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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re R.M., a Person Coming Under the
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

R.M.,

Defendant and Appellant.

A140316

(Humboldt County
Super. Ct. No. JV130116)

This is an appeal from the jurisdictional and dispositional orders of the juvenile court in dependency proceedings involving minor R.M. (minor), a four-year-old boy living with his father, appellant R.M. (father), in the home of his paternal grandfather, also R.M. (grandfather). Father challenges the jurisdictional order on the ground that it lacks the support of substantial evidence. He challenges the dispositional order on the ground that the juvenile court misapplied the governing law. For reasons set forth below, we agree with father’s latter contention, and thus reverse the dispositional order, and remand the matter for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Minor was born in April 2010. The relationship between father and minor’s mother, A.L., ended in 2011. Since that time and until the disposition in this case, minor lived full-time in the residence of his grandfather with father, minor’s older half-sibling,

K.P., and grandfather's wife. During this time, minor and his half-sibling regularly engaged in overnight visits with mother.

Just days after one of the children's overnight visits with mother at the Christie Motel, where she was living with her boyfriend, G.L., mother was arrested for possession of methamphetamine, heroin, and marijuana with intent to sell and child endangerment. While minor and his older half-sibling were not present at the time, the motel room was filled with their clothes, toys and other possessions.¹ Mother's newborn child, named S.L., was present and sleeping in a crib. The drugs found in the room were within reach of the children. In particular, a boot found near the children's bed contained methamphetamine and heroin, and a plate containing marijuana sat atop a child-size table. The arresting officer suspected mother was under the influence of methamphetamine at the time because she was talking nonsensically, shaking and acting agitated.

On the day of mother's arrest at the Christie Motel, father was incarcerated in county jail on a probation violation, where it was expected he would remain for about 20 days. Minor was at grandfather's house. The next day, father was released from jail and returned home to grandfather's house.

A social worker from the Humboldt County Department of Health and Human Services (department) visited minor and his older half-sibling at grandfather's house soon after mother's arrest. Minor's half-sibling told the social worker that she had last seen mother two days ago at the motel room. She also stated that her mother sells "little white pills" to people with headaches, and that she was forbidden to touch these pills. The social worker nonetheless found the children "healthy, happy," and without emotional or mental problems. She also noted the children were bonded to grandfather.

On August 2, 2013, the department filed a petition pursuant to Welfare and Institutions Code section 300, subdivision (b), alleging that minor had suffered or was at

¹ Among other things, there was a small dresser full of clean and dirty children's clothes, a children's bed and table, and toys.

substantial risk of suffering serious physical harm or illness due to mother's failure or inability to adequately supervise or protect minor, and that mother was unable to provide minor regular care due to her substance abuse (hereinafter, petition).² More specifically, the petition alleged mother was arrested for child endangerment and possession of narcotics with intent to sell in the motel room where minor and his half-siblings regularly stayed for overnight visits and while minor's youngest half-sibling, an infant, was in the room. It further alleged the drugs were located in places accessible to the children, and that mother appeared under the influence of drugs at the time. Father was not named in the petition.

In August 2013, following a hearing, the juvenile court detained minor as to mother but not as to father after finding a prima facie showing had been made that a substantial risk of danger to his physical or emotional health or safety existed, and that no reasonable means were available to protect him without removing them from mother's physical custody. The juvenile court set a jurisdictional hearing for September 16, 2013 and, in the meantime, placed minor with father in grandfather's home on the condition that father not move minor from this home without court permission.

Following the jurisdictional hearing, the juvenile court sustained the section 300, subdivision (b) allegations in the petition, as orally amended.³ A dispositional hearing was then set for October 17, 2013. In anticipation of this hearing, the department filed a report that included the following new information. Father had a criminal history that included a 2011 domestic violence conviction stemming from an altercation with mother, during which father accidentally struck minor, then a baby, in the face, causing injury. Father was also reported to have "anger" issues, and to have had his probation from the 2011 conviction revoked for failure to complete a court-ordered domestic violence program. As such, the department concluded father had not demonstrated the ability to

² Unless otherwise stated, all citations herein are to the Welfare and Institutions Code.

³ This amendment deleted reference in the petition to the presence of mother's newborn child in the motel room at the time of her arrest.

parent minor and could not be recommended for placement. In addition, the department indicated grandfather “was not able” to be approved as a placement option at that time.

The report also advised that, in September 2013, mother was arrested for, among other charges, possession of a firearm, being a felon in possession of a firearm, possession of drug paraphernalia and probation violations. Mother had also tested positive for drugs at least two times since her July 2013 arrest.

The department thus recommended minor and his half-sibling be removed from grandfather’s home and placed in foster care or with a suitable relative. In addition, the department’s case plan directed father to maintain a stable residence, demonstrate the ability to adequately parent minor, and to complete the court-ordered domestic violence program. The department proposed reunification services for mother and father.

An addendum to the disposition report was subsequently filed indicating father was currently incarcerated. However, the report made no changes to the previous recommendations.

At the October 2013 dispositional hearing, it was revealed for the first time that grandfather had been arrested on July 26, 2013, for misdemeanor assault and battery (offenses not involving minor or his half-sibling), and that he had other prior criminal convictions on his record, including a 2003 assault conviction. Grandfather acknowledged in court that he smoked marijuana daily at home without a license, albeit outside the children’s presence, and that he had previously abused drugs. According to grandfather, he had been “clean” for about ten years.

In addition, the case social worker testified regarding a recent visit to grandfather’s home, during which she found no issues regarding safety or the children’s health, care or well-being. In fact, she acknowledged having no information that the department had observed any interactions between father and minor or his half-sibling, or had offered him parenting classes. The social worker nonetheless insisted there was a risk minor and his half-sibling could be exposed to emotional abuse due to father’s “anger” issues, despite grandfather’s testimony that, whenever father was having a bout of anger, he would insist father leave the house to “cool off.” The social worker knew of

no incident of domestic violence in grandfather's home occurring in the children's presence. Further, she had no information father had ever yelled at the children or otherwise acted inappropriately toward them when angry. Aside from the 2011 domestic violence incident, the social worker knew of no other department or law enforcement contact with father due to any violent or angry outburst exhibited by him.

Following the dispositional hearing, the juvenile court, among other things, adopted the findings proposed by the department, declared minor a dependent of the court, and found by clear and convincing evidence that there would be a substantial danger to his physical health, safety, protection or emotional well-being if he were returned to mother, and that no reasonable alternatives to removal were available to protect him. In particular as to mother, the court found that she had made no significant progress with her case plan and that return to her care would be detrimental to minor. As to father, the court found the social worker did not solicit and integrate his input into the case plan. In addition, the court found by clear and convincing evidence that placing minor with the "non-custodial parent" would be detrimental to minor due to, among other factors, father's 2011 domestic violence conviction and his subsequent failure to complete the court-ordered domestic violence program. Thus, the court ordered reunification services and placed minor in foster care or with suitable relative or non-relative extended family member.⁴ This appeal followed.

DISCUSSION

Father raises two contentions on appeal in seeking reversal of the juvenile court's jurisdictional and dispositional orders. First, father contends the evidence of alleged harm or risk of harm to minor within the meaning of section 300, subdivision (b) is insufficient to support jurisdiction. Second, he contends the court misapplied the law by relying on section 361.2, subdivision (a), the statute governing non-custodial parents, rather than section 361, subdivision (c), the statute governing custodial parents, to

⁴ The record reflects minor and his older half-sibling were subsequently placed together in a foster home.

remove minor and place him in foster or suitable relative care. We address each contention in turn.

A. Evidentiary Challenge to the Juvenile Court’s Jurisdictional Findings.

Where, as here, a juvenile court’s jurisdictional findings are subject to an evidentiary challenge, we apply the substantial evidence rule. “In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact” (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214, quoting *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) Further, as a general rule, in dependency proceedings, we do not disturb a juvenile court’s order unless it exceeds the bounds of reason. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) Moreover, we must keep in mind that the “paramount purpose” of dependency proceedings is to protect the child. (*In re Jason L., supra*, 222 Cal.App.3d at p. 1214.)

Relevant to this particular challenge, “a jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent.” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) Moreover, a jurisdictional finding under section 300, subdivision (b) requires each of the following: (1) abusive or neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the child, or a “substantial risk” of such harm or illness. (*In re James R.* (2009) 176 Cal.App.4th 129, 135; see also *In re Janet T.* (2001) 93 Cal.App.4th 377, 388 [“before courts may exercise jurisdiction under section 300, subdivision (b) there must be evidence ‘indicating the child is exposed

to a substantial risk of serious physical harm or illness’ ”].) In meeting this standard, “previous acts of neglect, standing alone, do not establish a substantial risk of harm.” Rather, such previous acts by a parent become probative of risk of harm to the child only when considered in conjunction with the more recent alleged acts. (*In re Ricardo L., supra*, 109 Cal.App.4th at p. 565; see also *In re Angelia P.* (1981) 28 Cal.3d 908, 925.) In other words, “Past conduct is relevant on the issue of future fitness, although it is of course not controlling.” (*In re Angelia P., supra*, 28 Cal.3d at p. 925.)

Here, there is evidence in the record of each of the required elements – to wit, neglectful conduct by mother, causation, and exposure to, or substantial risk of, serious physical harm or illness to minor. For example, there was evidence before the court at the jurisdictional hearing that mother possessed for sale large quantities of dangerous narcotic substances, including methamphetamine and heroin, in the same motel room she was sharing with minor and his siblings (including his newborn half-sister). These narcotics were placed in the motel room in locations accessible to minor and his older half-sibling, including a large plate of marijuana on a child-size table and heroin and methamphetamine in a boot near the children’s bed. In addition, the day after her arrest for child endangerment and drug possession for sale at the motel, mother herself tested positive for use of methamphetamine and marijuana, despite her adamant denials of drug use. A social worker who visited mother at the motel room just after her arrest noted mother appeared under the influence of methamphetamine, acting agitated and talking nonsensically, even while acknowledging having breast-fed her newborn child just three hours earlier. Mother told the social worker minor’s older half-sibling was with a friend, but could not provided this friend’s address or contact information. When the social worker later visited the half-sibling at grandfather’s home, she told the social worker that her mother sells “little white pills” to people with headaches, which she is not allowed to touch.

Two months after mother’s July 31, 2013 arrest for possession of narcotics for sale and child endangerment, mother was arrested again, this time on charges that included

firearm possession, being a felon in possession of a firearm and ammunition, and possession of drug paraphernalia.

This record of mother's possession and personal use of deadly narcotic drugs in the living space she regularly shared with minor and his siblings provides substantial evidence that minor was at substantial risk of suffering serious physical and mental harm or illness due to mother's failure or inability to provide adequate care and supervision for him. (*In re James R.*, *supra*, 176 Cal.App.4th at p. 135.) Moreover, while father insists there is no evidence minor sustained any actual harm as a result of mother's illicit activities, actual harm is not and has never been the sole standard for the juvenile court's assumption of jurisdiction. Rather, as set forth above, the standard is actual harm *or* serious risk of actual harm. Given mother's conduct in both dealing in and using narcotics that include heroin and methamphetamines, and the lack of evidence that her conduct has or will abate in the near future, we are left with no assurance whatsoever that minor would be protected from harm while under her care. (See *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1657-1658 [child-endangering behavior likely to reoccur where "mother is in denial about [her] substance abuse" and "refuses to cooperate with professionals"].) Accordingly, there is no basis for reversing the juvenile court's jurisdictional order.

II. Legal Challenge to the Court's Placement of Minor in Foster/Relative Care.

The remaining issue is essentially a legal one: Did the juvenile court misapply juvenile dependency law by relying on section 361.2, subdivision (a), the statute applicable to non-custodial parents, rather than section 361, subdivision (c), the statute applicable to custodial parents, when removing minor from his home and placing him in foster care? For reasons discussed below, we conclude the juvenile court did commit legal error.

We begin with the relevant statutory provisions. Under section 361, subdivision (c), a "dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in

paragraphs (1) to (5), inclusive, . . . : [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm. [¶] . . . [¶] (5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.”⁵ (§ 361, subds. (c)(1), (c)(5).)

Section 361.2, subdivision (a), in turn, 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. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the

⁵ Section 361, subdivision (c) delineates six circumstances that provide a basis for removal pursuant to this statute. In this case, however, there appears to be no dispute that only two such circumstances – to wit, those identified in paragraphs one and five and set forth above – could arguably apply on this record.

safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a) [italics added].) Under subdivision (c) of section 361.2, the juvenile court must make a finding either in writing or on the record of the basis for its determination under subdivision (a). (§ 361.2, subd. (c).)

Here, when considering minor’s placement, the juvenile court applied section 361.2, subdivision (a), not section 361, subdivision (c), to father. In doing so, the court found that it would be detrimental to minor to reside with father and, thus, ordered minor to be placed in foster care or with a suitable relative.⁶ We conclude the juvenile court’s findings and order in this regard fail to comport with either the governing law or the facts of this case.

Turning first to the facts, there is no dispute that father is the non-offending parent in this case. The jurisdictional order reflects minor was detained only as to mother; not as to father. Nor was minor ever removed from father’s custody. While the department suggests minor lived with grandfather rather than father, grandfather himself testified repeatedly that he lived with both father and minor (as well as minor’s older half-sibling), and had for the last three or so years.⁷ Grandfather also stated that he and father shared responsibility for taking minor to school and to medical appointments, and providing other care.

It is also true that grandfather described a brief period of time (two or three months) in 2011 when father moved into his own apartment with mother prior to their separation; however, during this time, father and mother had minor with them. And while father was incarcerated for one or more brief periods of time after he moved back into grandfather’s house, including for an approximately 20-day period on a probation violation in July 2013, during which time these proceedings were initiated, under California law, his incarceration did not operate to deprive him of custody, particularly

⁶ Minor and his half-sibling were subsequently placed together in a foster home.

⁷ Undisputedly, at the time of mother’s arrest for possession of narcotics for sale, the event at the heart of these proceedings, grandfather had dropped minor and minor’s half-sibling at the motel room for just a two or three day visit.

where he arranged for grandfather to care for minor during his absence.⁸ (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 696; *In re Summer H.* (2006) 139 Cal.App.4th 1315, 1333-1334.) In any event, father was released just days after mother’s arrest on July 31, 2013, at which time he returned to grandfather’s house and continued to reside with minor and minor’s half-sibling. Indeed, this living arrangement continued even after entry of the jurisdictional order in this case, albeit subject to the condition that father not remove minor from grandfather’s residence without court permission.

During these proceedings, the fact that father was the custodial parent was repeatedly pointed out to the court by father’s counsel, drawing no objection from the department or mother. For example, at the disposition hearing, counsel stated: “I would just remind the Court that father has custody. He’s not a non-custodial parent. He’s always been a custodial parent. And even as recognized at detention by the Department, there was never a recommendation for removal from my client and then the Court continued it as a non-detained petition in this case.” Nonetheless, the juvenile court appears to have paid no heed to these words of father’s counsel. Rather, the court simply proceeded as if it were clear father was a *non-custodial* parent, applying section 361.2, the statute applicable to non-offending, non-custodial parents, when placing minor in foster/suitable relative care rather than permitting him to continue living with father in the home they had shared with grandfather for more than two years. This was error. (*In re A.A.* (2012) 203 Cal.App.4th 597, 608 [“parent must be *both* a nonoffending *and* noncustodial parent in order to be entitled for consideration under section 361.2”]; *In re Miguel C.* (2011) 198 Cal.App.4th 965, 970 [section 361.2 applies only after the juvenile court first removes the child from the *custodial* parent]. See also *County of Ventura v.*

⁸ There are certain allegations raised as to grandfather’s fitness to provide care for minor and his siblings. These allegations led the juvenile court to conclude grandfather must address certain issues before he could be considered for placement or guardianship. However, as stated above, father had custody of minor. Moreover, there has been no petition to remove minor from father’s care. As such, whether or not grandfather is a “suitable relative” for purposes of minor’s placement is, at least on this record, beside the point.

George (1983) 149 Cal.App.3d 1012, 1018 [“a person’s status as custodial parent is directly related to one’s actual possession and physical control of the dependent child”].)

Rather than conceding reversal is required under these circumstances, the department effectively asks us to imply the necessary findings under the correct statute – to wit, section 361, subdivision (c) – in order to affirm the disposition in this case. Given the significant constitutional implications of doing so, we decline this request. “Parents have a fundamental interest in the care, companionship and custody of their children. For this reason, they have certain due process protections in juvenile dependency proceedings. (*Santosky v. Kramer* (1982) 455 U.S. 745, 758)” (*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1210.) Section 361 was enacted to provide this due process protection by prohibiting the juvenile court at a disposition hearing from removing a child from the custody of a parent with whom the child resided at the time the section 300 petition was initiated without first finding by clear and convincing evidence that one or more of the circumstances identified in the statute exists. (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Indeed, “The fact that the child could not initially be removed from custody absent a finding supported by clear and convincing evidence is a linchpin of the [California Supreme] court’s determination that the statutory scheme for terminating parental rights comported with due process requirements.” (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1829, citing *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242 [*Cynthia D.*].)

Here, the department appears to rely upon the circumstance delineated in section 361, subdivision (c)(1) or (c)(5), in arguing there is “abundant evidence that placement with [father] would be detrimental to [minor’s] safety and well-being” and, thus, that the dispositional order should simply be affirmed. In doing so, the department relies upon the fact that father was incarcerated when mother was arrested on July 31, 2013, that he was arrested in 2011 for felony domestic violence (during which incident minor was unintentionally injured), and that he subsequently failed to complete the domestic violence program ordered by the court in connection with the incident. However, first, as explained above, a parent’s incarceration does not entitle the court to remove a child from

the home and place him or her in foster care, particularly where, as here, the incarcerated parent arranged for in-home relative care for the child. (*In re Isayah C.*, *supra*, 118 Cal.App.4th at p. 696; *In re Summer H.*, *supra*, 139 Cal.App.4th at pp. 1333-1334.)

Moreover, the 2011 incident of domestic violence between mother and father wherein father accidentally struck minor occurred approximately two years before this section 300 petition was filed and was not a factor in the department's decision to pursue dependency with respect to minor.⁹ As such, we do not agree that the incident provides a basis for finding clear and convincing evidence in support of minor's out-of-home placement.

And, finally, with respect to father's failure to complete the court-ordered domestic violence program, which was the reason for his incarceration at the time of mother's July 2013 arrest and was subsequently made a requirement of the department's case plan, we again question its significance in light of the applicable constitutional and statutory principles. "Section 361 by its terms operates independently of service plans. The test is whether there is *clear and convincing evidence* the child is in physical danger if left in the home (or already suffering severe emotional damage and there is no other way to protect the minor's emotional health without removal), not whether parents are obeying a service plan." (*In re Paul E.* (1995) 39 Cal.App.4th 996, 1004.)

Thus, after considering the facts relied upon by the department to support the disposition in this case in the context of the record as a whole, we cannot conclude as a matter of law that the section 361, subdivision (c) standard has been met. Indeed, aside from those facts, the record reflects substantial undisputed evidence that father is often an attentive and involved dad who works with grandfather to satisfy minor's physical, emotional and educational needs. It also reflects that minor is a happy, healthy child on a normal developmental track. And, while there is also evidence that father occasionally has bouts of anger, there is no evidence he has ever directed this anger at minor or his

⁹ On August 4, 2011, the department received a referral regarding father and minor, which was later assigned for investigation. However, ultimately the department concluded the allegation in this referral was unfounded.

siblings, much less that he has intentionally harmed minor or his siblings. Consistent with this record, the department has at no time ordered parental counseling or classes for father.¹⁰ Viewed in this light, father’s 2011 domestic violence conviction and subsequent failure to complete the court-ordered domestic violence program, even considered in conjunction with grandfather’s testimony that he sometimes has angry outbursts that prompt grandfather to ask him to leave the house for a few hours or days to “cool off,” is not enough for this court to conclude there is clear and convincing evidence that minor faces substantial danger to his physical or emotional health under father’s care, or that no reasonable means exist to protect him absent removal from father’s and grandfather’s home. As our appellate colleagues in the Fourth District, Division Three, explain: “Once a child is removed, termination of parental rights becomes a distinct possibility unless, at some point prior to the end of reunification services, the child is returned. If the position of the social services agency were correct, then parental rights could in some cases be terminated without the safeguards of section 361. That would be flatly contrary to the rationale in *Cynthia D.*, which relied on the existence of those safeguards to hold that eventual termination does accord with due process.” (*In re Paul E.*, *supra*, 39 Cal.App.4th at pp. 1001-1002.)

Thus, to ensure the mandates of California statutory and constitutional law are properly met, we remand this matter to the juvenile court to apply to father, as the non-offending, custodial parent, the heightened standard of clear and convincing evidence provided for under section 361. (See *Cynthia D.*, *supra*, 5 Cal.4th at p. 256; see also *In re Paul E.*, *supra*, 39 Cal.App.4th at p. 1005 [“The Legislature has imposed limits on the ability of government to remove children from parents’ homes under the aegis of child protection. ‘Section 361 embodies legislative solicitude for parental rights.’ [Citation]”].) There is simply not enough evidence on this record for this court to otherwise presume all relevant constitutionally-grounded inquiries have been made. (See *In re V.F.* (2007) 157

¹⁰ Similarly, while there is some evidence in the record that father has in the past abused drugs, there is no evidence that he currently does so, or that the department has ordered or considered ordering substance abuse counseling for father.

Cal.App.4th 962, 973 [concluding “the better practice is to remand the matter to the trial court where that court has not considered the facts within the appropriate statutory provision”].)

DISPOSITION

The juvenile court’s jurisdictional order is affirmed. The juvenile court’s dispositional order, however, is reversed, and the matter remanded for further proceedings consistent with the opinions reached herein.

Jenkins, J.

We concur:

McGuinness, P. J.

Siggins, J.