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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

HUMBOLDT COUNTY DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

R.B.,

Defendant and Appellant.

A136161

(Humboldt County  
Super. Ct. No. JV120076)

C.B.'s noncustodial father R.B. appeals from a dispositional order of the juvenile court denying him physical custody of his child. He contends the court should have granted him custody under Welfare and Institutions Code section 361.2,<sup>1</sup> a statute conferring on the noncustodial parent a qualified right to custody of a child, like C.B., who has been removed from the custodial parent. The juvenile court, father contends, erroneously applied a different statute. At a later status hearing, the court placed C.B. with mother and father jointly. The Humboldt County Department of Health and Human Services (department) contends the appeal is now moot. We agree, and order it dismissed.

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

## **FACTUAL AND PROCEDURAL BACKGROUND**

On May 1, 2012, the department filed a juvenile dependency petition alleging C.B., just shy of two years old, came under the court's jurisdiction. According to the department, mother, who had physical custody of C.B., had been arrested on April 27, 2012, for driving drunk with C.B. in the car. The arrest was the latest manifestation of a long-standing substance abuse problem that had given rise to at least two prior DUI convictions. The department asserted father, the noncustodial parent, knew or should have known of mother's substance abuse problem, yet never intervened.

On May 2, 2012, the court ordered continued detention of C.B., finding her removal from mother's home appropriate, and set a jurisdictional hearing.

The jurisdictional hearing took place on May 29, 2012. Father filed a waiver of rights, stating he would submit the matter of jurisdiction solely on the basis of the department's jurisdictional report and acknowledging he was giving up the right to a hearing, to present and challenge evidence, and to testify on his own behalf. At the hearing, father's attorney made some comments in support of father, but concluded by saying father was anxious to move to the disposition phase and to "mov[e] quickly to unsupervised visitation," and therefore, "in light of the low burden of proof at jurisdiction, he'd prefer to just focus on reunification rather than fighting at this stage." The court found it had jurisdiction by clear and convincing evidence and set a dispositional hearing.

At the dispositional hearing, which occurred on June 27-28, 2012, the court adjudged C.B. a dependent of the court. To reach this result, it applied Welfare and Institutions Code section 361, subdivision (c)(1), to remove custody from both mother and father. The court ordered C.B. placed in the home of a relative or non-relative extended family member and ordered reunification services to mother and father. The court issued written findings and orders on July 2, 2012.

Father filed a notice of appeal on July 25, 2012, from the court’s dispositional findings and orders. He has not challenged the jurisdictional order.

Following a six-month review hearing, the juvenile court, on December 19, 2012,<sup>2</sup> found mother and father had made substantial progress and had been actively involved in developing a case plan for C.B. Placement with mother and father, it found, would not create a substantial risk to C.B.’s well-being, and it ruled C.B. placed with them, in accordance with the developed case plan.

### DISCUSSION

Father’s sole assertion on appeal is that the juvenile court, when it ordered C.B. removed from his custody at the dispositional hearing, failed to apply the correct statute. Father contends section 361.2 applies to noncustodial parents such as himself, while section 361, subdivision (c)(1)—the provision the juvenile court employed—only governs “guardians *with whom the child resides* at the time the [dependency] petition was initiated.” (§ 361, subd. (c), italics added.)

Indeed, “[s]ection 361, subdivision (c) governs the child’s removal from the physical custody of a parent. ‘“It does not, by its terms, encompass the situation of the noncustodial parent.” ’ ” (*In re V.F.* (2007) 157 Cal.App.4th 962, 969.) Section 361.2, subdivision (a), on the other hand, “provides . . . when a court orders removal of a child pursuant to section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of section 300, who desires to assume custody of the child. The section goes on to provide that if that parent requests custody, the court shall place the child with the parent unless it finds that placement with that

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<sup>2</sup> On January 7, 2013, we granted department’s motion for judicial notice of the December 19, 2012 Six Month Review Findings and Order. (See *In re Adrianna P.* (2008) 166 Cal.App.4th 44, 52–53, fn. 3 [taking judicial notice of relevant juvenile court proceedings following a notice of appeal].)

parent would be detrimental to the safety, protection, or physical or emotional well-being of the child. (§ 361.2, subd. (a).)” (*In re A.A.* (2012) 203 Cal.App.4th 597, 604–605.) After awarding placement to a noncustodial parent under this section, the juvenile court may make the parent the legal and physical custodian and terminate jurisdiction, or it may order custody subject to the court’s ongoing jurisdiction and provide reunification services with an eye toward eventually giving full custody to one of the parents or both of them. (§ 361.2, subd. (b).)

The department does not defend the juvenile court’s use of section 361. Instead, it asserts father’s appeal is moot because the December 19, 2012, order placed C.B. with both father and mother. If a party to a juvenile proceeding “believes that an issue pending on appeal has been rendered moot by a court order at a subsequent status review hearing or other proceeding, the party may bring the matter to the attention of the reviewing court.” (*In re Adrianna P.*, *supra*, 166 Cal.App.4th at p. 52, fn. 3.)

“An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. [Citation.] However, a reviewing court may exercise its inherent discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review. [Citations.] We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.)

As a result of the December 19 order, father now has shared custody over C.B.<sup>3</sup> So does mother. Thus, the predicate for applying section 361.2—removal of a child from

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<sup>3</sup> There is no record evidence father opposed the December 19, 2012, order in the juvenile court and father has not stated an intention to challenge it by appeal or writ.

an offending parent and placement with a noncustodial parent—no longer exists. (§ 361.2, subd. (a).) Given subsequent events, the July 2, 2012 dispositional order created only a temporary placement arrangement for C.B. that has now ceased, and this court can no longer provide effective relief to father.

Although father believes the juvenile court should have fashioned the dispositional order in accordance with section 361.2, and thus should have placed C.B. with him, given him sole custody, and terminated jurisdiction, we shall not “turn back the clock” and undo the progress made or any “stability that was created” since disposition. (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 566 [appeal from error in temporary, and then-defunct custody order was moot]; cf. *Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 144 [“If relief granted by the trial court is temporal, and if the relief granted expires before an appeal can be heard, then an appeal by the adverse party is moot.”]; *In re Pablo D.* (1998) 67 Cal.App.4th 759, 761 [“we cannot rescind [reunification] services that have already been received by the parents”].) Moreover, even if the court had placed C.B. with father under section 361.2, it could have provided reunification services to mother and eventually have ordered the child to return to her custody. (§ 361.2, subd. (b)(3).) Thus, it is pure speculation by father to assert he would have obtained custody and the proceedings would have been terminated.

While “appeals in dependency matters are not moot if ‘the purported error is of such magnitude as to infect the outcome of subsequent proceedings’ ” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432 [challenged jurisdictional findings could “affect Father in the future”]), father has not demonstrated any significantly adverse future affect. He contends that failing to reverse the dispositional order “could adversely affect [him] because the time period for reunification will be shortened.” Not so. Reunification

services are, indeed, limited to 18 months.<sup>4</sup> (*In re Steven A.* (1993) 15 Cal.App.4th 754, 765.) But the 18-month period runs from the date of initial detention (in this case, from early May 2012) and is not adjusted based on whether a parent enjoys a period of custody during that time or whether a supplemental petition is sustained. (*Ibid.*; § 361.5, subd. (a)(3) [“18 months after the date the child was originally removed from physical custody”]; see also *In re N.M.* (2003) 108 Cal.App.4th 845, 854 [“ ‘requiring the court to start services anew simply because a parent succeeded in temporarily regaining physical custody “would scuttle the purpose of the statute” ’ ”].) The only other suggestion of detriment father makes is that the court might err again in the future in some other case. Even if that were to come to pass, that would be a matter for appeal in that case and is not a detriment to father. In short, father identifies no significant potential harm to him that necessitates review of the placement order. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1493 [not reaching the merits of an appeal where an alleged father “has not suggested a single specific legal or practical consequence from [an alleged adverse] finding”]; cf. *People v. Stanley* (1995) 10 Cal.4th 764, 793 [“general assertion, unsupported by specific argument” insufficient to raise issue on appeal].)

Nor, given the fact-based nature of dispositional rulings and the vast array of circumstances in which they may arise, is this an issue that is likely capable of repetition but will avoid review, or an issue of continuing public interest. *In re Yvonne W.*, *supra*, 165 Cal.App.4th at page 1404, which father cites, is readily distinguishable. In that case, an 11-year-old child was removed from the mother’s custody because the mother had used drugs in front of the child. The mother enrolled in a residential treatment program, participated in therapy, tested regularly and had successful visitation, in short, making

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<sup>4</sup> While 18 months is the maximum timeframe, the default period is actually only 12 months, measured “from the date the child entered foster care as provided in Section 361.49.” (§ 361.5, subd. (a)(1)(B).) Under section 361.49, that is, in this case, the date of the jurisdictional hearing (May 29, 2012).

very substantial progress toward reunification. (*Id.* at pp. 1397–1398.) As of the 18-month hearing, she had continued making good progress, but had been unable to find permanent housing and was living at a St. Vincent de Paul shelter, where she could stay for up to two years. The agency expressly approved this housing as “appropriate.” While the child enjoyed visits with her mother and there was adequate room for her to stay at the shelter, the child had a “negative attitude” toward the residents and stated she did not want to be homeless. The agency thus took the position, and the juvenile court found, that return of the child created a substantial risk of detriment based on the child’s expressed fear, anxiety and unhappiness about her mother residing at a shelter. The court maintained the child’s foster placement and selected “another permanent planned living arrangement.” (*Id.* at p. 1399.) After Mother appealed, the child was returned to her custody. The court denied the agency’s motion to dismiss on the ground the case presented issues of continuing public importance “because they challenge the court’s finding that a parent’s housing, previously deemed by the Agency to be adequate, creates a substantial risk of detriment to the minor when there are no other protective issues to warrant continued out-of-home placement.” (*Id.* at p. 1404.) This particular detriment finding could also adversely affect the mother in the future, should the child again be removed from her care. (*Ibid.*) On the merits, the court concluded no evidence in the record supported the juvenile court’s risk of detriment finding based on the fact the mother resided at the shelter, which the agency had reported to the court was entirely “appropriate.” (*Id.* at pp. 1401–1402.) The instant case presents no such issue of general public importance.

**DISPOSITION**

The appeal is dismissed as moot.

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Banke, J.

We concur:

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Margulies, Acting P. J.

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Dondero, J.