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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ANDREA J., a Person Coming Under  
the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LINDA J.,

Objector and Appellant.

B241002

(Los Angeles County  
Super. Ct. No. CK91164)

APPEAL from an order of the Superior Court of Los Angeles County. Marilyn Kading Martinez, Juvenile Court Referee. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Objector and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

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## **SUMMARY**

The mother, Linda J., appeals from the juvenile court's order of March 8, 2012, declaring her daughter, Andrea J., a dependent of the court under Welfare and Institutions Code<sup>1</sup> section 300 and removing Andrea from Linda's custody under section 361.

On appeal, Linda contends that the juvenile court improperly relied on excluded evidence and that substantial evidence did not support (1) the finding under section 300, subdivision (b), that Andrea suffered, or was at substantial risk of suffering, serious physical harm or illness as a result of the failure or inability of a parent to supervise or protect the child adequately or to provide regular care for Andrea due to parent's substance abuse; and (2) the order under section 361, subdivision (c), removing Andrea from parental custody. We affirm.

## **STATEMENT OF FACTS AND PROCEDURE**

On December 20, 2011, the Los Angeles Department of Children Services ("DCFS") filed a section 300 petition on behalf of then nine-year old Andrea, alleging that Linda had a history of substance abuse and was a current user of amphetamines, methamphetamine and marijuana and was under the influence when she cared for and supervised Andrea. The petition stated that Linda tested positive for all three drugs on December 6, 2011.

In a December 20, 2011 Non-Detained Detention Report ("Non-Detained Detention Report"), DCFS reported that Andrea resided with her mother Linda and her great maternal aunt ("MGA"). Andrea's sibling, Jeremiah, resided with their maternal grandmother ("MGM") in New Mexico. In an interview with a DCFS social worker, Linda stated that she had had a case in New Mexico in 2005 and Andrea was in foster care for six months until Linda was reunified with Andrea after completing parenting and substance abuse programs.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

As to the current allegations of drug use, the Non-Detained Detention Report stated that on November 28, 2011, DCFS received a referral alleging that Andrea stated that she no longer wanted to live with Linda and that Linda was under the influence of drugs in Andrea's presence, was associating with drug dealers, was leaving Andrea alone while she abused drugs and was leaving drugs behind so that Andrea had access to them. The referral also indicated that Andrea had been sexually abused approximately one year earlier and had not had sex abuse counseling. An investigation by DCFS and law enforcement found the allegations to be "largely unfounded," observing no drugs or drug paraphernalia during their safety check of the residence and no signs of current drug use by Linda. MGA advised the social worker that the only other person residing in the house was her son, Jorge S. Andrea stated that she did not see Linda act strange or in a way that scared her. In a visit to the residence on November 30, 2011, a DCFS social worker spoke to the babysitter who reported that she had no concerns about Andrea's well being and felt Andrea was well cared for.

According to the Non-Detained Detention Report, on December 2, 2011 DCFS received a new hotline referral alleging that in mid-November 2011 mother physically abused Andrea, yelled at her and slapped her on the back. On December 5, A DCFS social worker visited the home and spoke to mother and Andrea each privately. During mother's interview, she admitted to being a regular marijuana user and agreed that she would not be under the influence while in the presence of Andrea and agreed to take Andrea for physical and dental exams and to enroll her in sex abuse counseling. The social worker gave Linda referrals to sex abuse counseling and substance abuse programs. During Andrea's interview, she denied the incident described in the referral, stated that her mother does not use corporal punishment and that she felt well cared for and safe with mother. Andrea also stated she was still affected by the sexual abuse and wanted to be in therapy for the sex abuse. On December 6, 2011, the social worker received correspondence from Andrea's school counselor stating that Andrea had no behavioral issues at school, was easily distracted and struggled with focusing, and had

satisfactory attendance. The school counselor also stated that mother was “very compliant,” had signed Andrea up for counseling and was meeting with the school.

The Non-Detained Detention Report also stated that on December 8, 2011, the social worker obtained Linda’s drug test results from December 6 showing that she had tested positive for methamphetamine. A copy of the drug test results were attached to the Non-Detained Detention Report showed Linda had also tested positive for amphetamine and cannabinoids. When the social worker confronted Linda with her drug test results, Linda claimed the positive test result occurred because she had consumed energy drinks. Mother agreed to a substance abuse program although she did not believe she had a drug problem. The social worker also discussed Andrea’s sex abuse counseling, stating that sex abuse counseling was preferred over the school based counseling Andrea was receiving.

According to the Non-Detained Detention Report, a few days later a social worker “spoke with mother and she admitted to [the social worker] that she verbally abuses Andrea” and stated that “she needed help with parenting Andrea.” At a Team Decision Making meeting conducted on December 15, 2011, it was mutually decided that a non-detained petition would be appropriate. During the meeting, “mother demonstrated erratic behavior,” fluctuating from calm to incessant crying. She stated she wanted DCFS out of her life and did not have a drug problem, claimed the positive result was caused by a pill that she did not know was methamphetamine, admitted to relapsing over one year earlier, and saw no problem with using marijuana for “psychological purposes.” Linda also stated that she had a history of being involved in domestic violent relationships, that she was in a three-year relationship with a man who subsequently molested Andrea and against whom she pursued full criminal justice,<sup>2</sup> and that Linda had been horribly abused in her childhood by her own mother.

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<sup>2</sup> Linda stated during the TDM that the offender was sentenced to a prison term and that the incident occurred in New Mexico.

In a Last Minute Information For The Court form filed by a DCFS social worker on December 20, 2011 (“12/20/11 Last Minute Information form”), DCFS changed its recommendation to recommend that Andrea be detained from her mother because Linda “is not being truthful regarding her drug use; the severity and choice of her drug use renders her not capable of adequately caring for or parenting Andrea [] in that she admitted to losing her patience with Andrea resulting in verbal abuse; and mother does not believe she has a drug problem despite testing positive for methamphetamine and her previous child protective case in New Mexico which reflects an open case due to her drug/alcohol use.” Attached to the form was a “HIPPA Disclosure Made” form (“the HIPPA form”) with a handwritten notation stating “Closed CPS case in N.M. – 9 previous referrals. 8 unsubstantiated, 1 substantiated. most regarding drug/alcohol abuse by parents.”

At the initial detention hearing on December 20, 2011 at which Linda and Andrea were present and represented, the court after argument ordered Andrea detained with MGA with the understanding that Jorge S. and mother would move out of the home. During argument, mother’s counsel noted that although there had been nine previous referrals in New Mexico, eight were unsubstantiated and one was substantiated and that Linda completed a program and that case was closed. The matter was continued for a pretrial resolution conference.

In a Jurisdiction/Disposition Report filed on February 2, 2012 (“Jurisdiction/Disposition Report”), DCFS reported that On January 18, 2012, a DCFS social worker emailed the Public Records Custodian with the New Mexico Children, Youth and Families Department Protective Services “requesting additional case history” and received 93-pages of referral history, reports, and investigative narratives (“the New Mexico documents”). The Jurisdiction/Disposition Report contained a summary of the New Mexico documents, showing eight unsubstantiated allegations of physical neglect by mother (due to drug abuse) from 2003 until March 2011 and one substantiated allegation of physical neglect in 2005. The report also summarized the referral history in New Mexico, stating “more referrals continued to come beginning 2007, up until 2011”

and noting: “On 04/05/11, an investigative contact was entered by Ms. Elizabeth Davila, stating the following, “On 04/05/11 at 12:30 pm, a face to face contact with Linda [] (mother) at Range RV trailer park, space #11: Linda states there is currently no drug use in the home and is willing to provide the department with a UA if needed and she agreed to the drug test, but when she was told the department would request a hair follicle test, which would go back three months, Linda was asked what kind of results the drug test would show. Linda was honest and stated that there would probably be levels of cannabis and methamphetamine. She said the last time she used pot and meth was 2-½ months ago.” Finally, the report indicates that the New Mexico documents were attached, but the New Mexico documents were apparently removed so that redactions could be made.

The Jurisdiction/Disposition Report also indicated that DCFS social worker interviewed Linda by telephone, who was in New Mexico and did not have the means to return to California. Linda stated ““I’m not an everyday drug user. I admit I used pills . . . diet pills. I couldn’t believe my drug tests came out positive for three drugs when I took those pills. Wow! It was positive for methamphetamine, amphetamine and marijuana. I admit I smoke weed. The last time I smoked was a few days ago. I use it to calm my nerves and relax.” The report also indicated that a social worker interviewed MGA who stated that Linda would smoke marijuana all the time, including outside MGA’s house where MGA could smell it from the kitchen while cooking, that MGA confronted Linda about her smoking and what she was teaching Andrea, that on one occasion Linda “spanked Andrea real bad” on her back and in her hair, and that MGA sometimes protects Andrea and sometimes not because Linda gets “very, very mad.” Maternal grandmother in New Mexico was also interviewed and stated that she saw Linda in mid-January and “she’s clean.”

In a Last Minute Information For The Court form filed by a DCFS social worker on February 2, 2012, DCFS reported that Linda had called and stated that she was not returning to California and wished for the case to be transferred to New Mexico and that Linda was looking into a substance abuse program in New Mexico.

Accordingly, Linda was not present for the February 2, 2012 PRC hearing. At the hearing, mother's counsel indicated that she had the Jurisdiction/Disposition Report but not the attachments and the court noted that it did not know what those other reports contained, but "having read and considered today's report, I believe I have enough evidence to sustain a petition with, perhaps, modified language." The court then set the matter for contested hearing.

On March 7, 2012, DCFS filed a Witness List that also listed documents and specifically identified six documents it was going to offer: (1) the Non-Detained Detention Report, (1A) the drug test results, (2) the 12/20/11 Last Minute Information form, (2A) the HIPPA form, (3) the Jurisdiction/Disposition Report, and (3A) the New Mexico documents.

In a Last Minute Information For The Court form filed by a DCFS social worker on March 8, 2012, DCFS reported that Linda remained in New Mexico and had completed an intake appointment at a substance abuse program the day before.

Accordingly, mother was not present at the March 8, 2012 adjudication hearing but gave permission to her counsel to proceed without her. At the hearing, mother's counsel objected to exhibit 3-A, the New Mexico documents, arguing that it was irrelevant and lacked authentication. No other objections were made. Mother's counsel noted that the New Mexico documents did not have a declaration from the custodian. In response, the court stated: "It's an interesting question. The department has requested these documents and received these documents. Perhaps if they had been subpoenaed and sent under subpoena, then the authenticity from the holder of the records would have been clear. [¶] I think in an abundance of caution, that I will not admit petitioner's 3-A. But all other documents are admitted." DCFS counsel objected to the ruling but noted that "in this case, there's enough in the record to sustain the petition without those documents." The court agreed, noting 3-A was "the only document to which there was an objection" and "clearly, petitioner's 3 [the Jurisdiction/Disposition Report] states all of this history probably in a much more succinct way. So it's basically all in petitioner's 3.

So that's another reason I'm proceeding with caution and not admitting the document to which there was an objection."

After argument, the court sustained the section 300 petition as amended to strike the words "and damage" from the petition. The court noted that Linda had a recent positive drug test for marijuana and methamphetamine and other documents indicated a history of abuse. Specifically, the court noted that the HIPPA form indicated there was one substantiated investigation of drug and alcohol abuse by parents and the pages of the Jurisdiction/Disposition Report summarizing the New Mexico documents showed that when Linda was advised in April 2011 that the New Mexico agency would want a hair follicle test, she admitted that such a test would probably show levels of cannabis and methamphetamines as she used both drugs two-and-a-half months earlier. Thus, the court concluded, mother was clearly "a current user and has a history as well."

The court declared Andrea a dependent of the court pursuant to section 300, subdivision (b), removed her from Linda's custody, and ordered reunification services for Linda.

Linda filed a timely appeal.

## **DISCUSSION**

On appeal, Linda argues that the juvenile court erred in relying on information from the New Mexico documents summarized in the Jurisdiction/Disposition Report after it declining to admit into evidence the New Mexico documents themselves. Linda, however, has forfeited this argument.

"An appellate court ordinarily will not consider challenges based on procedural defects or erroneous rulings where an objection could have been made but was not made in the trial court. [Citation.] . . . The purpose of the forfeiture rule is to encourage parties to bring errors to the attention of the juvenile court so that they may be corrected. [Citation.]" (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754; *In re S.B.* (2004) 32 Cal.4th 1287, 1293; see, e.g., *In re Christopher B.* (1996) 43 Cal.App.4th 551, 558; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 582 ["A parent's failure to raise an issue in the juvenile court prevents him or her from presenting the issue to the appellate court."].)



Here, even after the juvenile court excluded the New Mexico documents but made clear that it would rely on the Jurisdiction/Disposition Report because it contained “basically all” the information from the New Mexico documents, just organized in a more “succinct” way, Linda never objected to the summarization of the New Mexico document or the court’s reliance upon it. In short, mother had a clear opportunity to bring the alleged error to the attention of the juvenile court so that it could be corrected but did not do so.

We recognize that the application of the forfeiture rule is not automatic and we have discretion to excuse a party’s failure to properly raise an issue in a timely fashion. (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293; *In re Wilford J.*, *supra*, 131 Cal.App.4th at p. 754.) This discretion, however, must be exercised with special care in dependency proceedings. Because these proceedings involve the well-being of children, and considerations such as permanency and stability are of paramount importance, that discretion should be exercised rarely and only in cases presenting an important legal issue. (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293; *In re Wilford J.*, *supra*, 131 Cal.App.4th at p. 754.) Because this case raises no novel legal issues requiring appellate resolution, it does not warrant the rare exercise of our discretion to excuse Linda’s forfeiture.

On appeal, Linda also argues that even if the evidence was sufficient to sustain the petition under a preponderance of the evidence standard, it was not sufficient to sustain the finding of substantial danger to Andrea under the clear and convincing standard for removal of a child. (§ 361, subd. (c)(1).)

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent

judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

“On review, we employ the substantial evidence test, however bearing in mind the heightened burden of proof” at the trial level of clear and convincing evidence for the removal of a child. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Here, there was substantial evidence that Linda had a history of substance abuse, had resumed using drugs including methamphetamine by early 2011, was a current user as of December 2011, and was a current and frequent user of marijuana. The evidence also showed that Linda denied using methamphetamine, first claiming she had consumed an energy drink and then claiming she had taken diet pills, and felt her use of marijuana was not a problem. Moreover, there was evidence that Linda spanked or hit Andrea on one occasion, and Linda admitted to verbally abusing Andrea. While there was contrary evidence suggesting that Andrea felt well cared for by Linda, we do not reweigh the evidence.

### **DISPOSITION**

We affirm.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.