition alleged the following three counts:

*Count b-1.* Mother placed minor in a detrimental and endangering situation in that she possessed synthetic marijuana while minor was in her care and under her supervision. Mother was arrested for child endangerment. Father should have reasonably known of mother’s substance abuse and failed to protect minor.

*Count b-2.* Mother has demonstrated numerous mental and emotional problems, including bipolar disorder. Mother has failed to take psychotropic medications and failed to continue mental health treatment as prescribed and ordered. Father should have reasonably known of mother’s mental health concerns and failed to protect minor.

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

*Count b-3.* Father has a history of convictions of burglary, possession/purchase of cocaine base for sale, possession of narcotic substances, transportation/sale of narcotics/controlled substances, sale/furnishing marijuana, and driving under the influence of alcohol/drugs. Father's criminal history and conduct endangers minor's physical safety and emotional well being and creates a detrimental home environment, placing minor at risk of physical and emotional harm and damage.

3. *Jurisdiction and disposition.*

a. *Reports.*

A dependency investigator (DI) interviewed father on June 17, 2016 and July 20, 2016. Father stated he worked all day, was unaware of mother's activities, was unaware of her mental health diagnoses, and had never seen her engage in substance abuse at home. Father denied any recent criminal history but admitted using marijuana during his twenties; he was now 46 years of age. When asked if he was currently using marijuana, father responded, "the courts did not order me to drug test so I'm just counting my blessings in that aspect.'" DI then asked father what he meant by that statement, and he responded, "the court did not order me to test and I'm just going to leave that as it is.'"

b. *The August 16, 2016 hearing; juvenile court admonished father that if he continued to bring third parties to his visits, his visits would be monitored.*

The initial jurisdictional hearing was conducted on August 16, 2016. The court determined that the case would not proceed with adjudication that day and continued the matter to August 30, 2016. The court further found that father is minor's biological and presumed father.

The court then addressed father's visitation. The court stated to father: "[I]nformation has come to my attention that you are bringing third persons to your visits with the child and that is not appropriate. [¶] . . . [¶] I ordered unmonitored visits for the father. [¶] But I do not want you to bring third parties to the visit, unless that third party has been approved by the Department. You cannot just bring random people to the visits with your child. [¶] . . . [¶] So please do not bring any third parties to the visits. If that continues I will ask the Department or minor's counsel to walk the matter on and I may have to modify your visitation to be monitored."

DCFS's counsel then requested that father's visits be changed to monitored "based on the amended petition and the facts in the jurisdiction disposition report and the reports concerning the conduct during visitation." The reports reflected, inter alia, that father smoked marijuana; further, he had come to visits unprepared, without baby formula or diapers, and minor smelled of smoke when father returned minor at the end of the visit.

Minor's counsel also requested that father's visits be monitored.

Father's counsel stated that he thought visitation issues would be addressed at the jurisdictional/dispositional hearing, and that father would like to "address the court, so there's not a miscommunication about the third parties so he can explain his side of the story." Father's counsel asked: "Would the court at least like to hear from the father?"

The court stated, "I'm going to continue to let you [father] have unmonitored visits, but no third parties at all. [¶] . . . [¶] But we have two more weeks before the next hearing and I want

to get an update from the Department on how those visits are going. And I want you to spend time with your child. One of the concerns is that I don't want the child to be spending time with other people . . . . I want [him] to spend time with you."

*c. The August 30, 2016 jurisdictional/dispositional hearing; at DCFS's request, father's visitation is changed to monitored.*

DCFS's last minute information for the court, filed in connection with the August 30, 2016 hearing, stated in relevant part: "On 8/25/16, [the investigator] spoke with the foster parent, Mrs. [A.], who stated that the father has only visited [minor] once this month. Mrs. [A.] stated that the visit took place on 8/17/16 at the mall from 1 pm-3 pm. . . . Mrs. [A.] reported that during these visits she and her husband observe the father to walk around the mall and that he usually sits at the food court. Mrs. [A.] reported that the baby will cry often and then puts his head down and falls asleep. Mrs. [A.] stated that [minor] does not recognize the father at all and that there is no attachment or bond to be observed between the father and child. The Department has also noticed that although father has unmonitored visits the child and father are not bonded or attached and that the father often times appears frustrated that the child cries a lot and father does not know how to soothe the child. The foster parents have reported that father often times over feeds the child to try and get the child to stop crying. Mrs. [A.] stated that she had tried to teach father some soothing techniques but that it is hard to do so because his visits are unmonitored. [¶] . . . Mrs. [A.] stated that a visit which was of high concern took place on 7/22/16 in which father was with 3 other women. Mrs. [A.] stated that she approached the father to

ask who they were as one of the women was holding the baby. Father stated that he did not know them. One of the women said that they were family members. Mrs. [A.] stated that she informed father that this is his visit and time to bond with the child and that although his visits are unmonitored other people are not to be brought to the visit. Mrs. [A.] also stated that this is the third time that the child was returned to them smelling like smoke. Father does not come prepared to visits with diapers or bottles and at the beginning of the visit the father requests these items from the foster parent.” (Italics added.)

The last minute information for the court concluded: “At this time based on the above information and the safety concerns that the Department has regarding the father’s visit that took place on 7/22/16, father’s lack of preparation for the visits as well as his inconsistent visits with the child *the Department is recommending that the court order the father’s visits to be monitored* with the Department having discretion to liberalize visits once appropriate.” (Italics added.) DCFS also continued to recommend that minor remain detained from both parents, and that the parents be ordered to participate in family reunification services.

The jurisdictional/dispositional hearing proceeded on August 30, 2016. The court took judicial notice of all prior findings and orders on the exhibit list. DCFS’s exhibits included the last minute information for the court, dated August 30, 2016, which was admitted without objection. The court then expressly asked the parties whether they had anything further. No additional evidence was proffered and the parties rested.

The parties then proceeded to present their arguments.

Father's counsel requested that father be stricken from counts b-1 and b-2 or, alternatively, that those counts be amended to state father was "unable to protect" rather than failed to protect. Father's counsel also requested that count b-3 be stricken in its entirety because father's convictions were remote in time.

The court inquired about father's current drug use. Father's counsel stated that father would "test positive for medical marijuana today."

The court amended count b-1 of the petition to state that father was "unable to protect the child," and sustained the count as amended. The court also sustained counts b-2 and b-3 as alleged in the petition.

The court then asked: "Is there any additional evidence for disposition?" Again, no additional evidence was proffered.

The court then declared minor a dependent of the court pursuant to section 300, subdivision (b), removed minor from parents, placed minor in DCFS's custody for suitable placement, and ordered reunification services.

DCFS then requested that father's visits be changed from unmonitored to monitored. Minor's counsel concurred. Father's counsel asked that visitation remain unchanged. The court ordered that father's visits would be monitored: "Unfortunately, . . . we do now find to be true he's currently using marijuana. . . . We have had the information about the visits that, really, they haven't been very frequent, and the ones that have taken place have not been of good quality."

At that juncture, father's counsel stated he "didn't think the court was going to change father's visits. [Father] tried to address the court at the last court date. He wants to at least tell



his side of the story as to the visits . . . since the court is inclined to change his visits.”

The court asked, “Is it different from what you just told me?” Father’s counsel replied: “He’s explaining the foster parents are very ready to adopt this child. I think they are trying to make the father not look so great.”

The court stated it was basing its decision “on the evidence in front of me which is that I just found out your extensive substance abuse history and current use of marijuana has resulted in neglectful care of [minor]. So that is what I’m basing it on. I understand that you and the foster parents might not get along. But really my ruling is based on just the fact that I want your child to be with a sober parent. [¶] . . . [A]nd frankly, Mr. [E.] you could have submitted some tests between now and our detention report. You could have shown the court you were willing to get clean, but you did not. So I don’t have any information right now to show that you are making those efforts.” The court added, “[i]f you are willing to test and lower your levels of marijuana in the tests to show you can be a sober parent, then there will be discretion to liberalize. . . . I have found that your use of drugs has led to neglect of your child, and that is what my monitored visitation order is about.”

The matter was set for a review hearing on February 28, 2017.

Father timely appealed the August 30, 2016 order.

### **CONTENTIONS**

Father contends: (1) his due process rights were violated by the juvenile court’s refusal to let him testify at the August 30, 2016 jurisdictional/dispositional hearing before it changed his

visits from unmonitored to monitored, and (2) the due process violation constituted prejudicial error.

### **DISCUSSION**

In juvenile dependency proceedings, due process requires that parents be given notice that is reasonably calculated to advise them that an action is pending and afford them an opportunity to defend. (*In re J.H.* (2007) 158 Cal.App.4th 174, 182.)

Here, father contends his due process rights were violated when the court refused to allow him to tell his side of the story before his visits with minor were changed from unmonitored to monitored. Father claims he “was taken by surprise at the jurisdictional/dispositional hearing when the court changed his visits from unmonitored to monitored visitation as the issue was addressed just two weeks prior where the court denied the Department’s request to have his visits monitored.” Father’s argument is belied by the record.

To reiterate, at the August 16, 2016 hearing, DCFS and minor’s counsel both requested that father’s visits be changed to monitored visitation. The court advised the parties that it would allow father to continue to have unmonitored visits for the next two weeks, but would “want to get an update from the Department on how those visits are going” at the next hearing and would order the visits to be monitored if the facts warranted it.

In its last minute information for the court filed in connection with the August 30, 2016 hearing, DCFS again requested that “the court order the father’s visits to be monitored.” DCFS’s last minute report recounted a July 22, 2016 visit in which father was accompanied by three unknown women;

further, it described that father and minor were not bonded to one another, father arrived for visits without diapers or bottles, was frustrated by minor's crying, lacked the necessary skills to soothe minor, and would overfeed minor in an attempt to get him to stop crying. Also, minor repeatedly returned from visits with father smelling like smoke.

Thus, when the matter came on for hearing on August 30, 2016, father knew both that DCFS was renewing its request for monitored visitation, and that DCFS had submitted additional evidence in support of its request for monitored visitation.

On August 30, 2016, when the matter was called, after the court received DCFS's exhibits without objection, the court separately asked each party whether they sought to present any additional evidence. Father's counsel stated: "*No, your honor.*" (Italics added.)

The parties then proceeded to argument, after which the court found minor a person described by section 300, subdivision (b).

The court then inquired, "*Is there any additional evidence for disposition?* Would any counsel like to address the court further on disposition?" (Italics added.) Again, father's counsel declined to offer any additional evidence or to call father to testify.

Thereafter, the court announced its ruling, including, *inter alia*, that father's visits would be monitored. It was only *after* the court made its ruling that father's counsel asked that father be allowed to "tell his side of the story as to the visits."

Father's assertions that he was taken by surprise at the August 30, 2016 hearing, and that he was denied the opportunity to tell his side of the story with respect to the issue of visitation,

is meritless. The record establishes that father was on notice that DCFS would be requesting monitored visitation at the August 30, 2016 hearing, and that DCFS had submitted additional evidence in support of its request. The record further establishes that before the court announced its ruling, the court *twice* invited the parties to proffer additional evidence. Despite the court's invitation, the parties did not present anything further. It was only *after* the court stated that father's future visits would be monitored that father asked to be heard. Father having had notice and an opportunity to be heard, there was no due process violation.<sup>3</sup>

In any event, even if the court did err in excluding father's testimony (which we do not find), any error clearly was not prejudicial. When father asked to testify, the court sought an offer of proof regarding the substance of his testimony. Counsel responded that father "wants to at least tell his side of the story as to the visits" because he believed the foster parents were "trying to make the father not look so great." The court stated that such testimony was unnecessary because its decision to monitor father's visits was based exclusively on father's "extensive substance abuse history and current use of marijuana

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<sup>3</sup> In a single sentence contained within his argument that due process was violated, father also contends that the court failed to specify the frequency with which visits were to occur. Father does not appear to raise this as a separate claim for relief. An argument raised in such a perfunctory fashion is waived. (*Rubio v. Superior Court* (2016) 244 Cal.App.4th 459, 487, fn. 13; *People v. Amaya* (2015) 239 Cal.App.4th 379, 382, fn. 2; see Cal. Rules of Court, rule 8.204(a)(1)(B) [each point must be stated under a separate heading or subheading summarizing the point, and supported by argument and citation to authority].)

[which] has resulted in neglectful care of [minor].” The court acknowledged that father and the foster parents “might not get along,” but stated, “[R]eally my ruling is based on just the fact that I want your child to be with a sober parent.” (Italics added.)

Accordingly, because the court’s decision to monitor father’s visits was based on father’s drug use, not the quality of his visits with his child, the exclusion of his testimony could not have been prejudicial.

**DISPOSITION**

The August 30, 2016 order of the juvenile court is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

JOHNSON (MICHAEL), J.\*

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