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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re S.K., a Person Coming Under the  
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT  
OF HEALTH & HUMAN SERVICES,

Plaintiff and Respondent,

v.

E.R.,

Defendant and Appellant.

A135330

(Humboldt County  
Super. Ct. No. JV110173)

E.R., mother of S.K., appeals from a dispositional order declaring the child to be a dependent of the court and removing the child from her custody.<sup>1</sup> The appeal also brings up for review the juvenile court’s finding that it had jurisdiction over the child pursuant to Welfare and Institutions Code, section 300, subdivision (b).<sup>2</sup> Mother contends the record does not contain substantial evidence to support the juvenile court’s section 300 jurisdictional finding and the dispositional order directing the removal of the child from

<sup>1</sup> The child’s presumed father is not a party to this appeal.

<sup>2</sup> All further unspecified statutory references are to the Welfare and Institutions Code. “A jurisdictional order is only a finding. The dispositional order is the judgment. Only the judgment is appealable. On appeal from the judgment, the jurisdictional findings can be reviewed.” (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112; see *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249 [“The parents have the right to challenge both the jurisdictional and dispositional findings and orders on appeal. (§ 395.)”].)

her custody. However, mother has not preserved her sufficiency of the evidence challenges for our review. Accordingly, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In August 2011, mother gave birth to twins, B.K. and S.K. Three months later, on November 21, 2011, B.K. died. At that time B.K. was living with mother and the children's presumed father. S.K. was then living with M.M., the legal guardian of one of the child's older half-siblings. Because the cause of B.K.'s death was not immediately known, the Humboldt County Department of Health and Human Services (the Department) took S.K. into protective custody and placed him in a foster home.

On November 28, 2011, the Department filed a first amended petition seeking an adjudication that S.K. was a dependent of the court based on an allegation that the child's mother had failed to protect him. (§ 300, subd. (b).) The petition recited the following pertinent supporting facts: The mother had "unaddressed substance abuse issues which render [her] unable or unwilling to provide the child with adequate care, medical and supervision."<sup>3</sup>

Before the jurisdictional hearing, the Department filed two reports: a "Jurisdiction Report," and a "1st Addendum Report." The Department's social workers described mother's prior contacts with child welfare services (from 2000 to 2006) regarding S.K.'s four half-siblings, two of whom were then living with their respective fathers, one with a legal guardian, and one with a paternal grandmother. Additionally, the social worker described the family's circumstances prior to B.K.'s death. In mid-October 2011, two-month old B.K. was diagnosed as having "feeding problems," showing a "[f]ailure to thrive," and suffering from "[e]sophophageal reflux disease." Shortly thereafter, on October 20, 2011, mother asked M.M. to care for S.K. Mother said she was stressed and things were not going well at home. Mother would call M.M. to check on S.K. or to ask for diapers for B.K. On a few occasions mother came and picked up S.K. for a short time.

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<sup>3</sup> The petition also included allegations pursuant to subdivision (j) of section 300 (abuse of sibling) that S.K. was at risk based on mother's alleged abuse or neglect of B.K. At the jurisdictional hearing, the court granted the parties' joint request to strike the section 300, subdivision (j), allegations.

M.M. had concerns about the parents' care of both children. When M.M. questioned mother about the children's need to be seen by their doctor, mother always replied that both children were healthy, except that B.K. had an ongoing problem with acid reflux. M.M. did not know when S.K. had last seen a doctor and mother had refused to provide a letter allowing M.M. to get medical treatment for S.K.

During an investigation of B.K.'s death, the deputy coroner met with the parents at their home on November 21, 2011. Father showed the coroner the bedroom where the child had slept with his parents before his death. When father opened the bedroom door, the deputy coroner saw mother "breathing out of a balloon. There was a whip-it canister by the door frame to the bedroom. [Mother] quickly put the balloon away." The deputy coroner also saw "a glass table in the room with a baby bottle sitting on it. Near the bottle was some white powder residue with linear marks through it."

On December 5, 2011, the Department's social worker and mother discussed the family reunification process. At that time, mother was questioned about the coroner's observations of a white powder and mother's act of blowing out a balloon. Mother asserted that the powder was spilled baby formula and she was merely blowing up a balloon for her roommate's children. Mother added that her roommate had an air soft gun and the cartridges were "02 for the gun and not used for huffing as suggested." The social worker explained that B.K.'s death was still being investigated and there were things that mother could and should do to demonstrate her safe parenting ability. Mother stated she would be willing to do anything including attending "Healthy Moms or AOD [Alcohol and Other Drug]" programs. However, she would prefer not to attend programs because she was currently on disability due to the birth of the twins and she would soon have to return to work. Mother stated that although she had used drugs in the past, she had participated in programs and she was now clean.

In assessing and evaluating the case, the social worker reported, in pertinent part, that mother had "unaddressed substance abuse issues which have been contributing factors to [her] inability to provide care for [her] children." "[Mother] has been struggling with substance abuse since she was twelve years old . . . . [She] resided in a clean and sober

living home . . . for approximately two years. She has also resided in other safe and sober homes. She is currently on probation for her drug use/abuse.” The social worker’s recommended jurisdictional findings and orders included requests that the court sustain the petition and find that S.K. “is described by § 300(b) . . . of the Welfare and Institutions Code by . . . clear and convincing evidence.”

At the January 23, 2012, jurisdictional hearing, counsel for the Department and the parents agreed that there would be no contested hearing as there had been a resolution of the matter, which required certain amendments to the first amended petition filed November 28, 2011. Specifically, the parties had agreed to further amend the petition to remove all allegations attributing B.K.’s death to the parents’ care of the child or to their unaddressed substance abuse issues. Once the juvenile court agreed to the amendments, mother’s counsel indicated the matter would be submitted pursuant to mother’s written waiver of rights form.<sup>4</sup> The Department’s counsel then asked the court to “enter the recommended Findings and Orders beginning on Page 10 of the Juris Report received on December 12th with the change to No. 5 to delete the (j) allegation.” The court admitted into evidence the jurisdictional report, received by the court on December 12, 2011, and the first addendum report, which was received by the court on December 22, 2011. The court asked counsel if there were “[a]ny other comments before we proceed?” Mother’s counsel replied no. The court then recited as its findings the recommended findings and orders set forth in the Department’s December 12, 2011 jurisdictional report, starting at the top of page 10. In pertinent part, the juvenile court “sustained” the first amended petition filed November 28, 2011, as amended January 23, 2011, and found, “by clear and convincing evidence,” that S.K. was a child as described in subdivision (b) of section 300. The court set the matter for a dispositional hearing.

Before the dispositional hearing, the Department again filed two reports: a Disposition Report, and a 1st Addendum Report, which attached a copy of B.K.’s autopsy

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<sup>4</sup> In the written form, mother indicated she wished to “submit the petition on the basis of the social worker’s . . . report and other documents, if any.” Mother also acknowledged her understanding that if she “submit[s] the petition on the report, the court will probably find that the petition is true.”

report and the deputy coroner's death investigation report dated December 15, 2011. The autopsy report listed B.K.'s cause of death as "[s]udden unexpected infant death associated with bed sharing." The Department's reports described the family's circumstances since the January 2012 jurisdictional hearing. The Department's social worker concluded that out of home placement remained necessary to protect S.K.'s health and safety due to mother's inability to provide consistent care and supervision of the child due to her unaddressed substance abuse issues. The social worker's recommended dispositional findings and orders included requests that the court find, by clear and convincing evidence, that the return of the child to mother would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child, and that the court declare the child a dependent of the court and order that placement out of the home was necessary and appropriate while reunification services were provided to mother. Mother filed an objection to the admission of B.K.'s autopsy report and to certain statements in the Department's initial disposition report in which the social worker had attributed B.K.'s death to the parents' unaddressed substance abuse issues.

At the March 8, 2012, dispositional hearing, the juvenile court granted mother's request to strike those statements in the initial disposition report that appeared to imply the parents' substance use problems may have contributed to the death of B.K. The court ruled that the first paragraph under the heading "Assessment and Evaluation" in the initial disposition report would read that the parents " 'continue to struggle with unaddressed AOD issues, which have negatively impacted their ability to care for their son, [S.K.]. Both [parents] have denied drug use[.]' . . . 'They did not return [B.K.] to his physician for followup treatment and failed to feed him every two hours as instructed, or to refill his prescription[.]' [¶] '[S.K.] was also lacking in medical care in that he had not received any well-baby checkups until his SCP [substitute care provider] took him after he was placed into protective custody[.]'" The court denied mother's request to strike B.K.'s autopsy report.

When the court asked if any party had any comments regarding the Department's recommended dispositional findings and orders, mother's counsel replied, "Submit it, your

Honor.” The court then indicated it had read and considered the Department’s initial disposition report and the first addendum report. The court then recited as its findings the recommended findings included in the initial disposition report including that there was “a substantial danger to the physical health, safety, protection, or physical or emotional well-being of [S.K.] or would be if the child were returned home, and there [were] no reasonable means by which the child’s physical health or emotional health [could] be protected without removing the child from the physical custody of the child’s mother and father.”<sup>5</sup> The court also found, by clear and convincing evidence, that the Department had made “reasonable efforts . . . to prevent or eliminate the need for removal of the child from the parents,” and that the child’s return to mother “would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child . . . .” The court found the decision to remove the child was based on: “The parents’ unaddressed substance abuse and mental health issues would render them unable to provide the child with medical care and supervision.” The court adjudged S.K. a dependent of the court and the Department was granted custody of S.K. and authorized to place the child out of the home, which placement was found to be “necessary and appropriate.” The Department was directed to provide the parents with reunification services under a case plan requiring them to participate in substance abuse and general counseling services and to complete an AOD assessment, and the parents were granted supervised visitation.

Mother timely appeals from the dispositional order and seeks review of the section 300 jurisdictional finding.

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<sup>5</sup> During the recital of its findings and orders, the juvenile court initially found as recommended that mother had made no progress toward alleviating or mitigating the causes necessitating intervention by the juvenile court. Mother’s counsel interrupted to impose an objection to that recommended finding. Mother’s counsel requested “at least a finding of minimal” progress because mother was then “in Healthy Mom’s and receiving counseling at Hospice and attending visitation.” Over the Department’s objection that mother had “just barely started those services,” the court granted mother’s request. When the court continued its recital of its findings and orders, the court found mother had made minimal progress toward alleviating or mitigating the causes necessitating intervention by the juvenile court.

## DISCUSSION

Mother's sole challenge on this appeal concerns the sufficiency of the evidence supporting the juvenile court's section 300 jurisdictional finding and the dispositional order's directive to remove the child from her custody. However, as we now discuss, we agree with the Department that the record conclusively demonstrates that mother did not preserve for our review her sufficiency of evidence challenges.

In dependency proceedings, a parent may elect to "submit the jurisdictional determination to the court based on the information provided to the court and waive further jurisdictional hearing." (Cal. Rules of Court, rule 5.682(e).) "By submitting on a particular report or record, the parent agrees to the court's consideration of such information as the only evidence in the matter. Under such circumstances, the court will not consider any other evidence in deciding whether the allegations are true. (*In re Tommy E.* [(1992) 7 Cal.App.4th 1234,] 1238.) [¶] Notwithstanding a submittal on a particular record, the court must nevertheless weigh evidence, make appropriate evidentiary findings and apply relevant law to determine whether the case has been proved. [(*Id.* at p. 1237.)] In other words, the parent acquiesces as to the state of the evidence yet preserves the right to challenge it as insufficient to support a particular legal conclusion. [(*Ibid.*] Thus, the parent does not waive for appellate purposes his or her right to challenge the propriety of the court's orders." (*In re Richard K.* (1994) 25 Cal.App.4th 580, 589.) However, where a parent fails to object or submits on the social worker's *recommendation*, not on the *report*, such conduct constitutes "acquiescence in or yielding to the social worker's recommended findings and orders, as distinguished from mere submission on the report itself. This is considerably more than permitting the court to decide an issue on a limited and uncontested report . . . . The [parent's] submittal on the recommendation dispels any challenge to and, in essence, endorses the court's issuance of the recommended findings and orders." (*Ibid.*, fn. omitted.)

Mother contends she preserved her right to challenge the sufficiency of evidence supporting the section 300 jurisdictional finding because she submitted solely on the social worker's reports, she did not admit to the acts set forth in the amended petition, and she

did not agree to address the issues that were stricken from the original dependency petition. She also contends she preserved her right to challenge the dispositional findings and orders relating to the need to remove the child from her custody because her counsel made objections and submitted at the dispositional hearing. We conclude mother's contentions are unavailing.

The record shows that, when asked, mother's counsel made no objection to the Department's request that the juvenile court adopt the recommended jurisdictional findings and orders. Additionally, with one exception not pertinent on this appeal, mother's counsel submitted on the social worker's recommended dispositional findings and orders including those relating to the need to remove the child from mother's custody. Thus, we conclude mother has failed to preserve for our review her challenge to the section 300 jurisdictional finding and the dispositional order's directive to remove S.K. from her custody.<sup>6</sup> Her conduct at the jurisdictional and dispositional hearings was "considerably more than permitting the court to decide an issue on a limited and uncontested record, as was the case in [*In re*] *Tommy E.*" (*In re Richard K.*, *supra*, 25 Cal.App.4th at p. 589.) Mother's failure to object and the submission on the recommendation "in essence, endorses the court's issuance of the recommended findings and orders." (*Ibid.*, fn. omitted.)

"As a general rule, a party is precluded from urging on appeal any point not raised in the trial court." (*In re Richard K.*, *supra*, 25 Cal.App.4th at p. 590; see *In re S.B.*, *supra*, 32 Cal.4th at p. 1293 ["[d]ependency matters are not exempt from this rule".]) "The purpose of this rule is to encourage parties to bring errors to the attention of the trial court,

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<sup>6</sup> "Although the loss of the right to challenge a ruling on appeal because of the failure to object in the trial court is often referred to as a 'waiver,' the correct legal term for the loss of right based on failure to timely assert it is 'forfeiture,' because a person who fails to preserve a claim forfeits that claim. In contrast, a waiver is the 'intentional relinquishment of abandonment of a known right.'" [Citations.] (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) By mother's failure to object to the social worker's recommended section 300 jurisdictional finding, she forfeited her claim to contest that finding. By her submission on the recommended dispositional findings and order relating to the need to remove the child from her custody, mother waived her right to challenge those findings and orders.

so that they may be corrected. [Citation.]” (*In re S.B.*, *supra*, 32 Cal.App.4th at p. 1293.) “Any other rule would permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware. [Citation.]” (*In re Richard K.*, *supra*, 25 Cal.App.4th at p. 590.) Had mother raised her appellate contentions in the juvenile court, “the court may well have entered” different findings and orders. (*In re Kevin S.* (1996) 41 Cal.App.4th 882, 886.) Instead, mother chose not to contest the juvenile court’s section 300 jurisdictional finding and the dispositional findings and orders relating to the removal of the child, which “coincided with the social worker’s recommendation[s].” (*In re Richard K.*, *supra*, 25 Cal.App.4th at p. 590.) Under these circumstances, we decline to address mother’s appellate challenges to the section 300 jurisdictional finding and the dispositional order.

#### **DISPOSITION**

The section 300 jurisdictional finding and the dispositional order are affirmed.

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McGuinness, P.J.

We concur:

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Pollak, J.

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Jenkins, J.