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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re S.A., a Person Coming Under the Juvenile Court Law.	
HUMBOLDT COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, CHILD WELFARE SERVICES BRANCH, Petitioner and Respondent, v. H.A., Objector and Appellant.	A138294 (Humboldt County Super. Ct. No. JV120057)

H.A. (Mother) appeals from a dispositional order on a Welfare and Institutions Code section 388 petition of the Humboldt County Department of Health and Human Services's Child Welfare Services Branch (Department) removing her daughter S.A. from her custody. The Department has filed a respondent's brief, which we have construed as a motion to dismiss the appeal, arguing that the appeal is moot because S.A. has now been returned to Mother's custody. We conclude that the appeal is moot and grant the motion to dismiss.

I. BACKGROUND

In May 2012, the court sustained a dependency petition for S.A., born in 2006, finding that she was a child described in Welfare and Institutions Code section 300,

subdivision (b),[1] by virtue of Mother's "mental health issues," and the failure of J.A. (Father) to acknowledge the severity of Mother's issues. In June 2012, S.A. was declared a dependent, and placed in Mother and Father's home with provision of family maintenance services. In November 2012, citing a newly obtained psychological evaluation of Mother, the Department filed an amended section 388 petition requesting that S.A. be detained from Mother's custody and that Mother have only supervised contact with S.A. In December 2012, the court granted the section 388 petition, finding changed circumstances based on new evidence, and set the matter for a contested disposition.

In March 2013, after a series of hearings, the court found by clear and convincing evidence that "return of [S.A.] to [Mother] at this time would create a substantial risk [of] detriment to . . . [S.A.]." The court "order[ed] that [S.A.] continue to be placed in [Father's] home. [Father] may cho[o]se to co-reside with [Mother], so long as he has the consent of the social worker in writing with notice to [S.A.'s] counsel to arrange for [S.A.] to reside with an approved relative who agrees to assure that [S.A] does not have any unsupervised contact with [Mother], and then only with an approved supervisor." The Department recommended, and the court ordered, family maintenance services for Father and what were described as "[f]amily [r]eunification services" for Mother.

Mother appealed from the dispositional orders on the section 388 petition removing S.A. from her custody. We hereby grant the Department's request for judicial notice of orders entered in October 2013, which restored S.A.'s placement with both Mother and Father.

II. DISCUSSION

The Department argues that restoration of S.A. to Mother and Father's joint custody has rendered Mother's challenge to disposition of the section 388 petition moot. The Department notes that her restoration of custody has given Mother the relief she seeks in this appeal. An appeal is subject to dismissal when no effective relief can be

[1] All further statutory references are to the Welfare and Institutions Code.

granted. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315.) However, "[w]e 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.)

Citing section 361.5, Mother argues that her right to future reunification services will be limited if the orders on the section 388 petition are not reversed. Section 361.5 places limits on the length of reunification services a parent can receive. (§ 361.5, subds. (a)(1)(A) [for children three years or older, services are provided beginning with the dispositional hearing and ending 12 months after the child entered foster care], (a)(4) [maximum of 24 months].) But "the time limits for services set forth in section 361.5 do not apply if the child is not removed from the custody of *both parents* at the disposition hearing." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1169, italics added.) Based upon our review of the record, we agree with the Department that S.A. has remained in Father's custody throughout this dependency, and thus she was never removed from the custody of both her parents.

Mother's argument to the contrary is based on a statement by Father's counsel at the final dispositional hearing on the section 388 petition that Father elected to live with Mother. The court gave Father a choice "between providing a home for his daughter or providing a home for his wife," and provided in its disposition that he could choose to live with Mother if the case social worker approved a relative placement. Mother observes that a relative placement is "foster care" within the meaning of section 361.5. (§ 361.5, subd. (a)(1)(A); see *In re A.C.* (2008) 169 Cal.App.4th 636, 651 [children entered foster care when they were placed with their grandmother].)

However, Father's future living arrangements were not set in stone at the dispositional hearing. Father's counsel first advised the court that "the father and child will live together and the mother can visit in the home . . . ." Mother's counsel then said that the family "is not intending to have the mother live elsewhere; . . . they are, instead, alternating on a somewhat daily basis on whether the father and the child go to the grandparents[], or just the minor goes to the grandparents[]." The court said that it

needed to confirm where S.A. would be living, and that Mother could not be coming and going from the family home. But the court "[did not] have a problem . . . if . . . sometimes the father is residing with the child in the grandparents' home." After conferring with Father, his counsel said that "the child will be living with the relatives and . . . the mother would maintain the current apartment. There is some hope in discussion of renting an additional apartment nearby the existing one . . . ." The court then said, "certainly, Father has the discretion, if he wishes, to allow the child to spend the night at the grandparents' home and he be elsewhere, but that the residence of himself and the minor now would be the grandparents' home . . . ." The court added "that the child's residence will be, by Father's agreement, the grandparents' home until further notice. And then he can be there or not be there."

On this record, we are not persuaded that the court removed S.A. from Father's custody or ordered S.A.'s placement with a relative. It appears, to the contrary, that Father retained custody of S.A. and had authority over her living arrangements. Since S.A. was not removed from the custody of both parents, the services Mother received after she lost custody were not reunification services under section 361.5. (*In re T.W.*, *supra*, 214 Cal.App.4th at p. 1169.)

Where, as here, the dependent remains in the custody of one of the parents, the parent losing custody cannot be provided reunification services. (*In re A.L.* (2010) 188 Cal.App.4th 138, 140-141.) In this situation, the applicable statute is section 362, not section 361.5. (*In re Pedro Z.* (2010) 190 Cal.App.4th 12, 19-20.) Section 362 "does not say anything about 'reunification services.' " (*In re A.L.*, *supra*, 188 Cal.App.4th at p. 144.) It provides instead for "child welfare services or services provided by an appropriate agency designated by the court." (§ 362, subd. (c).) Whether those services are called "family maintenance services" (*In re Pedro Z.*, *supra*, 190 Cal.App.4th at p. 20) or family " 'enhancement' " services (*In re A.L.*, at p. 142, fn. 2), they are not reunification services. (See *In re Pedro Z.*, at p. 20 ["the focus of dependency proceedings 'is to reunify the child with *a parent*, when safe to do so for the child' "].) "Family reunification services shall only be provided when a child has been place in out-

of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court." (§ 16507, subd. (b); see § 361.2, subd. (b)(3) [providing for reunification services to a parent from whom a child is removed if the child is placed with a previously noncustodial parent].)

Mother argues that although the services she received "arguably could have been deemed something other than reunification services, the fact remains that the Department requested, and the juvenile court ordered, '[f]amily [r]eunification services.' . . . [¶] In the circumstances presented, if [S.A.] is again removed from [Mother], it is likely that the Department will take the position, and that the juvenile court will order, that the period of services provided [Mother] between the time of [S.A.'s] removal and her return seven months later should be counted against the time permitted by section 361.5 for provision of reunification services." However, our discussion in this opinion should be sufficient to prevent any such legally erroneous argument or outcome. As we have explained, the services Mother received during the period in question were not reunification services, and thus will not count against her future entitlement to those services under section 361.5.

Mother argues further that the appeal is not moot because there "can be no reasonable doubt that a history of removal from parental custody has a significant negative influence on the decisions made in the course of a dependency proceeding." But any stigma possibly associated with S.A.'s removal is eclipsed by her prompt return to Mother's custody. The removal will be relevant to future proceedings, if at all, primarily for its effects on the family, which we can do nothing to change. The case will continue, and possible future rulings will be based on the facts then existing. "[D]ependency cases by their nature are not static, and, because circumstances can change dramatically, the court must make its orders based on the circumstances existing at the time of the hearing." (*In re K.B.* (2009) 173 Cal.App.4th 1275.) Mother's concerns about the risk of future detriment are too speculative to warrant issuance of an advisory opinion on the propriety of the section 388 disposition.

III. DISPOSITION

The appeal is dismissed.

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Siggins, J.

We concur:

_____
McGuiness, P.J.

_____
Jenkins, J.