

Filed 4/20/18 In re Ryan A. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re RYAN A., et al., Persons  
Coming Under the Juvenile Court  
Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.A.,

Defendant and Appellant.

B282833

(Los Angeles County  
Super. Ct. Nos. CK55529,  
CK55505)

APPEAL from orders of the Superior Court of Los Angeles  
County, Steff R. Padilla, Juvenile Court Referee. Affirmed.

Linda Rehm, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

These consolidated appeals involve two children, K.A. and Ryan A. (Ryan), who have the same father, defendant and appellant R.A. (Father). In prior opinions, we affirmed the juvenile court's jurisdictional finding that both K.A. and Ryan are children described by Welfare and Institutions Code section 300.<sup>1</sup> (*In re K.A.* (Jun. 22, 2017, B277442) [nonpub. opn.]; *In re Ryan A.* (Aug. 4, 2017, B277430) [nonpub. opn.]). When the juvenile court made its jurisdictional findings, it ordered informal supervision instead of declaring the children dependents of the court. Approximately six months after the jurisdictional hearing, however, the Los Angeles County Department of Children and Family Services (the Department or DCFS) filed petitions asserting the order for informal supervision had been ineffective in protecting the children's welfare. The Department asked the juvenile court to declare the children dependents of the court and to impose new dispositional obligations on Father. The juvenile court agreed, and we consider whether substantial evidence supports its determination.

## I. BACKGROUND

### A. *Proceedings Prior to the Former Appeals*

Detailed accounts of the earlier juvenile court proceedings are set forth in this court's opinions in *In re K.A.*, *supra*, B277442 and *In re Ryan A.*, *supra*, B277430. We summarize the pertinent events, drawing on our prior opinions.

The dependency proceedings commenced after DCFS received referrals raising concerns about the well-being of K.A.

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<sup>1</sup> Statutory references that follow are to the Welfare and Institutions Code.

and Ryan, who were both living with Father at the time. As a result of prior dependency proceedings, Ryan's mother, A.I., was allowed only monitored visitation with Ryan.

The assigned social worker visited the family home, interviewed the family members, and also spoke to a medical assistant at a community clinic that provided medical services to Ryan. The medical assistant reported Ryan had been diagnosed with strabismus (more commonly known as "lazy eye") and had a referral to an ophthalmologist on which the family had not followed through. The medical assistant also stated Ryan had been diagnosed with asthma and Ryan's last prescription for Albuterol (a drug used to treat his asthma symptoms) should have run out already. The medical assistant explained Ryan should be seen about once per month due to his asthma and expressed concern that Ryan had not been seen at the clinic since August 2015.

On May 17, 2016, DCFS filed two petitions pursuant to section 300 alleging both K.A. and Ryan came within the jurisdiction of the juvenile court.<sup>2</sup> Count b-2 of each petition alleged there was a substantial risk K.A. and Ryan would suffer serious physical harm or illness due to Father's failure to obtain recommended medical care for Ryan's asthma and strabismus. Count b-3 of the petition regarding K.A., as later amended by the juvenile court, alleged Father repeatedly violated court orders when he left K.A. and Ryan alone with A.I., and that such violations "resulted in [K.A.] being struck by [A.I.] with a

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<sup>2</sup> Because they are not pertinent to this appeal, we do not discuss the counts that were later dismissed by the juvenile court.

helmet.” The count further alleged “[t]he violation of court orders by [Father] endanger[ed K.A.’s] physical health and safety and plac[ed K.A.] at risk of serious physical harm, damage, danger and physical abuse.” Count b-3 in the petition regarding Ryan similarly alleged Father and A.I. had violated court orders when Father left Ryan and K.A. alone with A.I. Count j-1 of the petition regarding K.A. alleged Father’s medical neglect of Ryan placed K.A. at substantial risk of abuse or neglect.

At the initial detention hearings, the juvenile court found Father was K.A. and Ryan’s presumed father and ordered K.A. and Ryan to remain in Father’s custody pending adjudication of the section 300 petition. The court granted A.I. visits with Ryan twice a week, but ordered the visits could not take place in Father’s home and had to be monitored by someone, not Father, who met with DCFS’s approval.

In the weeks following the detention hearing, a DCFS social worker conducted further interviews with K.A., Ryan, Father, and A.I. in connection with preparing a jurisdiction/disposition report for the juvenile court. Regarding obtaining medical care for K.A., Father stated “he [was] certain that [K.A.] is up to date” with his medical care. However, when the social worker contacted K.A.’s medical provider the next day, the social worker learned that Father had missed a scheduled appointment for K.A., that this was the second consecutive appointment K.A. had missed, that K.A.’s last physical was in April 2015, and that K.A. was “overdue for his updated immunizations.” When the social worker told Father about the issues disclosed by the medical provider, Father stated “he would call to schedule” an appointment.

Regarding obtaining medical care for Ryan, Father told the Department he tried to make an ophthalmology appointment for Ryan after receiving an initial referral from the community medical clinic. Father claimed he was not able to make the appointment because the referral he was given included incorrect contact information.<sup>3</sup> Father reported Ryan had recently been seen by his medical provider and was scheduled to have an allergy screening test performed. A Department investigator called Ryan's medical provider the next day and talked with a staff member who reported Father was a "no show" for a scheduled appointment. Father stated he was unaware of that appointment, but he had taken Ryan to have his allergy testing done at another medical testing facility.

When the juvenile court jurisdiction hearing later commenced, the court received several DCFS reports in evidence and took judicial notice of a custody order entered during prior dependency proceedings that gave custody of Ryan to Father and provided A.I. with only monitored visitation rights. Father also testified during the jurisdiction hearing.

Following the presentation of evidence and argument from counsel, the juvenile court sustained counts b-2 (risk of harm to Ryan and K.A. from Father's neglect in obtaining medical care for Ryan), b-3 (as amended, risk to Ryan and K.A. from leaving them

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<sup>3</sup> A.I. asserted she called Ryan's healthcare provider about the ophthalmology referral and the provider had agreed to send a new referral. However, when later contacted by DCFS, a representative of the healthcare provider reported there was no record of such a call in the provider's records, which "would have been documented."

alone with A.I. in violation of court order), and j-1 (risk to K.A. from Father's medical neglect of Ryan).

The court found both K.A. and Ryan were children described by section 300 but opted not to declare either a dependent child. Instead, the court ordered DCFS to provide services to keep the family together and placed the children and parents under the informal supervision of the social worker for six months pursuant to section 360, subdivision (b). The juvenile court's informal supervision order required Father to complete five random drug tests, participate in family preservation services, and regularly attend parenting education and alcoholic/narcotic anonymous classes. The order also required Father to obtain individual counseling and IEP assessments for Ryan and K.A., to seek regional center services for Ryan, and to ensure both children's medical needs were being met.

Father and A.I. appealed the juvenile court's jurisdictional findings. We held substantial evidence supported the juvenile court's decision to find count b-3 of the respective dependency petitions true and accordingly affirmed the jurisdictional determinations as to both children.

*B. Proceedings Since the Prior Appeals*

*1. DCFS files petitions alleging the court's order for informal supervision had not been successful*

According to Department status reports, in the months following the jurisdiction and disposition hearing, Father only partially complied with the court's informal supervision order. Father did have K.A. and Ryan assessed for mental health services, he obtained individual counseling for K.A., he had Ryan assessed for Regional Center Services, and he agreed to request

an IEP assessment for Ryan. On the other hand, Father only attended ALANON meetings “when he fe[lt] he really need[ed] it,” which was approximately once a week, and he had not provided DCFS with proof of his participation. Father also had not completed a DCFS-approved parenting class. Though Father had originally told DCFS he was going to enroll in a parenting class at Gangfree Alternative Program (GAP), he instead enrolled in an online parenting class, which was not among the programs approved by the Department, without notifying DCFS. Father had obtained an IEP assessment for K.A. from his elementary school, but had not obtained one from his new middle school. Father also had not fully addressed Ryan’s medical needs as Father had not taken Ryan to an ophthalmologist appointment due to the expiration of a prior referral and delays in receiving a new referral, though he eventually made an appointment for January 2017.<sup>4</sup>

On December 27, 2016, nearly six months after the juvenile court found K.A. and Ryan were children described by section 300, DCFS filed petitions alleging the court’s informal supervision order “ha[d] been ineffective in ameliorating the situation requiring the child welfare services” for both boys. Both petitions specifically cited Father’s failure to regularly participate in parenting education and alcoholic/narcotic anonymous classes.

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<sup>4</sup> A.I. had also failed to comply with the terms of the informal supervision. A.I. had not participated in court-ordered drug testing and had not provided DCFS with proof of enrollment in either a 12-step program or a parenting program. She had been participating in weekly monitored visits with Ryan, and the monitor reported A.I.’s visits had been appropriate.



The petition regarding K.A. further alleged Father had failed to comply with the juvenile court order to ensure an IEP assessment was completed for K.A.

Over the following weeks, Father made some additional progress in complying with his court-ordered obligations. In an interview with the Department, however, he conceded he still had not completed all of what the court had required. Father had requested IEP assessments for both Ryan and K.A. He had not, however, completed his parenting class through the GAP program (though he was enrolled as of January 9, 2017 and was scheduled to finish the twelve-week program on March 27, 2017). Father had also not been continuously attending ALANON meetings. Though he provided proof of attendance, that proof only demonstrated his attendance from September 2016 to November 2016.

Father also admitted he had not fully addressed the children's medical needs. Though Father had taken Ryan to an ophthalmologist appointment on January 24, 2017, Ryan was prescribed glasses that Father had not yet obtained for him. (Father asserted the delay was because the glasses were not covered by insurance and he did not have the funds to pay out-of-pocket.) In addition, Ryan had been to the doctor in July and August of 2016 to receive the results of an allergy test and to undergo a TB test, but he had not had an asthma follow-up appointment. Father stated Ryan no longer had asthma and no longer needed medication, but that statement was contradicted by the medical assistant at Ryan's doctor's office. K.A.'s medical records indicated he had not been to a doctor's appointment since April 2015.

## 2. *The renewed disposition hearings*

The juvenile court held contested disposition hearings as required by the Department's filing of petitions alleging informal supervision had been ineffective. At K.A.'s hearing (the court held separate hearings for both boys), Father asked the juvenile court to close the case because K.A. was not at risk of harm. K.A.'s attorney joined in that request.<sup>5</sup> The juvenile court ruled it would declare K.A. a dependent child, explaining, "[Father] had six months to do what [he] needed to do, and this case would have gone away. He didn't do it." The court continued its placement of K.A. in Father's home and ordered Father to finish his parenting class; participate in ALANON meetings; and obtain an IEP reassessment, individual counseling, mental health services, and education tutoring services for K.A. The juvenile court continued the matter for three- and six-month status review hearings.

At Ryan's hearing, Father similarly asked the court to close the case. Ryan's counsel joined in the request, arguing Father had complied with a number of the juvenile court's directions and his failure to obtain eyeglasses for Ryan was due to monetary problems and issues with insurance. The juvenile court declined to close the case and declared Ryan a dependent of the court, noting the "360 failed." The juvenile court opined Father "has an excuse for everything. He had six months. He didn't have to do much. And I would have even forgiven the parenting class,

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<sup>5</sup> The juvenile court expressed surprise at minor's counsel's joinder, noting K.A. had not seen a doctor for two years. Counsel for Father and counsel for K.A. disputed that characterization, with K.A.'s attorney noting K.A. had seen a doctor in February 2017.

because he took the wrong one, if he'd taken his kids to the doctor's, if he had met his children's needs." The juvenile court stated it had no confidence Father would meet the children's needs absent court supervision and ordered Father to complete an ALANON program, a parenting class, and family preservation efforts. The court also ordered Father to obtain an IEP assessment for Ryan and to ensure Ryan's medical and medication needs were met. The juvenile court additionally directed DCFS to work with Father to find appropriate funds and resources for Ryan to obtain glasses. The court continued the matter for three- and six-month status review hearings.

## II. DISCUSSION

The juvenile court initially found K.A. and Ryan to be persons described by section 300, but the court opted not to declare them dependents and instead ordered informal supervision pursuant to section 360, subdivision (b). We affirmed those jurisdiction findings. When DCFS returned to the juvenile court alleging the informal supervision had failed to ameliorate the conditions that had brought the children before the juvenile court, the court's original jurisdictional findings remained valid and operative, and DCFS's burden was to prove the conditions had not been resolved by the informal supervision. Once the juvenile court found DCFS had satisfied its burden, the only remaining task for the juvenile court was to enter a new, appropriate disposition order.

The juvenile court did so and we conclude substantial evidence supports the juvenile court's determinations. The conditions informal supervision were meant to address had not been ameliorated because Father had not sufficiently addressed

Ryan's medical needs and had failed to comply with other requirements of the informal supervision orders.

*A. Father Cannot Now Challenge the Jurisdiction Findings*

If, following a period of informal supervision under section 360, subdivision (b), “the family subsequently is unable or unwilling to cooperate with the services being provided, the social worker may file a petition with the juvenile court pursuant to Section 332 alleging that a previous petition has been sustained and that disposition pursuant to subdivision (b) has been ineffective in ameliorating the situation requiring the child welfare services. Upon hearing the petition, the court shall order either that the petition shall be dismissed or that a new *disposition* hearing shall be held pursuant to subdivision (d).” (§ 360, subd. (c), emphasis added.)

Father devotes much of his briefs on appeal to arguing the juvenile court's jurisdictional findings should be reversed. The argument is unavailing; there is now no basis to challenge whether jurisdiction is appropriate.

When the juvenile court rendered its jurisdictional findings in July 2016, it did not then declare K.A. and Ryan dependents of the juvenile court. Instead, the court exercised its discretion to proceed under section 360, subdivision (b) and “without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker for a time period consistent with Section 301.” (§ 360, subd. (b).) “If the court agrees to or orders a program of informal supervision, it does not dismiss the dependency petition

or otherwise set it aside. The true finding of jurisdiction remains. It is only the dispositional alternative of declaring the child a dependent that is not made.” (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1260 quoting Seiser & Kumli, Cal. Juvenile Courts Practices and Procedure (2009) § 2.124[2], pp. 2-283-2-284.)

The juvenile court’s jurisdictional findings, which this court previously affirmed on appeal, remained valid and were not at issue in the section 360, subdivision (c) proceedings. The informal supervision order was a disposition order. (*In re Adam D.*, *supra*, 183 Cal.App.4th at p. 1261.) This appeal does not present Father with another opportunity to challenge the jurisdictional findings. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 892-893.)

*B. The Juvenile Court’s Findings and Refashioned Disposition Order Are Supported by Substantial Evidence*

We review the juvenile court’s factual findings and disposition order for substantial evidence. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216, fn. 4.)

In order to obtain a new disposition hearing under section 360, subdivision (c), all DCFS needed to establish was that the “disposition pursuant to subdivision (b) ha[d] been ineffective in ameliorating the situation requiring the child welfare services.” (§ 360, subd. (c).) Substantial evidence supported the juvenile court’s determination that this was true. Following the order for informal supervision, Father needed to submit to drug testing, participate in family preservation, regularly attend parenting

education and alcoholic/narcotic anonymous classes, obtain individual counseling and IEP assessments for Ryan and K.A., seek regional center services for Ryan, and ensure he was meeting the children's medical needs. In the ensuing six months, Father only partially complied with those requirements. As of the date DCFS filed the section 360, subdivision (c) petition, Father had not attended a DCFS-approved parenting program, had not completed an ALANON program, had requested but not yet obtained IEP assessments, had not taken Ryan to an ophthalmologist to address his strabismus diagnosis (and had let at least one referral expire), and had not taken Ryan to a follow-up appointment to monitor his asthma.

Though Father made additional progress on these matters between the initial hearing on the petition and the disposition hearing, he was still not fully in compliance with the juvenile court's orders by the time of the disposition hearing. Father's failure to satisfy the terms of the informal supervision constitutes substantial evidence that informal supervision had not ameliorated the conditions that brought K.A. and Ryan to DCFS's attention—namely neglect of Ryan's medical needs and Father's failure to follow court orders.<sup>6</sup>

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<sup>6</sup> Father does not challenge the appropriateness of the services ordered and conditions imposed as part of his case plan at the section 360, subdivision (d) hearing on February 7. We therefore need not address that issue.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIM, 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.