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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re C.T., a Person Coming Under the
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH & HUMAN SERVICES,

Plaintiff and Respondent,

v.

C.T.,

Defendant and Appellant.

A134153

(Humboldt County
Super. Ct. No. JV0900712)

C.T. (referred to as Father) appeals an order establishing a guardianship for his son, C.T. and related jurisdictional and dispositional findings. He contends the juvenile court did not follow the proper procedures in ordering the guardianship and that the court's findings were not supported by substantial evidence. We conclude the juvenile court erred in setting a plan for a guardianship without Father's waiver of reunification services, and remand the matter for further proceedings.

I. BACKGROUND

We recently decided a related case, *In re Tamara T.* (July 19, 2012, A132508) [nonpub. opn.] (*Tamara T.*).¹ The complex background of this matter through December 13, 2010, is described in detail in that opinion, and we will not repeat it here except as necessary to understand the issues before us.

C.T. and his sister, T.T., are the two oldest of the six children of A.B. (Mother). Father is the father of C.T. and T.T., but not of Mother's four younger children. Father did not live with Mother or the children. However, he was able to visit them at his own convenience and take them to his home. During the proceedings below, the juvenile court granted him presumed father status.

The juvenile court took jurisdiction of C.T. on August 25, 2010, sustaining allegations that despite four voluntary case plans and numerous services offered to Mother and her family, there had been continuing referrals of neglect and abuse; that C.T. had refused to go to school in April 2010, and had disclosed witnessing an incident of domestic violence between Mother and his stepfather; and that Mother and her mother (Grandmother) were unable or unwilling to care for T.T. and that this pattern of instability placed C.T. at substantial risk of harm in that he was shuttled back and forth between Mother and Grandmother.

In October, 2010, the juvenile court sustained the amended allegations of a subsequent petition that Mother was unable to care for the children, that the children fought, assaulted each other, and left the house without permission, that Mother's home presented health and safety concerns, that Mother had unaddressed mental health needs, that Mother had reported she no longer had food for the children, and that Father's "willful or negligent failure to adequately supervise [T.T.] and [C.T.] from the conduct of the mother places them at risk [of] abuse or neglect. This places the children at

¹ We have taken judicial notice of the record on appeal for *Tamara T.* Concurrently with this opinion, we file an opinion in another related case, *In re T.T.*, A134923.

substantial risk [of] abuse or neglect in which the father should have known and has failed to protect the children from the actions of the mother.”

In its December 13, 2010, disposition order, the juvenile court ordered that C.T. be placed in Mother’s home, that Mother receive family maintenance services, and that Father receive “normalization” services.² Father appealed, contending the jurisdictional findings were erroneous because he did not have custody of either T.T. or C.T. and hence had no duty to protect them from Mother; that certain dispositional findings as to T.T. were not supported by the record; and that there had been inadequate inquiry and notice under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.; ICWA; see also Welf. and Inst. Code, § 224 et seq.³). Father appealed, and in *Tamara T.*, filed July 19, 2012, we conditionally reversed the dispositional orders and directed the juvenile court to ensure compliance with ICWA, but otherwise affirmed the orders.

In April 2011, the Humboldt County Department of Health and Human Services (the Department) filed a supplemental petition pursuant to section 387. According to the detention report, C.T. had been “acting out” at school, and Mother had refused to pick him up when the school tried to contact her. In March, 2011, during a meeting with a social worker, Mother did not intervene when one of her other children became angry and ran toward the social worker with a steak knife. On another occasion when the social worker visited, the children were unsupervised while Mother slept. Mother offered no supervision when her children engaged in dangerous play and hit the social worker. The house was messy, with air soft bullets strewn about and food and trash on the floor. Mother had been given notice to leave the house she was renting. C.T. was detained and the court ordered reunification services for Mother and Father. The services ordered for Father included parent education, substance abuse assessment, drug monitoring and screening, and anger management.

² T.T. was placed in foster care.

³ All undesignated statutory references are to the Welfare and Institutions Code.

On July 15, 2011, before the jurisdictional hearing on the supplemental petition, Mother filed a request for a change order pursuant to section 388, asking the juvenile court to make Grandmother C.T.'s guardian and to terminate the dependency. According to the request, Mother was involved in a treatment program, and Grandmother had cared for C.T. for most of the past several years.

The Department filed a pretrial statement taking the position that, while it did not object to a permanent plan for C.T. of guardianship with Grandmother, "the Mother's 388 should have asked that a [section] 366.26 hearing be set. That cannot happen until the pending 387 petition is sustained, then, at [disposition], the [Department] will request a [section] 366.26 hearing be se[t], assuming both mother and father file a waiver of reunification services." The Department enunciated the issue as "Whether or not the mother may use a [section] 388 [request] to short-circuit legally mandated procedures."

The hearing on the section 387 petition as to C.T. took place together with a six-month review hearing for T.T. on July 27, 2011. The juvenile court noted in connection with T.T.'s case that Father had not "fully engage[d]" in the services available to him in the past, and asked the Department's counsel whether it was willing to modify and continue normalization services for Father if he were willing to engage in them; counsel responded that the Department would do so if Father fulfilled the alcohol and other drugs (AOD) and domestic violence aspects of a case plan and kept in weekly contact with the social worker. Father's counsel said that Father was interested in parenting classes and wanted assistance in beginning such a program. Through his counsel, Father indicated he did not believe there was a connection between a requirement for AOD and domestic violence services and the problems leading to the dependency, and that such services might not be appropriate.

In connection with the section 387 petition as to C.T., Mother testified that Grandmother had been C.T.'s primary caregiver during his lifetime. Mother believed it was in C.T.'s best interest to be placed with Grandmother. The juvenile court sustained

the petition with certain amendments and ordered C.T. placed in suitable foster care or the home of a suitable relative or extended family member.⁴

A disposition report was filed for an August 30, 2011 hearing in C.T.'s case. According to the report, Mother had substance abuse and mental health issues that affected her ability to care for her children, although she was currently in a residential treatment program. The report described Father as having "significant anger issues which negatively impact his ability to adequately and appropriately parent his children." He was arrested for being drunk in public on August 10, 2011. He had refused to work with the Department to address his alcohol and drug use, and had "also been unwilling to address how his lack of intervention in his children's lives and his lack of positive parenting ha[d] contributed to [C.T.] and [T.T.'s] very serious emotional and behavioral issues." The report continued, "Social workers have witnessed [Father] berate his children, often in front of others. His lack of insight into his children's lives and his self-centered antics has not improved his relationships with his children, but rather has significantly damaged them." He had not told social workers what help he believed his family needed. The report noted, however, that Father had attended most court hearings involving his children. The report also described C.T.'s significant emotional, behavioral, and physical problems, including "throwing tantrums, kicking, hitting, enuresis, encopresis, disruptive behaviors in school and home," "extreme anxiety, depression, withdrawal, [and] untoward aggressive behavior toward self or others."

With regard to the proposed guardianship, the report stated that Mother, but not Father was entitled to reunification services; and that the Department favored a guardianship pursuant to section 360, subdivision (a), which "will require the completion of a guardianship assessment, the waiver of reunification services, and the father's agreement."

At the August 30, 2011 hearing, counsel for the Department recommended guardianship, and took the position that if Father did not agree to a guardianship, the

⁴ C.T. was living with Grandmother, in whose home he had been placed after he was detained in April 2011.

matter should be set for a hearing pursuant to section 366.26, at which the Department would recommend guardianship as a permanent plan. Father's counsel stated that Father was "not necessarily opposed to the recommendation of guardianship," but did not want to waive any rights in connection with an appeal of the December 13, 2010 order.⁵ After some discussion, counsel explained Father's position as follows: "[Father] does not have any objection to the recommendation of guardianship, but on the specific understanding that: [¶] One, he is not waiving any appellate rights presented, if any, right now or for his prior filed appeal. [¶] Two, he has requested, and would still like to request parenting class. He understands that he would not be offered in this case, but possibly under his still pending case of [T.T.'s] case, he would just still like to participate in that parenting class." Father's counsel also indicated that Father did not agree to all the proposed terms of the guardianship, including visitation arrangements; however, he did not object to a guardianship assessment taking place.

Mother signed a waiver of her right to reunification services, conditional on the guardianship being approved. The court ordered C.T. retained in out-of-home placement, and ordered a guardianship home assessment. Father objected to a portion of the case plan that required him not to use alcohol or drugs for 24 hours before a visit with C.T., taking the position that the record did not support that requirement. The juvenile court admonished Father that he needed to work with the social worker to arrange visitation, noting that at times he had failed to do so out of frustration about his pending appeal. The court warned Father, "you don't benefit [C.T.] by not engaging the process, even if your appeal comes through, because that's going to take a while. And so to not fully engage the process really does cut off your own nose to spite your own face."

At an October 20, 2011 hearing, Father reiterated his objection to the alcohol and drug condition to his visitation, but requested assistance with parenting education classes.

⁵ At the time, there was some question about whether Father had lost his appeal rights due to an untimely notice of appeal. This court ultimately granted relief from default and considered the appeal on the merits in *Tamara T.*

Counsel for the Department stated that Father had “absolutely refused” to participate in normalization services, and that the Department had stopped offering those services based on his own request.

At a November 29, 2011 dispositional hearing, Father took the position that he did not agree either to the guardianship or to waive reunification services, and said he wished to have custody of C.T. Father also objected to the proposed case plan; his counsel stated: “Should the Court wish to proceed over [F]ather’s objection on the guardianship, we also have an objection to the case plan as it applies to [F]ather. . . . [I]t indicates requirements, particularly, that [Father] will develop appropriate parenting skills. Again, there is no discussion about him or his need for requirements of services in the report to support any such case plan component. He has previously indicated a continuing desire to have a parenting class. I don’t believe that has begun. But if he did so, I believe it should be voluntary”

The juvenile court ordered a permanent plan of legal guardianship with Grandmother as guardian. In doing so, it concluded that although Father had not waived services, “the status of the case does not require that there be a waiver by the father to proceed at this time.” The court also found by clear and convincing evidence that it would be detrimental to place C.T. in Father’s custody. Unsupervised visitation between Father and C.T. was ordered, to take place twice a week as long as Father was sober.

II. DISCUSSION

A. Waiver of Services

Father contends the juvenile court erred in ordering the guardianship under section 360 over his objection and in the absence of his waiver of reunification services. Section 360, subdivision (a) provides in pertinent part: “Notwithstanding any other provision of law, if the court finds that the child is a person described by Section 300 and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, it may, in addition to or in lieu of adjudicating the child a dependent child of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, if the court determines that a guardianship is in the best

interest of the child, provided the parent and child agree to the guardianship The court shall advise the parent and the child that no reunification services will be provided as a result of the establishment of a guardianship . . . [¶] . . . [¶] No person shall be appointed a legal guardian under this section until an assessment as specified in subdivision (g) of Section 361.5 is read and considered by the court”⁶ Under section 361.5, subdivision (g)(1)(A), the assessment must include information on “[c]urrent search efforts for an absent parent or parents and notification of a noncustodial parent in the manner provided for in Section 291.”⁷ Section 360, subdivision (a), is an “ ‘alternative procedure for appointing a guardian when the parent acknowledges early in the dependency proceedings that he or she cannot, and will not be able to, even after family reunification services, provide adequate care for the child.’ ” (*In re L.A.* (2009) 180 Cal.App.4th 413, 425 (*L.A.*), quoting *In re Summer H.* (2006) 139 Cal.App.4th 1315, 1325.)

As explained in *L.A.*, reunification services implement the dependency law’s strong preference for maintaining family relationships where possible; therefore, with limited exceptions, section 361.5 requires the juvenile court to order child welfare services for both parent and child when a minor is removed from parental custody. (*L.A.*, *supra*, 180 Cal.App.4th at p. 424.) However, “ ‘reunification services need not be

⁶ Similarly, California Rules of Court, rule 5.695(b)(1) provides that a court may appoint a legal guardian for a child at a disposition hearing if “(A) The parent has advised the court that the parent does not wish to receive family maintenance services or family reunification services; [¶] (B) the parent has executed and submitted *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195); [¶] (C) The court finds that the parent, and the child if of sufficient age and comprehension, knowingly and voluntarily waive their rights to reunification services and agree to the appointment of a legal guardian; and [¶] (D) The court finds that the appointment of the legal guardian is in the best interest of the child.”

⁷ Section 291 provides that after the initial petition hearing, notice of a hearing shall be served on, *inter alia*, the mother and father or fathers, presumed and alleged. (§ 291, subd. (a).) Among the items to be included in the notice is a statement that if the noticed persons fail to appear, the court may proceed without them. (§ 291, subd. (d)(6)(A).)

provided to a parent who does not wish to maintain the family unit, and who makes an informed decision to reject them. . . . [S]ection 361.5, subdivision (b)(14) allows the parent to “waive[]” such services, where the waiver is expressed in writing, executed while the parent is represented by counsel, and accompanied by an advisement of the possible consequences, including the termination of parental rights and placement of the dependent child for adoption. ([Citation]; see also § 360, subd. (a) [parental decision to forego reunification may lead to establishment of legal guardianship].)’ ” (*L.A.*, *supra*, 180 Cal.App.4th at p. 424.) Section 361.5, subdivision (b)(14) allows services to be bypassed when “the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.”

A dependent child’s mother and statutorily presumed father are generally entitled to reunification services, unless one of the bypass provisions of section 361.5, subdivision (b), applies. (§ 361.5, subd. (a).) These bypass provisions, of course, include section 361.5, subdivision (b)(14). The court in *In re Adrianna P.* (2008) 166 Cal.App.4th 44 (*Adrianna P.*) considered whether the provisions of section 361.5 for bypass of reunification services applied to a *noncustodial* parent, and answered that question in the affirmative. It reasoned that under section 361.2, which governs placement when a child has a parent with whom the child was not living at the time of the events or conditions that led to the dependency, the court must first consider placing the child with the noncustodial parent before placing the child in out-of-home care, if the parent requests custody. (*Adrianna P.*, *supra*, 166 Cal.App.4th at p. 55.) If the court places the child with the noncustodial parent, it may order services to be provided to either or both parents. (*Ibid.*; see also 361.2, subd. (b)(3).) Aside from this reference, section 361.2 is silent on the issue of reunification services; it does not address the provision or denial of services if the child is not placed with the noncustodial parent. (*Adrianna P.*, *supra*, 166 Cal.App.4th at pp. 55-56.) This silence did not strip the court of its authority to deny services to a noncustodial parent pursuant to an applicable bypass

provision; rather, the court in *Adrianna P.* concluded, “the juvenile court is not required to distinguish between a custodial and noncustodial parent when ordering or bypassing reunification services for a child in out-of-home placement. Section 361.5, subdivision (a), now clearly directs the court to provide reunification services to the child’s mother and statutorily presumed father, unless a statutory bypass exception applies.” (*Adrianna P.*, *supra*, 166 Cal.App.4th at pp. 56-57.)

Reading these authorities together, we conclude as follows: C.T. was not placed with Father, his noncustodial parent, pursuant to section 361.2. Father’s entitlement *vel non* to reunification services was accordingly governed by section 361.5, and a waiver of such services was subject to the waiver requirements of section 361.5, subdivision (b)(14). That statute provides for bypass of reunification services if the parent executes a waiver of services and advises the court he or she does not want the child placed in his or her custody. Father did neither of these things.

The Department contends, however, that under the reasoning of *L.A.*, Father’s express waiver of services was unnecessary before authorizing a guardianship under section 360. While *L.A.* contains some language that, taken out of context, appears to support the Department’s position, we conclude such a reading is not supported by the statutory scheme.

The children in *L.A.* had been removed from the care of their father. (*L.A.*, *supra*, 180 Cal.App.4th at p. 419.) The mother, who had been released from jail, did not remain in touch with her probation officer and called the children only irregularly. When she spoke with the probation officer, she said she did not know her own address, and she did not attend a subsequent hearing in the dependency action. (*Id.* at p. 420.) The department’s efforts to contact the mother included the use of her former mailing address and the cell phone numbers and email addresses the department had for her. (*Id.* at p. 422.) The department recommended a legal guardianship with the children’s paternal grandparents, and Father was in accord with the recommendation. (*Id.* at pp. 421, 423.) The juvenile court, however, concluded it could not order a guardianship under section 360 without the mother’s waiver of services. (*L.A.*, *supra*, 180 Cal.App.4th at p. 423.)

The appellate court reversed. It concluded that section 360, subdivision (a)'s reference to "the parent" advising the court that he or she is not interested in family services, when considered along with the notification requirement to the noncustodial parent, suggested that " 'the custodial parent can waive his/her reunification services and that the court can proceed with a guardianship without the appearance or express waiver of the [noncustodial] parent if that person has been properly noticed.' " (*L.A., supra*, 180 Cal.App.4th at p. 426.) The court went on: "Section 291 provides that notice should be given to the noncustodial parent unless that parent's address is unknown, then notice can be given to a relative residing in the county or an adult relative residing nearest the court (§ 291, subd. (a)(7)), and the notice shall state that, if they fail to appear, the hearing may proceed without them (*id.* at subd. (d)(6)(A)). Accordingly, *if the noncustodial parent's whereabouts are unknown or that parent otherwise indicates a reluctance or disinclination to be involved in the dependency proceedings or to receive services to allow him or her to parent the child*, that parent's express waiver of reunification services is not required. To interpret section 360, subdivision (a) to require the noncustodial parent to expressly waive reunification services, even in situations where that parent is aware of but declines to participate in proceedings that would determine the placement of the child, would be unreasonable and contrary to the legislative scheme governing dependency proceedings. The statute contemplates that the whereabouts of a noncustodial parent may be unknown or that the parent may refuse to participate in the juvenile court proceedings, and specifies that information concerning the effort to contact and notify the noncustodial parent must be included in the assessment report that must be read and considered by the court before the court appoints the legal guardian and issues letters of guardianship under the statute." (*L.A., supra*, 180 Cal.App.4th at pp. 427-428, italics added.)

Despite the breadth of the language italicized above, the facts here lead to a result different from that in *L.A.* There, the mother's whereabouts were unknown, and she had failed to appear or participate in the proceedings. Father here, on the other hand, participated consistently in the proceedings, often in person. Although he objected to

conditions that required him to be sober, and had apparently refused services in the past, he expressed interest in parenting classes at court hearings.⁸

In these circumstances, the rule of *L.A.* is not applicable. Father participated regularly in the dependency proceedings. To conclude that Mother’s unilateral agreement to a guardianship acted to deprive *Father* of his right to reunification services would render Father’s right to such services under section 361.5 nugatory—a result we must avoid in construing a statute. (*L.A.*, *supra*, 180 Cal.App.4th at p. 427 [“ ‘ “An interpretation that renders related provisions nugatory must be avoided . . . [and] if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed” ’ ”].) The juvenile court erred in ordering a guardianship under section 360 in the absence of Father’s waiver of reunification services. Accordingly, the guardianship order pursuant to section 360 must be reversed.

This result does not mean, of course, that the juvenile court might not ultimately decide that a guardianship is appropriate in this case. It merely means the juvenile court must follow the appropriate procedures before ordering one. Indeed, the Department took the position during these proceedings that unless Father agreed to the guardianship,

⁸ The Department does not argue on appeal that Father was not entitled to services with respect to C.T. after he had been removed from Mother’s care.

the matter should be set for a hearing pursuant to section 366.26, at which the court could order a guardianship.⁹ (§ 366.26, subd. (b)(3).)

B. Substantial Evidence to Support Detriment Findings

Father challenges the sufficiency of the evidence to support the juvenile court's findings that C.T.'s removal was based on the detriment of placing C.T. with Father and on Father's inability to address his "AOD, anger and mental health issues."

As Father points out, C.T. was not in his custody at any point relevant to these proceedings. Accordingly, he argues, the juvenile court could not *remove* C.T. from Father's custody, and its findings that Father's conduct and the resulting detriment formed part of the basis of the removal were unsupported by the evidence. Father argues that these findings acted to circumvent the requirements of section 361.2, subdivision (a), which provides that if a noncustodial parent requests custody of a dependent child who has been removed from the custodial parent, "the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." We reject this contention. It is clear that the juvenile court knew C.T. was not in Father's custody, that it considered

⁹ We reject Father's contention that, having taken this position below, the Department cannot be heard to argue on appeal that the juvenile court could properly order a guardianship under section 360. The doctrine of judicial estoppel, upon which Father relies, is meant to prevent " 'the intentional assertion of an inconsistent position that perverts the judicial machinery.' " (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 183 (*Jackson*)). It has been held to apply when the same party has taken two positions in judicial or quasi-judicial administrative proceedings; "*the party was successful in asserting the first position*"; "the two positions are totally inconsistent; and [] the first position was not taken as a result of ignorance, fraud, or mistake." (*Ibid.*, italics added; see also *International Engine Parts, Inc. v. Fedderson & Co.* (1998) 64 Cal.App.4th 345, 351.) Here, of course, the juvenile court did *not* adopt the position that Father's waiver was necessary if it was to order a guardianship under section 360. In any case, we see no " 'perver[sion of] the judicial machinery' " (*Jackson, supra*, 60 Cal.App.4th at p. 183) in the Department's position on appeal that the juvenile court's order was supported by the applicable law.

placing C.T. with him after he was removed from Mother's care, and that it concluded such placement would be detrimental to C.T.¹⁰

Father also contends the evidence does not support the finding that he had an "inability" to address his substance abuse, anger, and other issues or that these problems affected C.T. The disposition report for the August 30, 2011, hearing stated: "[Father] has significant anger issues which negatively impact his ability to adequately and appropriately parent his children. On or about 8/10/2011, [Father] was arrested for being drunk in public. [Father] has continually refused to work with CWS in order to address his alcohol and other drug use. He has also been unwilling to address how his lack of intervention in his children's lives and his lack of positive parenting have contributed to [C.T.] and [T.T.'s] very serious emotional and behavioral issues. [¶] Social workers have witnessed [Father] berate his children, often in front of others. His lack of insight into his children's lives and his self-centered antics ha[ve] not improved his relationships with his children, but rather ha[ve] significantly damaged them." The report also concluded placement with Father, the noncustodial parent, was not a viable option, noting, "[Father] has unaddressed mental health and substance abuse issues. [Father] currently resides with his sister who has allegedly stated she does not want him there. [Father] has been reported to often be drunk in public and has ongoing anger issues. [Father] has not engaged in any services recommended by Child Welfare Services and has been opposed to discussing any recommended services to assist him with becoming an appropriate care provider for his children. Recently his attorney informed the Court that [Father] was willing to participate in a parenting class." According to the October 2011, guardianship home evaluation report, C.T. said that he did not always feel safe with Father. He also said Father " 'is always getting drunk. When he drinks he yells, screams, acts crazy, and gets mean,' " and that it was "scary."

¹⁰ We concluded in *Tamara T.* that in the jurisdictional findings, the juvenile court properly relied in part on Father's failure to protect his children from Mother's conduct. (*Tamara T.*, *supra*, A132508.)

The evidence is sufficient to support the juvenile court’s findings. We recognize, as Father points out, that the dependency law does not require perfection in parents, and that it requires only “passing grades here, not straight A’s.” (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789-790.) On this record, however, we reject his argument that his behavior, while imperfect, falls within the “passing” range with respect to C.T. C.T. has severe emotional, behavioral, and physical problems, including obesity, enuresis, encopresis, and a disruptive behavior disorder. His emotional disturbances have included “throwing tantrums, kicking, hitting, . . . and disruptive behaviors in school and home,” and he suffers “extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others.” An October 2011, guardianship home evaluation report indicated the encopresis was under control, and the social worker believed this success was due in part to the structure in C.T.’s life and his reduced stress since he had been returned to Grandmother’s care. The juvenile court could reasonably conclude a child with these emotional and behavioral problems would suffer detriment from placement with a parent who had a pattern of drunkenness and accompanying “yell[ing], scream[ing], act[ing] crazy, and get[ting] mean” behavior that C.T. reported was “scary”; whose housing was unstable; and who had not taken steps to address his own issues and improve his ability to be a good parent.¹¹

C. Request for New Judge

Father asks us to direct that the matter be heard by a new judge pursuant to Code of Civil Procedure section section 170.1, subdivision (c), under which, “[a]t the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than

¹¹ We reject Father’s argument that the juvenile court improperly took judicial notice of the truth of matters stated in earlier reports, which Father contends were not properly before the court when it made its rulings in the August and November, 2011, disposition and guardianship hearings. Section 358 authorizes the juvenile court to consider hearsay such as social workers’ reports and studies or evaluations made by a child advocate at disposition. (§ 358, subd. (b); see also *In re Vincent G.* (2008) 162 Cal.App.4th 238, 243.) And the reports prepared for the August and November, 2011, hearings are sufficient to support the juvenile court’s findings.

the judge whose judgment or order was reviewed by the appellate court.” This power is to be used sparingly (*People v. Superior Court (Dorsey)* (1996) 50 Cal.App.4th 1216, 1230), for example, where it appears the original judge bore “an animus inconsistent with judicial objectivity” or showed a “whimsical disregard” of the statutory scheme (*People v. Gulbrandsen* (1989) 209 Cal.App.3d 1547, 1562 [disqualification of sentencing judge]). Although we agree with Father that the judge below misunderstood the prerequisites to a section 360 guardianship, nothing in the record persuades us the same judge could not rule objectively on remand. Accordingly, we deny Father’s request.

III. DISPOSITION

The November 29, 2011, order is reversed to the extent it established a guardianship for C.T., and otherwise affirmed. The matter is remanded for further appropriate proceedings.

RIVERA, J.

We concur:

REARDON, ACTING P.J.

SEPULVEDA, J. *

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.