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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re A.S. et al., Persons Coming Under the
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

T.B. et al.,

Defendants and Appellants.

A142925

(Humboldt County
Super. Ct. Nos. JV080192, JV080193)

T.B. (Mother), J.L. (Father), and A.S. and J.L. (Minors; born 2004 and 2007, respectively) appeal from the juvenile court’s dispositional orders in these dependency cases. We reverse and remand the juvenile court’s order denying reunification services for Mother, and otherwise affirm.

BACKGROUND

2008 Petitions

In June 2008, the Humboldt County Department of Health and Human Services (Department) filed Welfare and Institutions Code section 300¹ petitions regarding Minors. As to both Minors, the juvenile court sustained allegations that Mother “was

¹ All undesignated section references are to the Welfare and Institutions Code.

arrested for possession of a controlled substance, for operating a drug house and for child endangerment” and that “the physical conditions of the home created an immediate threat to the health and/or safety of the child.”² Following the August 2008 disposition hearing, Minors were removed from Mother’s custody and reunification services were ordered. Reunification services were also ordered for Father, the then-noncustodial parent.

At the six month review hearing, the Department reported Mother had stopped visiting Minors, had fallen out of contact with the Department, and had been arrested for public intoxication. Father had successful visits with Minors, had complied with his reunification case plan, and wished to take custody of Minors. The juvenile court terminated reunification services for Mother and placed Minors with Father.

In the following months, Minors adjusted well to living with Father and his girlfriend, Jackie M. The Department attempted to locate Mother but was not successful. In August 2009, the juvenile court terminated the dependency cases with exit orders giving Father custody of Minors with visitation for Mother as arranged by the parents.

2014 Petitions

In March 2014, the Department filed section 300 petitions alleging, as subsequently amended, that Father engaged in domestic violence against Jackie in front of Minors on numerous occasions. The Department’s jurisdiction report detailed Jackie’s statements that Father was emotionally and physically abusive to her and that Minors had been exposed to the violence. The report included threatening text messages Father had sent to Jackie. The court sustained the jurisdictional allegations on April 2.

Shortly after the petitions were filed, Jackie—who stopped living with Father during these proceedings—filed a request to be elevated to presumed mother status, and subsequently requested in the alternative to be designated a de facto parent. She represented she was the only person Minors called “mom” and the only mother they knew. Father stated Minors believed Jackie was their mother. Others, including Minors’

² The juvenile court sustained additional allegations regarding Father with respect to J.L.; this finding was subsequently reversed on appeal.

paternal grandmother and Minors' principal, reported Minors loved Jackie and referred to her as their mother. At the dispositional hearing, the Department social worker testified Minors had not known Mother was their biological mother before the current dependency case. The Department recommended the court order Jackie elevated to presumed mother status, place Minors with her, and order family maintenance services.

Meanwhile, the Department located Mother in New York. Mother told the Department she wanted custody of Minors and, through counsel, requested they be placed with her. The Department opposed Mother's request for placement and urged the juvenile court to deny reunification services for her.

In its disposition orders, the juvenile court denied Mother's request that Minors be placed with her and denied reunification services for Mother. The court denied Jackie's request for presumed mother status but designated her a de facto parent, ordered Minors placed with her, and ordered family maintenance services provided to her. The court ordered reunification services for Father. This appeal followed.

DISCUSSION

I. Mother's Appeal

Mother appeals the juvenile court's denial of reunification services.³ Mother argues that the provision of reunification services to her is governed by section 361.5, and further argues no substantial evidence supports bypassing services under that section. We agree with Mother that a remand is appropriate.

A. Background

Prior to the disposition hearing, the Department, in its pretrial statement primarily argued that, because Mother was a noncustodial parent who previously failed to reunify with Minors, she was not entitled to reunification services. The Department argued in the

³ Mother does not challenge the juvenile court's order declining to place Minors with her.

alternative that bypass was appropriate under section 361.5, subdivision (b)(10) (section 361.5(b)(10)).⁴

At the disposition hearing, the Department noted its investigation into Mother was “cursory” but argued, “we don’t have to do an assessment of a noncustodial parent seeking custody under any code section. They are not entitled to reunification services. It’s discretionary under the Court’s discretion. And we’re asking the Court not to exercise that discretion at this time.” The Department did not argue at the hearing that it had proven the elements for bypass under section 361.5(b)(10).

Mother contended the proper analysis was under section 361.5(b)(10) and argued there was insufficient evidence to find the provision applied. Mother also argued, with respect to both placement and services, “I don’t think that the Court has the information before it today to be able to make a decision as to exactly where we stand in terms of detriment, because I -- because I believe that the Department hasn’t done the thorough investigation that needs to be done in order to get that assessment. And so to that regard, to be clear, what I am asking Your Honor to do is order the Department to do that assessment, at which point we can come back before the Court on what exactly -- if there is a detriment, and what exactly would need to be done in terms of case plan issues or things in order to remediate that.” Minors’ counsel similarly argued, “I would request that the [court] order [the Department] to do a thorough home study and background check of [Mother] promptly and expeditiously regarding the bypass issue”

The juvenile court denied services to Mother, finding “bypass is appropriate” and services “are not in the best interests of [Minors].”

⁴ Under section 361.5(b)(10), reunification services need not be provided if the court finds by clear and convincing evidence “[t]hat the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.”

B. *Applicability of Section 361.5*

Section 361.5 provides: “Except as provided in subdivision (b) [or other circumstances not relevant here], whenever a child is removed from a parent’s or guardian’s custody, the juvenile court *shall order the social worker to provide child welfare services to the child and the child’s mother* and statutorily presumed father or guardians.” (§ 361.5, subd. (a), italics added.) “Reunification services need not be provided to a parent or guardian . . . when the court finds, by clear and convincing evidence,” any of a number of exemptions. (§ 361.5, subd. (b).) “[T]he party seeking bypass of reunification services under section 361.5, subdivision (b) has the burden of proving that reunification services need not be provided.” (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 521 (*Angelique C.*).

The Department does not identify any other applicable statute. Rather, it apparently argues that no statute governs the provision of reunification services to a noncustodial parent who has failed to reunify in a previous dependency case, and we should create a new rule shifting the burden to the parent to prove services are in the best interests of the child. We decline to do so.

Section 361.5 is not limited to custodial parents. “[S]ection 361.5 governs the grant or denial of reunification services to a noncustodial parent who has not assumed custody of his or her child under section 361.2, subdivision (b).” (*In re Adrianna P.* (2008) 166 Cal.App.4th 44, 54 (*Adrianna P.*)). In *Adrianna P.*, a noncustodial parent, Andrew, had reunification services with Adrianna terminated in a prior dependency proceeding. (*Id.* at pp. 50–51.) In the instant proceeding, Andrew requested custody of Adrianna. (*Id.* at p. 52.) The juvenile court denied Andrew custody under section 361.2 but found it unclear whether section 361.5 applied to a noncustodial parent who had requested custody such that the court could bypass services to Andrew under that section. (*Adrianna P.*, at p. 52.) The Court of Appeal—after considering the statutory language, statutory framework, and policy considerations—concluded it did: “[T]he 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.” (*Id.* at p. 57.) We see no basis under *Arianna P.* to distinguish parents who are both noncustodial and previously had reunification services terminated.

In addition, the plain language of the statute is contrary to the Department’s position. (*In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1504 (*Nickolas T.*) [“If the statutory language is not ambiguous, then we presume the Legislature meant what it said, and the plain meaning of the language governs.”].) By its own terms, the statute does not exclude parents such as Mother from its scope. Moreover, the section 361.5(b) exceptions apply to noncustodial parents (§ 361.5(b)(14) [parent who is not interested in having child “returned to or *placed in his or her custody*,” italics added]; *Arianna P.*, *supra*, 166 Cal.App.4th at p. 57) and parents who failed to reunify in a prior dependency proceeding (§ 361.5(b)(10) [failure to reunify with sibling or half-sibling]). These provisions underscore the statute’s application to noncustodial parents who previously failed to reunify.

The Department argues the reasoning of *In re A.A.* (2012) 203 Cal.App.4th 597 (*A.A.*) supports its position. *A.A.* involves section 361.2, which governs the placement of a child following removal,⁵ and held that statute did not apply to a noncustodial parent who had lost custody of the child in a prior dependency proceeding. (*A.A.*, *supra*, at pp. 608–609 [“if the noncustodial status of the . . . parent is due to a prior dependency order removing custody, and there has been no intervening restoration of the parent’s right to physical custody of the child, the court need not inquire if that parent desires to have the child placed with him or her”].) The court found this conclusion supported by the statutory language of section 361.2. (*A.A.*, at p. 609.)

⁵ Section 361.2 provides, in relevant part, “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 safety, protection, or physical or emotional well-being of the child.” (§ 361.2.)

At least two courts have disagreed with A.A.'s construction of section 361.2. (*In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 301; *Nickolas T.*, *supra*, 217 Cal.App.4th at pp. 1504–1505.)⁶ We need not decide whether A.A. was correctly decided, however, because section 361.2, which addresses placement, not reunification services, is not at issue in this appeal. As noted above, section 361.5 contains no statutory language supporting a conclusion that the Legislature intended its terms not apply to noncustodial parents who previously failed to reunify. Based on the current record, the juvenile court was required to apply section 361.5 in determining whether Mother should be provided with reunification services.

C. *Section 361.5(b)(10)*

In finding reunification services “are not in the best interests of [Minors],” the juvenile court apparently concluded—erroneously—that section 361.5 did not apply. On appeal, the Department argues we can affirm the juvenile court’s ruling on the alternative ground that services should be denied under section 361.5(b)(10).

To bypass reunification services under section 361.5(b)(10), “the juvenile court must find both that (1) the parent previously failed to reunify with a sibling and (2) the parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling.” (*In re Albert T.* (2006) 144 Cal.App.4th 207, 217 (*Albert T.*)) “The reasonable effort requirement focuses on the extent of a parent’s efforts, not whether he or she has attained ‘a certain level of progress.’ [Citation.] ‘To be reasonable, the parent’s efforts must be more than “lackadaisical or half-hearted.”’

⁶ The Department relies on *Nickolas T.* for its reference to section 366.3 (*Nickolas T.*, *supra*, 217 Cal.App.4th at pp. 1502, 1508), which permits a parent, in some circumstances, to obtain reunification services after a permanent plan is ordered by proving such services would be in the best interests of the child. (§ 366.3, subs. (b), (f).) Because section 366.3 applies only after reunification services have been bypassed or terminated, it does not support the Department’s position. Similarly, *In re William B.* (2008) 163 Cal.App.4th 1220, 1227, cited by the Department, involves the best interests of the child analysis in section 361.5, subdivision (c) (also relied on by Father at oral argument), which applies only after one of the bypass provisions of section 361.5, subdivision (b) is found.

[Citations.] However, “[t]he “reasonable effort to treat” standard “is not synonymous with ‘cure.’ ” ” (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.) The Department bore the burden of proving Mother had not made a reasonable effort to treat the problems leading to Minors’ removal from her custody in 2009. (*Angelique C.*, *supra*, 113 Cal.App.4th at p. 521.) We review for substantial evidence a finding that a parent failed to make reasonable efforts. (*Albert T.*, *supra*, at p. 216.) We agree with Mother that no substantial evidence in the current record supports any such finding.⁷

1. *Background*

The evidence of Mother’s conduct following the first dependency proceeding was minimal. The disposition report stated Mother told the Department the following: after Minors were removed she moved to New York because Father was constantly threatening her; she has been drug free and in a stable relationship for five years; and she is currently a stay at home parent with a four-year-old son. She also told the Department Father told her four years ago that she lost her parental rights.

The disposition report attached an active warrant for Mother from a February 2009 arrest for possession of a controlled substance and stated, “It is unknown if the mother has actually made changes in her life other than herself report [sic] that she has had five years clean and sober as it has been reported that she continues to post pictures on [the internet] of her partying.” The report stated Father, Jackie, and Minors’ paternal grandmother said Mother has not asked about or tried to contact Minors since she left for New York.

In testimony at the disposition hearing, the Department social worker conceded she had taken no steps to confirm whether Mother was currently clean and sober. The

⁷ This conclusion renders it unnecessary for us to decide Mother’s contention that we cannot infer a finding under section 361.5(b)(10). In addition, although a footnote in Mother’s brief notes that she objected below to the section 361.5(b)(10) bypass recommendation as untimely, she does not appear to pursue this contention on appeal and did not set forth reasoned argument; we therefore need not address the issue. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [points not raised or raised without reasoned argument are deemed waived].)

social worker testified the report of pictures of Mother on the internet came from Father, and the social worker had not herself looked at any such pictures.

2. *Analysis*

The disposition orders from the 2008 proceedings identified “[t]he facts on which the decision to remove the child are based on” as being “Mother was arrested for drug possession” (J.L.) and “mother was arrested for drug possession and has not completed treatment” (A.S.).⁸ Mother represented to the Department she had been clean and sober for five years; the Department’s social worker conceded the Department had taken no steps to determine whether Mother’s representation was accurate. On appeal, the Department points to the active warrant and to “information that caused [the Department’s social worker] to question” Mother’s representation. The warrant stemmed from a 2009 arrest; it does not constitute evidence of any efforts Mother took to treat her substance abuse problem after Minors’ 2009 removal. The sole “information” relied on by the Department as giving rise to questions about Mother’s sobriety was Father’s *unsubstantiated* allegation that Mother posted photographs depicting her “partying”; however, there was no evidence of when the photographs were taken or what they specifically showed. The Department presented no substantial evidence with respect to Mother’s efforts, or lack thereof, to treat her substance abuse.

The Department argues other problems led to Minors’ removal in the prior proceeding: Mother’s failure to follow up with services offered by the Department, to maintain contact with the Department, and to maintain contact with Minors. While these were problems leading to the juvenile court’s decision to terminate Mother’s reunification services, they were not problems leading to Minors’ removal from Mother’s custody—at the time of removal, Mother was participating in services, in contact with the Department, and visiting Minors. “[T]he reasonable-efforts-to-treat prong of section 361.5, subdivision (b)(10), is directed not to *all* the issues that confronted a parent in a

⁸ Additional facts were identified with respect to Father.

prior dependency proceeding but specifically to ‘the problems that led to the removal of the sibling.’ ” (*Albert T., supra*, 144 Cal.App.4th at p. 220.)⁹

Finally, the Department argues that, because Mother lacks a current relationship with Minors, “any attempt to reintroduce [Mother] into her children’s lives could be emotionally destabilizing for [Minors], who turned to Jackie to fill the role of a parent.” Whether or not this assertion is correct, it is not relevant to the section 361.5(b)(10) analysis. Notably, a juvenile court may not consider a minor’s relationship with a de facto parent when determining whether to terminate a parent’s reunification services. (*Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 507.) Because “ “[t]he focus during the prepermanent planning stages is preserving the family whenever possible,” ” it is “improper” for a juvenile court to consider a minor’s “relationship with his [or her] de facto parents as *part of* its decision to terminate services” to the minor’s parents. (*Ibid.*)

The Department admittedly failed to undertake any meaningful investigation to determine whether Mother made reasonable efforts to address the problems leading to Minors’ removal from her custody, relying instead on its argument that section 361.5 did not apply. Below, Mother argued the juvenile court should order the Department to conduct such an investigation before issuing its ruling; we find it likely that the juvenile court, had it concluded section 361.5 did apply, would have ordered this investigation. We will reverse the juvenile court’s order denying services to Mother and remand for

⁹ Even if these problems were relevant under section 361.5(b)(10), the Department has not met its burden to show Mother failed to make reasonable efforts to treat them. The Department’s social worker testified she spoke to Mother four or five times between March and July 2014 and Mother has consistently requested in these proceedings that Minors be placed with her, evidence of her desire to rebuild a relationship with Minors and her ability to remain in contact with the Department. Mother’s past lack of contact with Minors is not indicative in light of her uncontradicted representation that Father told her she lost parental rights four years ago. The Department points to Mother’s failure to attend hearings in the instant case, but Mother lives in New York and apparently lacks the resources to travel; her failure to appear is not evidence that she would not participate in offered services or maintain contact with the Department.

further proceedings consistent with this opinion. Such proceedings may include, at the juvenile court's discretion, a hearing, following an investigation by the Department, on the applicability of section 361.5(b)(10). (See *In re Isayah C.* (2004) 118 Cal.App.4th 684, 701 ["[B]ecause we lack information as to any court orders or factual developments that may have intervened since the entry of the dispositional order . . . and cannot speculate as to their possible effect on the current situation of [the minor] and his family members, we leave it to the sound discretion of the trial court to determine what procedural steps, and what result, are appropriate at this juncture in light of our reversal, the grounds on which it was based, and the current state of affairs in [the minor's] family."].)¹⁰

II. *Minors' Appeal*

Minors contend the trial court abused its discretion when it (1) granted Jackie's request for de facto parent status and (2) ordered Minors placed with Jackie and family maintenance services provided. We disagree.¹¹

A. *De Facto Parent Status*

"A de facto parent is "a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a

¹⁰ For the first time at oral argument, the Department argued the order in the 2008 dependency case terminating reunification services to Mother was still in effect and Mother was therefore required to file a section 388 petition to obtain services. " " "Obvious considerations of fairness in argument demand that the appellant present all of his points in the opening brief. To withhold a point until the closing brief would deprive the respondent of his opportunity to answer it or require the effort and delay of an additional brief by permission." ' ' ' (*Doe v. California Dept. of Justice* (2009) 173 Cal.App.4th 1095, 1115.) The same considerations of fairness preclude the Department from raising an argument for the first time at oral argument, and we decline to consider this argument. We express no opinion as to whether the Department can raise this argument in the juvenile court on remand.

¹¹ The Department contends Minors lack standing to appeal. We need not decide this issue because we are rejecting their arguments on the merits. (*In re Sarah S.* (1996) 43 Cal.App.4th 274, 282, fn. 10 [assuming standing and rejecting argument on the merits].)

substantial period” ’ ’ (*In re Bryan D.* (2011) 199 Cal.App.4th 127, 141 (*Bryan D.*.) “De facto parent status ‘provides a nonbiological parent who has achieved a close and continuing relationship with a child the right to appear as a party, to be represented by counsel, and present evidence at dispositional hearings. . . . De facto parent status is ordinarily liberally granted on the theory that a court only benefits from having all relevant information on the best interests of the child.” (*Ibid.*)

“[T]he determination depends on the specific circumstances of each case. [Citations.] [¶] The factors courts generally consider for determining de facto parent status include ‘whether (1) the child is “psychologically bonded” to the adult; (2) the adult has assumed the role of a parent on a day-to-day basis for a substantial period of time; (3) the adult possesses information about the child unique from other participants in the process; (4) the adult has regularly attended juvenile court hearings; and (5) a future proceeding may result in an order permanently foreclosing any future contact between the adult and the child.’ ” (*Bryan D., supra*, 199 Cal.App.4th at p. 141.) We review the trial court’s order granting Jackie de facto parent status for abuse of discretion. (*Ibid.*)

Minors first contend Jackie forfeited de facto parent status under *In re Kieshia E.* (1993) 6 Cal.4th 68 (*Kieshia E.*) because she failed to protect Minors from being exposed to Father’s domestic violence. In *Kieshia E.*, the juvenile court, after finding that a nonparent had sexually molested the minor, granted the nonparent de facto parent status. (*Id.* at pp. 71, 73–74.) The Supreme Court held the order granting de facto parent status was error because “a nonparent who commits sexual or other serious physical abuse upon a child in his or her charge thereby abandons the function of care, affection, and psychological fulfillment essential to the role of a de facto parent. When a juvenile court has found that the nonparent committed such abuse, and has therefore deemed it necessary to make the victim a dependent of the court, the abuser is barred from intervening in the same proceeding under the de facto parenthood doctrine. The abuser forfeits the opportunity to appear as a party, be represented, and give evidence about disposition in a dependency proceeding caused by the misconduct.” (*Id.* at pp. 79–80.)

In re Leticia S. (2001) 92 Cal.App.4th 378 (*Leticia S.*), relied on by Minors, construed *Kieshia E.* broadly: “In determining whether a person should be accorded de facto parent status, the court must consider whether that person’s behavior was the basis for a jurisdictional finding by the court. (*In re Kieshia E.*, *supra*, 6 Cal.4th at p. 78.) If the applicant’s action caused the child to be declared a dependent, that person has abandoned ‘the role of parent’ and ‘[b]y acting in a manner so fundamentally inconsistent with the parental role . . . forfeits any opportunity to attain the legal status of de facto parent.’ (*Ibid.*)” (*Leticia S.*, at p. 382.) A subsequent case has disagreed with *Leticia S.* (*Bryan D.*, *supra*, 199 Cal.App.4th at p. 144 [“We respectfully disagree with the *Leticia S.* court to the extent it characterizes *Kieshia E.* as holding that an applicant for de facto parent status becomes automatically ineligible if the applicant’s conduct is a cause for the dependency proceeding, *regardless of the nature of the conduct in question.*”].) As *Bryan D.* explained, “*Kieshia E.* does not stand for the proposition that any time the conduct of a person who would otherwise qualify as a de facto parent directly or indirectly causes the initiation of dependency proceedings, that person is automatically ineligible for de facto parent status, regardless of the nature of the conduct. *Kieshia E.* explicitly focused on ‘sexual or other serious physical abuse’ that led to dependency proceedings. Subsequent cases have extended *Kieshia E.*’s analysis to conduct other than sexual or physical abuse, but these cases still concern serious and substantial harms to the children involved.” (*Id.* at p. 143.) We find *Bryan D.* persuasive.

Turning to the nature of Jackie’s conduct, we find it does not warrant a conclusion that she forfeited de facto parent status. There is evidence that Jackie had been subjected to Father’s domestic violence for some time and that Minors were exposed to this domestic violence. However, Jackie’s role in the harm this caused Minors is not equivalent to that of a perpetrator of “sexual or other serious physical abuse,” at issue in *Kieshia E.* Unlike the circumstances contemplated in *Kieshia E.*, Jackie’s failure to protect Minors from exposure to domestic violence does not necessarily mean she “abandon[ed] the function of care, affection, and psychological fulfillment essential to the role of a de facto parent.” (*Kieshia E.*, *supra*, 6 Cal.4th at pp. 79–80.) While her

conduct is certainly a relevant consideration for the juvenile court, it is properly considered as part of the totality of the circumstances in determining whether de facto status is appropriate.¹²

The juvenile court did not abuse its discretion in concluding the circumstances warranted granting Jackie de facto parent status. There was evidence Minors called Jackie their mother and expressed their love and affection for her; Jackie filled a parental role in their lives. The juvenile court could reasonably conclude that her failure to protect Minors from exposure to Father’s domestic violence—including, as Minors argue, that she admitted not knowing what was going on in the home when Father was abusing her and that prior to these dependency proceedings she tried to conceal the domestic violence from investigating social workers—did not outweigh the evidence of the parental role she played and did not negate the likelihood that she would have information relevant to the proceedings.

Minors also point to Jackie’s failure to attend most of the hearings in this proceeding. Jackie apparently came to the courthouse on several occasions but left before the hearings began. There is evidence that she left because of her fear of Father: on one date, the Department’s social worker found her in the courthouse bathroom “shaking and crying” because Father “was sending her texts,” “she was afraid to leave the bathroom,” and “could not face [Father].” Given this evidence and the evidence of Father’s domestic violence, the juvenile court did not abuse its discretion in awarding de facto parent status despite Jackie’s failure to attend most court hearings.¹³

¹² We also reject Minors’ suggestion that Jackie’s conduct in connection with their education fell within *Kieshia E.* There was ample evidence that Jackie attended parent conferences, helped Minors with their homework, and transported them to and from school. Minors point to evidence that Jackie was reluctant to tell Father about school meetings to discuss areas in which Minors were struggling because she was afraid Father would be angry and “take it all out on me and the kids.” Minors fail to explain how this conduct—which reveals a desire to protect Minors from Father—constitutes an abandonment of the parental role.

¹³ Minors contend Jackie’s failure to attend the contested hearing on her request for de facto parent status put her “beyond cross-examination.” Minors did not object below to

Minors' final argument is Jackie failed to submit her request for de facto parent status on the appropriate form. Minors concede she submitted a different form containing overlapping information but claim the form Jackie submitted did not include the following section, which is included on the de facto parent form: "Kinds of information I have about the child that others may not have (medical, educational, behavioral, etc.)." There was evidence in the record that Jackie, but not Father or Mother, was involved with Minors' education and working with Minors' school on various issues. Minors cite no authority that a party's failure to submit the appropriate form, when all relevant information is elsewhere in the record, is grounds to reverse an order granting de facto parent status. We decline to so find.

B. Placement and Services

Minors also appeal the trial court's order placing Minors with Jackie and ordering services. Minors argue the juvenile court applied the wrong legal standard, pointing to the court's finding that Jackie "is entitled to request custody and/or receive maintenance services, unless an exception applies and services are found not to be in the children's best interest." We agree with Minors that this does not accurately state the law. "[T]he status of de facto parenthood does not give de facto parents the rights and responsibilities of parents or guardians. [Citation.] Specifically, they do not have the right to reunification services, custody, or visitation." (*Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, 752.)

Minors did not object below to this finding as setting forth the wrong legal standard and have therefore forfeited this challenge. (*Dakota H., supra*, 132 Cal.App.4th at p. 221.) Moreover, we find the error harmless. A juvenile court can order a child to be placed with a nonrelative "adult caregiver who has . . . a familial or mentoring relationship with the child." (§ 362.7.) Any such order "must be in the best interest of

her failure to appear at the hearing in person or attempt to call her as a witness and have therefore forfeited any challenge on that basis. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221 (*Dakota H.*) ["A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court."].)

the child.” (*Samantha T. v. Superior Court* (2011) 197 Cal.App.4th 94, 97.) The juvenile court made statements indicating, had it employed the proper standard, it would have reached the same result: “[T]he children should . . . be placed with [Jackie], who they consider their primary caretaker,” and “she needs services to assure that she has the capacity to protect the children from Father.” There was ample evidence that Jackie had a familial relationship with Minors and the order placing Minors with Jackie and ordering family maintenance services was not improper.

III. *Father’s Appeal*

Father challenges the trial court’s orders (1) limiting his educational rights, and (2) approving a case plan that included substance abuse testing for Father. We reject both challenges.

A. *Educational Rights*

The Department’s disposition report recommended Jackie be named the sole educational rights holder for Minors. Father objected to this recommendation and suggested that he and Jackie both be educational rights holders. The Department cited evidence Jackie, not Father, has signed most of Minors’ report cards and attended school meetings. Minors were struggling in school academically and with social/emotional adjustment. The Department expressed its concern that, if Father and Jackie were co-educational rights holders, a disagreement between the two would require a court order to break the impasse. The trial court limited Father’s educational rights and named Jackie as the sole educational rights holder, explaining: “The controlling aspect of [Father] in this particular case is overwhelming by his own statements, his text messages, his threats to [Jackie]. It’s overwhelmingly clear that this is a person who will use this opportunity, if I give it to him, to control [Jackie] and these children in a fashion that’s detrimental to them This is domestic violence; this is controlling behavior, and [Jackie] is the parent who -- de facto parent who is most able to exercise those rights in a reasonable fashion.”

“[W]hen a child is a dependent child, a court may limit a parent’s ability to make educational decisions on the child’s behalf by appointing a responsible adult to make

educational decisions.” (*In re R.W.* (2009) 172 Cal.App.4th 1268, 1276; see also § 361, subd. (a)(1) [“In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational or developmental services decisions for the child shall be specifically addressed in the court order.”].) “A court-imposed limitation on a parent’s educational rights ‘may not exceed those necessary to protect the child.’ ” (*In re R.W.*, *supra*, at p. 1276 [quoting § 361, subd. (a)(1)].) “We review the juvenile court’s order limiting parents’ educational rights under an abuse of discretion standard” (*Id.* at p. 1277.)¹⁴

Father argues the court was required to find him unavailable or unwilling to exercise his educational rights. Father points to section 319, subdivision (g), which requires such a finding (§ 319, subd. (g)(1)(A)); however, this provision only applies “[a]t the initial hearing upon the petition . . . or anytime thereafter up until the time that the minor is adjudged a dependent child of the court or a finding is made dismissing the petition.” (§ 319, subd. (g)(1).) The appealed-from order issued after Minors were adjudged dependents of the court and is therefore governed by section 361, subdivision (a), which applies “[i]n all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300.” (§ 361, subd. (a)(1).) As set forth above, section 361, subdivision (a) requires that limitations on a parent’s educational rights “may not exceed those necessary to protect the child.” (§ 361, subd. (a)(1).)

The juvenile court found a substantial risk that Father would use his educational rights to control Minors and Jackie, rather than use them in Minors’ best interests. This

¹⁴ Father contends our review should be for substantial evidence. “The practical differences between the two standards of review are not significant” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351), and our decision would be the same under either standard.

finding was not unreasonable and the court did not abuse its discretion by limiting Father's educational rights.

B. Substance Abuse Testing

The disposition report recommended Father's case plan include participation in both a substance abuse assessment and random testing, including urine and hair follicle testing. Father objected to the testing requirement. The court approved the Department's plan, finding Father's "record certainly supports . . . an assessment" and "the testing is simply a verification tool to ensure his continued sobriety."

"The Legislature has given juvenile courts broad discretion to fashion reunification orders designed to address the problems that have led to a dependency proceeding." (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1229.) "Of course, the juvenile court's discretion in fashioning reunification orders is not unfettered. Its orders must be 'reasonable' and 'designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.' [Citation] 'The reunification plan " 'must be appropriate for each family and be based on the unique facts relating to that family.' " " " (*Ibid.*)

Father argues the issue in this case is his domestic violence, not his sobriety. However, there was evidence that the two were connected; specifically, the Department submitted a police report of a February 2014 incident in which Jackie reported Father was drinking, placed a gun in front of her, and screamed—in front of Minors—that he was going to kill Jackie. Because the juvenile court could reasonably conclude that Father's domestic violence was related to his sobriety, the testing order was not an abuse of discretion.

DISPOSITION

The portion of the juvenile court's disposition order bypassing reunification services to Mother is reversed and the matter is remanded to the juvenile court for further proceedings consistent with this opinion. In all other respects, the disposition order is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.

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