Filed 1/5/26 In re B.A. CA4/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re B.A., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. JOSEPH V., Defendant and Appellant.	G065818 (Super. Ct. No. 24DP1152) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Daphne G. Sykes, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Debbie Torrez and Chloe R. Maksoudian, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

This is an appeal by Joseph V. (the father or Joseph) in a dependency matter pursuant to Welfare and Institutions Code section 300, et seq.[1] The father contends that at the disposition hearing, the Orange County Social Services Agency (SSA) failed to establish that placement with him would be detrimental. He also argues the juvenile court applied the wrong code provision, section 361, subdivision (c)(1), rather than section 361.2, because he was a noncustodial parent. We find no reversible error and therefore we affirm the order.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Background and Detention

The parents in this matter, A.A. (the mother) and Joseph, have two children together. Mia was born in 2023 and B.A. (the child), who is the subject of this appeal, was born in 2024. We focus on the history of the case as relevant to the father, and omit details relating to the mother where possible.

Mia was also the subject of a dependency matter. She was born testing positive for substances. By the time of detention, reunification services had been terminated and the matter had proceeded to a permanency planning hearing (§ 366.26).[2] During the pendency of Mia's case, the father participated in drug testing but failed to regularly attend 12-step meetings. His visitation with Mia was also irregular; he attended only eight of 39 possible visits and would simply fail to appear. We mention Mia's case below where it is pertinent.

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[1] Subsequent statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] We have no further information about the status of Mia's case.

The mother had an unresolved substance abuse problem dating back to approximately 2018, and she had multiple drug-related and other misdemeanor convictions, including child abuse and endangerment (Pen. Code, § 273a, subd. (b)). The father had a criminal history that included a conviction for felony possession with intent to sell (Health & Saf. Code, § 11351). At the time of detention, he had a criminal case pending for assault with a deadly weapon with a gang enhancement.

The mother gave birth to B.A. in September 2024. At the time of delivery, the mother tested positive for fentanyl and methamphetamines. The child was taken to the neonatal intensive care unit (NICU) due to the mother's positive drug test, and preliminary tests were positive for the same substances. Confirmatory tests on the child were pending. The child had withdrawal symptoms including tremors, muscle rigidity, and difficulty waking up. The mother denied drug use. Soon after, the mother left the hospital against medical advice.

The maternal grandmother told the social worker that she believed Joseph was the father based on his "on and off relationship" with the mother and their history, including the birth of Mia. The maternal grandmother called the father and the social worker contacted him shortly thereafter. He went to the hospital to see the child and was interviewed by the social worker at that time.

The father told the social worker that he was the child's father. He had last seen the mother approximately three months prior, and she informed him that she was pregnant and he was the father. Otherwise, they did not have much contact. He stated he would like to take the child home once he was released from the NICU. He later told SSA he was living in a

shared home with his grandmother and uncles. He stated he had his own room and a crib from his time with Mia.

Two days later, while the child was still in the hospital, SSA obtained a protective custody warrant to temporarily remove the child from parental custody. Shortly thereafter, SSA filed a dependency petition. With respect to the father, SSA alleged the father had a substance abuse problem and a criminal history. The petition also alleged the parents had a substantiated history of child abuse and neglect that had led to Mia's dependency case, and ultimately the termination of services.

Shortly before the detention hearing, the social worker received a call from an individual who wished to keep her information confidential. As pertinent here, the caller reported her belief that the father sells drugs because she had "witnessed him put on black gloves, go into the backyard, and come out to meet people." The caller also believed the father had been supplying the mother with fentanyl.[3] With regard to the parents' relationship, the caller stated that the parents had resided together during the mother's pregnancy with B.A., although she had not seen the father in the past two months. She characterized the relationship between the parents as "'super toxic'" because they were always arguing.

The father appeared at the detention hearing on September 24, and he submitted on the matter of detention. The court found a prima facie basis to detain the child and ordered paternity testing. The court granted the father's request to visit the child while he was hospitalized and ordered three hours per week of supervised visitation upon release.

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[3] The social worker in Mia's case had been provided similar information from a caller who did not provide a name.

B. Jurisdiction

SSA's report reflected that the father denied the statement by the anonymous caller that he was a drug dealer or supplied the mother with drugs. He denied any substance abuse since 2019.

With respect to Mia's case, the father claimed he had "'completed all the services.'" He claimed he had an upcoming trial date in October 2024 to request more visitation. He stated he was not aware services had been terminated.

Regarding his criminal history, the father stated it was comprised of "'old arrests when I was a teenager,'" apparently disregarding his felony assault and gang charge in 2022.[4]

SSA developed a case plan, and the father began substance abuse testing in October 2024. He tested negative during the pendency of this case.

The father was scheduled to visit with B.A. In the period before the jurisdiction hearing, visits, when they occurred, proceeded appropriately, although the supervisor reported that on several occasions, the father held the baby while using his phone. Several visits were missed because the father did not respond to scheduling efforts. He canceled one visit and failed to show up for another.

In December 2024, the father pleaded no contest to an amended petition. The amended petition dropped the allegations of the father's drug use and clarified that the father had one drug-related conviction, for possession of heroin with intent to sell in 2016. The court found the

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[4] The father was born in October 1996. He was no longer a "teenager" as of his birthday in 2016. The father later reported to SSA that the 2022 case had been reduced to a misdemeanor with no jail time. It is unknown if SSA verified the status of that case.

allegations of the amended petition true by a preponderance of the evidence on the counts of failure to protect, no provision for support, and sibling abuse/neglect. The father was determined to be the biological father based on paternity test results. Pursuant to section 361.5, subdivision (b)(10), termination of parental rights as to a sibling, SSA recommended no services to either parent. A contested disposition hearing was set.

C. Disposition

In February 2025, B.A. was moved to the home of a paternal cousin, Vanessa G. The father appeared to be doing generally well on his case plan, testing negative for substances and visiting consistently. He also attended B.A.'s occupational therapy appointments. He began attending 12-step meetings in May 2025. SSA continued to recommend no services pursuant to section 361.5, subdivision (b)(10).

The disposition hearing began in July 2025, approximately 10 months after the child's detention at the hospital. The senior social worker assigned to the case testified that SSA's concerns with returning the child to the father concerned a "lack of consistency in the engagement of the services." The father's visits, although improved prior to the hearing, were inconsistent at first, and he had not started 12-step meetings until shortly before the hearing. Although it was not reflective of SSA's official position, the social worker testified that with protective orders, he believed a test release of 30 to 45 days would be appropriate. He repeated, however, that his opinion was not the official SSA position.

During argument, the father's counsel contended the child should be returned to the father, either unconditionally or with protective orders. Counsel for B.A. was opposed to releasing him to either parent, noting that only supervised visitation had been permitted up to that point. County

counsel requested reunification services for both parents instead of the bypass of services recommended by SSA.

The court ultimately ordered B.A. removed from both parents with reunification services, stating: "Court finds by clear and convincing evidence that 361(c)(1) applies and to vest custody with parents would be detrimental to the child and to vest custody with the Social Services Director is required to serve the child's best interest." The court felt return of the child was premature, given the parents had been on supervised visitation for the entirety of the case. The court set a six month review hearing for January 2026.

The father now appeals.

DISCUSSION

I.

THE DISPOSITION ORDER

The father contends the court failed to return the child to his custody, arguing the court lacked clear and convincing evidence that "There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being . . . ." (§ 361, subd. (c)(1); see § 361.2, subd. (a) [child to be returned unless it "would be detrimental to the safety, protection, or physical or emotional well-being of the child"].) To order a child removed, there must be a present risk of harm, although the "court may consider past events to determine whether the child is presently in need of [the court's] protection." (*In re A.F.* (2016) 3 Cal.App.5th 283, 289.)

We review the court's findings for substantial evidence. "Substantial evidence is evidence that is 'reasonable, credible, and of solid value'; such that a reasonable trier of fact could make such findings." (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.) "Issues of fact and credibility are

questions for the trial court and not the reviewing court. The power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact." (*In re Christina T.* (1986) 184 Cal.App.3d 630, 638–639.) "[W]e draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence." (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250–251.)

The father frames this case as if it is entirely about his alleged substance abuse. But there was more to this case than that—considerably more. There was a lengthy history of a dysfunctional, recurring relationship between the parents. Their "on and off relationship" occurred in the context of the mother's longstanding substance abuse problem. There was evidence from which the court could find they cohabited as recently as the mother's pregnancy with B.A. and that the relationship was full of conflict.

The father had a criminal history, and admitted that he sold drugs. He had no legitimate source of income, reporting that he did "'odd jobs . . . under the table.'" There was evidence from which the court could find that the father had supplied the mother with drugs.

Perhaps most pertinent and concerning, the parents had failed to reunify with their older child, Mia, who, like B.A., had tested positive for drugs at birth. During the reunification period, the father had drug tested, participated in counseling, and parenting classes. But he was inconsistent in communicating with the social worker, claimed attendance at 12-step meetings while offering varying excuses for failing to verify attendance, and

failed to visit with Mia regularly or prioritize visitation. During one visit he did participate in, he allowed the mother to have unauthorized contact with Mia. Reunification services for the father in Mia's case were eventually terminated due to his inconsistency and lack of progress. The father claimed he was unaware services had been terminated.

While the father has shown that he can participate in services and visitation, his history demonstrates a lack of consistency over a sustained period of time. Additionally, the father had never had as much as a single hour of unsupervised visitation with B.A. The court could therefore reasonably conclude that granting custody to the father, even with protective orders, posed a substantial danger to B.A.'s health and well-being. It was reasonable for the court to order continued services, which could hopefully proceed to unsupervised visits, overnights, and further opportunities for the father to demonstrate he was able to safely care for a small child.[5] We conclude substantial evidence supports the court's order.

II.

APPLICATION OF SECTION 361, SUBDIVISION (C)

As noted above, the court applied section 361, subdivision (c) to determine whether removal was appropriate. The father argues the court applied the wrong code section because section 361, subdivision (c) applies to parents who had custody prior to detention, and therefore, the court should have applied section 361.2, which applies to noncustodial parents.

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[5] The father points out that he has family support, and would live with the child in a home with relatives. But it is not his family that would have custody of the child; it would be the father, and he must be able to care for the child independently.

The father forfeited this issue by not raising it below. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 222.) At the disposition hearing, shortly after the mother's counsel argued section 361 applied to removal from her, the father's counsel stated outright that "[i]t's the same legal standard for the father." While we have discretion to ignore the forfeiture if we conclude the issue can be decided on undisputed facts, we find no reason to do so in this case. The father admits "the difference [between the standards] is not substantial." The standard the court applied here under section 361, subdivision (c), is a slightly more demanding standard, requiring "substantial danger" to the child, while section 361.2 uses the standard of "detriment[]." Accordingly, if we were to ignore forfeiture, we would conclude any error was ultimately harmless. Several cases have found as much. (*In re D'Anthony D.* (2014) 230 Cal.App.4th 292; *In re Nickolas T.* (2013) 217 Cal.App.4th 1492.)

While the father claims these cases are distinguishable, we disagree. We do not find this to be an issue of express versus implied findings, as the father believes. Rather, the question is whether the court would have ruled differently if it had applied section 361.2 as opposed to section 361, subdivision (c). The record gives us no reason to believe that is the case. Because any error would have been harmless, we find no reason to waive the father's forfeiture of this issue on appeal.

DISPOSITION

The juvenile court's disposition order is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

GOODING, J.

SCOTT, J.