

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LINDA H.,

Defendant and Appellant.

B254727

(Los Angeles County
Super. Ct. No. DK02732)

APPEAL from a judgment and orders of the Superior Court of Los Angeles
County, Julie Fox Bradshaw, Judge. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and
Appellant.

Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County
Counsel, and Jeanette Cauble, Deputy County Counsel for Plaintiff and Respondent.

Linda H. (“mother”) appeals from the juvenile court’s judgment and orders of February 20, 2014 declaring seven of her children (the “children”) dependents of the court under Welfare and Institutions Code section 360¹ and removing them from her custody. She contends the removal order must be reversed, because the juvenile court denied placement in her custody without making a finding that releasing them to her would be detrimental to the children and stating the basis for its determination, as required by Welfare and Institutions Code section 361.2. We conclude mother failed to perfect her request below. She admittedly lacked appropriate housing and therefore was not in a position to request a “home of parent” order. Moreover, on the record presented, any error in this regard is harmless. Accordingly, we affirm the judgment and orders.

STATEMENT OF FACTS AND PROCEDURE

The children were born to mother and Darren G. (“father”). They ranged in age, at the time they were detained, from six to 13 years old. The children lived with mother until March 2013, when she left them behind in the shelter where they resided and moved to Palmdale to find a job, obtain housing, and deal with other issues she had, such as health issues.

On December 13, 2013, when father failed to pick up the five younger children from school, the Department of Children and Family Services (Department) detained the five children and filed a section 300 petition. The two older children were detained on December 18, 2013, and a section 300 petition was filed. The juvenile court granted mother monitored visits with the five younger children for at least three hours per week and monitored visits with the two older children at least twice a week. Mother was homeless. She did not take advantage of the minimum visitation she was granted.

On January 7, 2014, the juvenile court sustained allegations under section 300, subdivisions (b) [as to all the children] and (j) [as to the two older siblings] that the children suffered or there is a substantial risk they will suffer serious physical harm or

¹

All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

illness as a result of father's failure to supervise or protect them, in that: father failed to make a plan for ongoing care of the five younger children, left them at school for an extended period of time, and his whereabouts were unknown for six hours. Father asked for custody of the children; mother did not. At father's request, the disposition hearing, including the custody issue, was put over to February 20, 2014, to give the Department time to hold a Team Decision Meeting to determine whether father's issues with housing and child care could be resolved, with the Department's help, so that the children could safely be returned to him at the disposition hearing. Mother did not make a similar request. Her only request was for transportation assistance. The court gave the Department discretion to release the children to father.

A Team Decision Meeting was not held, because the parents failed to communicate with the Department to schedule it. Mother did not visit or contact the children.

On February 20, 2014, the court denied father's request, joined by mother, to continue the disposition hearing so that a Team Decision Meeting concerning release of the children to father's custody could be held. Mother then requested a "home of parent order"² (§ 362, subd. (c)) and stay of that order pending the parents finding appropriate shelter. Mother acknowledged she did not have housing for the children. The court found mother had been involved with the children only intermittently and was not really a part of their lives. The court stated to the parents: "[T]he court's goal here is to reunify [the] family. That is definitely what I hope happens here. [¶] However, there are some issues that need to be addressed beforehand. And hopefully, we can use this next six-month period to address those issues and bring all of your children back home to you. You can find an appropriate housing place, and this case will be over for you. But we

² Section 362, subdivision (c) provides: "If a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300, and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court."

aren't quite there yet. [¶] And hopefully, the Department can help you get access to the services that you need in order to put everything in place for your children to come home. But at this point, the court is not going to release your children to you."

The court declared the children dependents of the court and removed them from the parents' custody, finding, pursuant to section 361, subdivision (c), that a substantial danger exists to the children's physical health and there are no reasonable means to protect them without removal from the parents' custody. Reunification services were ordered. Mother was ordered to participate in individual counseling to address parenting and appropriate supervision, and transportation and housing assistance was to be provided to her. She was granted monitored visits, which would become unmonitored after she had four consecutive clean drug tests. If mother missed a test or had a dirty test, she would have to enroll in a drug treatment program. The Department was given discretion to release the children to either parent. Mother appealed the February 20, 2014 findings and orders.

DISCUSSION

The removal order.

Mother contends the removal order must be reversed because the court failed to make a finding that placement of the children in her custody would be detrimental to the children and state the basis for its determination, as required by section 361.2. The contention fails.³

Section 361.2 provides in pertinent part: "(a) When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. 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

³ We sent a letter to the parties advising them it appeared mother forfeited the contention. The parties submitted supplemental briefs, which we have reviewed.

safety, protection, or physical or emotional well-being of the child. [¶] . . . [¶] (c) The court shall make a finding either in writing or on the record of the basis for its determination”

“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.] Subdivision (a) of section 361.2 provides that when a court orders removal of a minor under section 361, the court ‘shall first 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. [Citation.] 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 minor.’ [Citation.]” (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1820-1821, fns. omitted.)

Mother did not ask the court to release the children to her at the disposition hearing, nor was she in a position to do so, as she admittedly lacked appropriate housing. Rather, she requested a home of parent order and stay of that order pending her securing appropriate shelter. This is a request that, if and when, at an unspecified time in the future, she were to obtain appropriate housing, the children would be released to her care. It was not a request for immediate custody which would have triggered the finding required by section 361.2.

In any event, any error in the juvenile court’s failure to make the finding required by section 361.2, subdivision (a), did not result in a miscarriage of justice. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1078 [“Before any judgment can be reversed for ordinary error, it must appear that the error complained of ‘has resulted in a miscarriage of justice.’ (Cal. Const., art. VI, § 13.) Reversal is justified ‘only when the court, “after an examination of the entire cause, including the evidence,” is of the “opinion” 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 . . .)”].) (Accord, *In re Abram L.* (2013) 219 Cal.App.4th 452, 463.)

On this record, there is no likelihood mother would have achieved a better outcome at the hearing had the juvenile court made a finding in accordance with section 361.2, subdivision (a), as to whether placement of the children with her would be detrimental to them. Eleven months earlier, mother could not provide appropriate care for the children. She left them on their own, in a shelter, without making provision for their care or support, and moved away to work on her health issues and issues of homelessness and unemployment. She never asked father to let her have the children back, and, after the children were detained, did not ask the court or the Department to release them to her. Unlike father, she did not ask for the Department's help to resolve the issues preventing her from being able to care for them. She did not take advantage of visitation. Lacking stable housing, unemployed, and out of the children's lives, mother was not ready or able to have the children placed with her at the time of the disposition hearing, and she did not ask for placement. There was no indication she was in a better position than she was in eleven months earlier to provide the children with safe, stable, and adequate supervision. The court found by clear and convincing evidence, pursuant to section 361, subdivision (c), that substantial danger existed to the children's physical health, safety, protection, or physical or emotional well-being and no reasonable means to protect them without removal from parents' custody. As mother was not ready, willing, and able to care for the children, and the court found the children would be at substantial risk of harm in mother's care, it is not reasonably probable that, had the court made the finding required by section 361.2, subdivision (a), the court would have found that placement of the children with mother would not be detrimental to them.

DISPOSITION

The judgment and orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

KITCHING, J.

ALDRICH, J.