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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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

CONTRA COSTA COUNTY CHILDREN
& FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

EDWARD S.,

Defendant and Appellant.

A145468

(Contra Costa County
Super. Ct. No. J14-01135)

In 2001, appellant Edward S. was convicted of one count of lewd and lascivious conduct involving a child under 14 years old. Thirteen years later, respondent Contra Costa County Children and Family Services Bureau (Bureau) filed a Welfare and Institutions Code section 300¹ petition alleging that eight-year-old Benjamin S. (the son of Edward and his wife Tracy W.) was at substantial risk of suffering serious physical harm or sexual abuse because Edward, who was required by Penal Code section 290 to register as a sex offender, was living in the family home and providing care for Benjamin. An amended petition added allegations that Edward and Tracy had substance abuse problems that impaired their ability to provide care for Benjamin.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

The juvenile court found the jurisdictional allegations to be true, ordered Benjamin removed from the custody of his parents, and ordered reunification services for Tracy but denied them for Edward. Edward challenges the court's jurisdictional and dispositional orders. We conclude that the court's jurisdictional findings and removal order were supported by substantial evidence but that its dispositional order bypassing reunification services for Edward was an abuse of discretion. We therefore reverse the court's dispositional order as to him.

FACTUAL AND PROCEDURAL BACKGROUND

Initial Concerns Leading to the Bureau's Involvement

In September 2014, Edward, Tracy, Benjamin, and three-year-old Amber (Tracy's daughter by a man other than Edward²) all lived together in Bay Point.³ On September 8, the Bureau received a referral that Tracy was engaging in prostitution and doing drugs "at all hours of the night." The reporting party was concerned about Amber's safety, claiming Tracy would either leave her with "anyone she can find" when she was engaged in prostitution or would have sex in front of her. Tracy also purportedly did drugs ("Crack Cocaine" and "Crystal Meth") and drank alcohol in front of Amber.

On September 10, two emergency response social workers met with Tracy, Edward, and Amber at their home. They found the two-bedroom, one-bath home "unclean, unkept, [with] roaches crawling on the floor [and] very little food" Amber appeared "clean, appropriately dressed, and free of any bruises or marks associated with abuse or neglect." She told the social workers she knew where her private parts were and no one had touched her there. She appeared bonded with Tracy and Edward, although Tracy was impatient with her and did not return her affection, while Edward was patient and affectionate with her.

² Tracy became pregnant with Amber when she and Edward were separated. They subsequently reunited.

³ Tracy is not a party to this appeal, nor is Amber a subject of this appeal. We thus omit details regarding them except where relevant to the issues before us.

Tracy acknowledged she used to “ ‘hustle back in the day,’ ” but said she had not done any sex work since Amber was born. She acknowledged current marijuana use but denied other drug or alcohol use. She claimed that Edward only drank beer. He was on disability at the time due to a broken arm so they were low on food, but they had applied for assistance and expected to receive money soon.

Tracy denied that Amber had been sexually abused or was at risk for sexual abuse. If Tracy left home, she either took Benjamin and Amber with her or left them with Edward. Edward agreed Tracy left the children with him if she went out, although he claimed she rarely went anywhere without them. He denied that he or Tracy used drugs or that Tracy was doing sex work.

A social worker met with Benjamin on September 17. He told her drugs are bad and he did not know anyone who used them. He had seen his mother and father smoke, but they did not act funny, strange, or different when they did. His mother was nice and was always busy cooking, doing laundry, and helping with homework, and his father was really nice and worked in the garage, checked “stuff” in the house, and did dishes.

Benjamin said no one had ever touched his private parts. He felt safe at home because both of his parents were there when he went to bed at night and he knew they would protect him. No one watched his sister except his parents, and sometimes he and his sister would stay with his father if his mother had to go to the store.

On October 24, in the course of investigating the family, the Bureau learned that in 2001, Edward had been convicted of lewd and lascivious conduct with a child under 14, a conviction stemming from his sexual abuse of his then 11-year-old daughter.⁴ In light of this information, the social worker requested that the Sheriff’s Department conduct a welfare check on the children. A deputy sheriff conducted a check that day and found the home neat and tidy (although not clean) with food. Benjamin was not home, but the deputy spoke with Amber, who was friendly, outgoing, and energetic, and did not exhibit any behavior suggesting she was the victim of sexual abuse.

⁴ In addition to Benjamin, Edward had a son and a daughter who were in their mid-20s at the time of the dependency proceeding.

That same day, the social worker returned to the home to again meet with Tracy and prepare a safety plan for Amber. Tracy acknowledged Edward was required to register as a sex offender, stating he told her it was because he had been accused of molesting his daughter. She said Edward was very conscious of his conviction and how he was perceived, and was thus very careful about his behavior around any children. According to Tracy, he did not bathe or dress Amber and or help with her toileting. She constantly asked Amber if anyone had ever touched her private parts, and Amber always said no. According to Tracy, if she went out and Edward stayed home with the children, Benjamin was always there as well.

Tracy signed a safety plan for the weekend indicating that she would not leave Amber alone with Edward at any time.

On October 27, the social worker received a copy of a 2000 police report concerning the sexual abuse allegations against Edward. She summarized the information in the report as follows: “The child reported that on 2 separate occasions her biological father Edward S[.], who recently got out of rehabilitation due to methamphetamine addiction visited her at where she resided with her brother and grandmother. The child stated on the first occasion she sat on her father’s lap, he grabbed her breasts; he touched her ‘butt.’ He held her and moved her into a better position on his lap. The child stated the second incident was when the father lay on top of her and rubbed his ‘private’ on the lower portion of her behind. He held her down with his arms and asked her, ‘Do you like it?’ ‘Does it feel good?’ ‘Has anyone ever done this to you before?’ The child from then on was afraid to be around her father.

“[Edward] initially denied all the allegations made, he accused his daughter of lying as he paid her brother and his baseball games more attention than he did her and her schooling. [Edward] finally admitted after questioning following a polygraph exam, ‘he made a mistake.’ ”

Original Petition

On October 28, the day after receiving the police report, the Bureau filed a section 300 petition. It asserted one failure to protect allegation under section 300, subdivision

(b): that there was a substantial risk Benjamin would suffer serious physical harm because Tracy allowed Edward to live in the home and provide care for Benjamin despite knowing that Edward had been convicted of sexually abusing his 11-year-old daughter in or around 2000 and that he was required to register as a sex offender per Penal Code section 290 (count b-1). It also asserted two substantial risk of sexual abuse allegations under section 300, subdivision (d): that Tracy had placed Benjamin at a substantial risk of sexual abuse because she allowed Edward to live in the home and provide care for him (count d-1); and that Benjamin was at a substantial risk of sexual abuse by Edward (count d-2).⁵

The Bureau's Detention/Jurisdiction Report

The Bureau prepared a combined detention/jurisdiction report that summarized the allegations involving Tracy that brought the family to the Bureau's attention and documented the social worker's meetings with and investigation of the family, described above.

In addition, the Bureau reported that the family had been the subject of 15 prior child welfare referrals in Solano, Sacramento, and Contra Costa counties from 2006 to 2014. The most recent was in June 2014 for the general neglect of Benjamin and for Amber being at risk and was closed as unfounded.

The Bureau also noted that both parents had significant criminal histories. Edward had a history of arrests dating back to 1981, including petty theft, battery, fighting in a public place, disorderly conduct, prostitution, exhibiting a deadly weapon, receiving stolen property, possession of a controlled substance and paraphernalia, possessing a dangerous weapon, possession of a controlled substance for sale, possession of a hypodermic needle, disorderly conduct (intoxication), disorderly conduct (under the influence of drugs), lewd or lascivious acts with a child under 14 years old, and failure to register as a sex offender. He had four misdemeanor and three felony convictions. All

⁵ Although not at issue here, a similar petition was filed on behalf of Amber.

convictions predated his 2001 lewd and lascivious conduct conviction, with the exception of one in 2007 for failing to register as a sex offender.

The Bureau also reported that when the social worker spoke with Edward about his conviction for sexual abuse, he told her he was going to seek to have his conviction reversed. He claimed there was “no physical evidence, the molestation was alleged and everything was thrown out. He was told he was looking at 8 years, 8 months and his daughter would go to foster care and never see any family again; so he pled guilty and got 12 months in order to keep his daughter in the family. He stated he was not allowed to speak to her again until she was 18-years-old; she is now 26-years-old and she is willing to write a letter on his behalf saying she falsified the allegations.”

Detention

A detention hearing was held on October 29. Before the case was called, the court ordered Tracy and Edward to submit to drug testing. Both parents tested positive for amphetamine, with Tracy also testing positive for marijuana.

Both parents objected to detention, arguing that the case had been brought solely based on Edward’s status as a Penal Code section 290 registrant, his sex offense had occurred in 2000, and there was no indication either Benjamin or Amber had been sexually abused. Edward was willing to move out of the house, despite being the sole provider for the children, if it meant they could remain with Tracy.

The court ordered Benjamin and Amber detained, and they were removed from the home and placed in foster care.

Amended Petition

On November 3, the Bureau filed an amended petition adding two additional failure to protect allegations: that Tracy’s substance abuse problem impaired her ability to provide adequate care for and supervision of Benjamin in that she used methamphetamine, including most recently October 24 to 26, 2014, while Benjamin was in her care (count b-2); and that Edward’s substance abuse problem impaired his ability to provide adequate care for and supervision of Benjamin in that he used

methamphetamine, including most recently on October 26 and 27, 2014, while Benjamin was in his care (count b-3).

The Bureau's December 17, 2014 Addendum Report

In a December 17 addendum to its detention/jurisdiction report, the Bureau informed the court that the social worker had spoken with the parents about their positive drug tests. Tracy admitted she smoked methamphetamine on October 26 before the social worker had arrived to complete the safety plan. She admitted using drugs once a month for two to three days at a time. She denied she used when the children were in the home, although she admitted she had been under the influence of drugs while taking care of them. Tracy told the social worker she planned to enter an inpatient drug treatment program.

Edward told the social worker he had completed a two-year substance abuse program in 2000 but had “ ‘slipped.’ ” He had been smoking methamphetamine, most recently on October 26 or 27. He reported plans to begin an outpatient program.

Contested Jurisdictional Hearing

Tracy submitted to jurisdiction on count b-2 (that her drug abuse placed Benjamin at risk of harm). On February 4, 2015, the court held a contested jurisdictional hearing on the remaining allegations. The following evidence was presented:

Therapist Mathew Pereira was the director of the SAFER Program, an outpatient treatment program for sex offenders. The program is a minimum of three years, and up to a third of the work involves getting the offender to acknowledge the offense, with much of the program devoted to relapse prevention. According to Pereira, a doctor who evaluated Edward for a presentence report described him as amenable to treatment and reported that he did not fit the formal diagnosis of pedophilia. The doctor found Edward genuinely remorseful regarding his offense and interested in entering treatment.

Edward participated in the SAFER Program from September 2000 to a final group session in 2004. He successfully completed it and engaged in extra therapy with two of the therapists. Pereira, who worked with Edward and was his group therapist, described him as a “very honest reporter” who “talked quite a bit” and “volunteered information

within the program that only he knows, which is always a healthy sign.” During Edward’s participation in the program, he did not exhibit any behavior that would cause Pereira concern regarding his safety around young children.

Pereira was disappointed to learn that Edward had told the social worker that the sexual abuse had not happened and that his daughter was going to retract her allegations. Pereira did not expect this “from the Ed [he] knew” because Edward had acknowledged the abuse. Pereira would expect such a statement from someone who was starting the program, but not from someone who had completed it. Even given the circumstances when the statement was made (that Edward feared losing Benjamin and Amber), Pereira believed Edward “should have stood by what he said and did in treatment, and dealt with [it] in the present tense.”

Twenty-six-year-old Ronald B. (Tracy’s son and Edward’s stepson) testified that he had known Edward since he, Ronald, was 15 years old, having spent “plenty of time with him”—summers, weekends, time off—when he was younger. Edward never touched him in a sexual way, made sexual advances towards him, or made sexualized comments to him. He also spent time with Edward when Benjamin or Amber was around. He never saw Edward touch either child in a sexual manner or heard him make sexualized comments to or about them. Ronald allowed Edward to be around his own children (ages seven, three, and one) and never witnessed any sexually inappropriate behavior.

Asked to characterize the interactions between Edward and Benjamin, Ronald described them as “[l]ike any typical father and son: They love to play with each other. They love to be around each other.” Neither Benjamin nor Amber had said that Edward behaved in a sexually inappropriate manner, nor had they behaved in a manner suggesting they had been sexually abused.

Ronald learned in approximately 2008 that Edward was a registered sex offender. He was told Edward had done something inappropriate to his daughter. Edward told him, however, that the allegations were false and that he was not even there.

Kathryn W. (Tracy's mother) testified that the family lived with her for approximately two years around the time Benjamin was born. After that, she generally saw Benjamin and Amber on the weekends when she was not working. She never saw Edward touch Benjamin in a sexual manner or heard him make sexual comments about either child. She characterized the relationship between Benjamin and Edward as "great": "He's very concerned about his son. His son loves him a lot. . . . They get along great." She had also seen Amber and Edward interact and said that Amber "loves her daddy." She never observed Benjamin or Amber appear to be afraid of Edward.

Asked what she knew about Edward's criminal history, Kathryn testified that before the family moved in with her, Tracy told her "something happened with his daughter" and the police would be able to enter her home at any time. Kathryn was not aware, however, that Edward was required to register as a sex offender. She believed children are safe around him and had no concerns about Edward caring for Amber or Benjamin.

Kathryn confirmed that Amber and Benjamin were currently in her care. Benjamin had been having some behavioral and anger problems, but his behavior had improved.

Edward also testified at the jurisdictional hearing. He admitted methamphetamine use on October 27, 2014, but claimed that prior to that, he had not used drugs since 1998, when he had enrolled in the Delancey Street drug treatment program. After completing that program in 2000, he attended a 12-step program seven days a week for seven months. He then reduced the frequency of his meetings, eventually stopping in 2005. He did not have a relapse prevention plan.

When Edward "slipped" in October, he did not use in front of the children, who were down the street playing with friends. He claimed he got the methamphetamine from someone on the street who randomly approached him in a parking lot and said, "Hey, hey I got some. I got some." Although his use date coincided with Tracy's reported use date, Edward denied that he and Tracy had used together.

Edward acknowledged that he still drinks beer, but “[a] six pack would last [him] a week.” When asked about Benjamin having described him in 2013 as an alcoholic, Edward responded, “[H]e doesn’t know the meaning of the word that he says. He does that a lot. Anybody who drink alcohol is an alcoholic, according to Ben. He’s not understanding exactly what he’s saying.”

Following his conviction for sexually abusing his daughter, Edward served one year in county jail with five years probation and was required to participate in the SAFER Program, which he successfully completed. Other than that conviction, Edward had not been arrested for any crime relating to inappropriate sexual conduct.

Edward testified that when the social worker confronted him about his conviction, he “panicked.” He admitted, “I should have owned up to it right then and there. But I was trying to think of a way for them not to take our children from the home with that.” As to Ronald’s testimony that Edward denied the abuse, Edward testified that he was referring to one of the allegations in the 2000 criminal complaint that alleged an incident that purportedly occurred when he was in the Delancey Street program.

Edward is very cognizant of his behavior around children and is careful to avoid situations that could be misconstrued. He does not do things that would be inappropriate around children, and he does not go into a room alone with a child. He does not dress or bathe Amber or change her diapers.

At the conclusion of evidence, the court sustained all allegations in the first amended petition, reasoning as follows:

“I found rather profound the testimony of the treatment provider who came forward on behalf of Father, I assume in an effort to overcome that presumption. And his words were, ‘A third of the work is acknowledging the offense.’ And he said that Dad while participating in that program actively engaged, was forthright. And he was visibly shocked when he read Father’s denial to the [Bureau]. And said, No, it wasn’t sufficient explanation that Father was afraid about losing his children. And he didn’t even know then that years before that [Edward] had made the same denial to the stepson, that he was—he did not commit the offense, and it was not true, even though the stepson knew

[Edward] was now required to be registered. [Edward] denied the conduct that led to that registration.

“And that’s not really the only issue that places these children at substantial risk of harm. You have to then add to the mix of that a father who has a substance abuse history, significant enough to do two years of Delancey Street, who now has admittedly used and smoked methamphetamine. And his testimony was completely incredible. It was very awkward, quite frankly, to have to watch father squirm on the witness stand, which he did. And the pregnant pauses in between answering questions really spoke volumes; that he only used once, and a random person approached him with the drugs. It’s just not at all credible.

“And then when he tried to explain away what he said to [the social worker] over his resumption of drug use, he used the words, ‘Well, that’s not exactly what I said.’ Again, trying to wiggle in his now explanation to walk back statements that he has made.

“And this whole notion of wanting to make sure that a situation couldn’t be misconstrued, I found, again, showing that father—if he did at one point in time embrace whatever treatment and tools that he was offered in the three years that he participated in that program, he has since lost all of those based on the evidence that’s been provided to this Court.

“And I might note, everyone keeps talking about who saw what in the house, usually a perpetrator of sexual molestation doesn’t commit those accounts in the presence of other people. It is usually behind closed doors or alone and that sort of thing. So it’s not unusual at all that the grandmother never saw father engage in that sort of conduct; the stepson never saw father engage in that sort of conduct. And the law quite frankly doesn’t require that we wait until a child is sexually abused by a convicted sex offender who is a registrant. And in this case father did sexually abuse his own 11-year-old daughter right on the heels of completing a two-year substance abuse program. So that’s the backdrop of this case. And that’s the evidence before this Court.

“He is now consuming alcohol. He is smoking methamphetamine. So, quite frankly, the risk is rather high under these circumstances.

“As it relates to the substance abuse, I know that Mother didn’t offer any evidence. The burden is still on the [Bureau]. And based on the evidence that has been provided before the Court in light of these circumstances, the use of substances by the parents is particularly risky and harmful because of the risk that is unique to the composition of this household.”

The Bureau’s Disposition Report

The matter was scheduled for disposition on March 4. The parents drug tested that day, and Edward was positive for amphetamine and Tracy was positive for amphetamine and marijuana. The Bureau informed the court of reports that both children had disclosed inappropriate sexual experiences in the past, and disposition was continued to March 23.

In a disposition report prepared in anticipation of the March 23 hearing, the Bureau informed the court that when Benjamin was removed from the home the day after the detention hearing, he had a serious emotional outburst that culminated in him running into the street and standing in the path of oncoming cars until the social worker pulled him out of the way. As a result, he was briefly hospitalized in a mental health facility. At the time of detention, he had been exhibiting behavioral problems in school, “often present[ing] as being very angry,” which included defiance towards adults and pushing, hitting, and kicking other students. On December 24, 2014, both children had been placed with their maternal grandmother, and Benjamin’s behavior and attitude greatly improved.

The Bureau reported that Edward was “hard working and had been able to maintain a high paying job (around \$40.00 per hour)” up until his recent disability. He was providing health insurance for the children and assisting in their care. Although he and Tracy had been together on and off for approximately 10 years, they did not have “an emotionally close relationship” at that time.

The Bureau further reported that Edward wanted Benjamin in his care: “He said that Ben is his love and he will do anything for him. He feels that he is able to take appropriate care of Benjamin.”

The report provided the following family assessment:

“This matter was brought to the attention of the Bureau on or about September 8, 2014, due to allegations that the mother, Tracy W[.] and her husband, Edward S[.] were neglecting the children’s needs. The reporting party alleged extensive drug and/or alcohol use in the home. The report further indicated that there were possible lewd sexual behaviors in front of the children. Upon further investigation the Bureau determined that [Edward], the father in the home, had previously been convicted of molesting his own 11-year-old daughter back in 2000. . . . [Edward] is a registered sexual offender (per PC 290). It was determined that [Tracy] was aware that [Edward] was a registered sexual offender but had not taken necessary steps to protect her children from [Edward]. [Edward] had previously completed a sexual offender program, which requires acknowledgment and taking responsibility for the sexual abuse. More recently he has taken the stance that the molestation had not really occurred as was originally alleged and that the victim had recanted. . . .

“The parents had originally denied or minimized substance use during the original investigation. However, both parents tested positive at the time of court hearings. The Bureau amended the Petition to include the use of and abuse of alcohol and other substances. Further review of the history of [Tracy] and [Edward] indicates that there has been substantial history of substance use and abuse. . . . [Edward] reportedly has primarily an alcohol problem, however, he actually tested positive for methamphetamine at court. Although the parents have been referred to drug testing on January 13, 2015, neither parent is currently testing for the Bureau.”

The Bureau also noted that Benjamin was “starting to talk about some incidents from the past” that indicated he and some neighborhood children “had engaged in sexualized behaviors when he resided with his parents in Bay Point. These may have included some sexualized behaviors related also to Amber and another younger little girl who is also a relative. This seems to have included ‘dry humping,’ kissing, touching and possibly oral copulation. Based on his statements as well as presentation and behavior it appears that Benjamin may have been a victim of sexual abuse or exposed to

inappropriate sexual content.” The Bureau indicated, however, that at that time, “no adults are implicated in sexual misconduct.”

In light of the foregoing, the Bureau did not believe Benjamin could be returned to his parents’ care: “The parents have not demonstrated that they have made any substantial efforts to address the issues which brought this matter to the attention of the Bureau. [Edward] has been previously adjudicated as a sexual offender, yet currently is in a state of denial related to his previous offense as well as his potential to abuse other children. [Tracy] has known about the potential of her husband’s sexual abuse to her children, based on his previous conviction and has not taken appropriate measures to protect her children. The supervision of the children is lacking by the mother. There are inconclusive allegations that [Tracy] has exposed the children to inappropriate sexual content, behaviors, or exploitation. The children are displaying inappropriate sexualized behaviors which are of great concern to the Bureau. Based on initial comments that the children have made it seem [*sic*] that these allegations are possibly true and place the children at further risk of harm should they be returned to the care of the parents at this time.

“Prior case and referral history related to the parents indicating [*sic*] that they both have had alcohol and/or drug use problems. The parents have tested positive at the Court Hearings. Neither parent has addressed the use and/or abuse of alcohol or drugs. The Bureau feels that the parents have a serious and chronic substance use problem which affects their ability to provide appropriate care and safety for their children. The Bureau recommends that both parents enter and successfully complete an inpatient substance abuse program.”

The Bureau recommended reunification services for Tracy but no services for Edward pursuant to section 361.5, subdivisions (b)(12) and (b)(16) because it believed reunification with him would not be in Benjamin’s best interest.

The morning of the March 23 hearing, the court ordered both parents to drug test. Edward’s test was negative, while Tracy tested positive for marijuana. The court set the matter for a contested disposition hearing on April 23. It encouraged Edward and Tracy

“to get into residential treatment. And you should not waste any time between now and that court date.” Tracy entered a residential treatment program on April 10.

Disposition was subsequently continued to June 10 due to Tracy being in a blackout period in her treatment program and Edward experiencing significant health concerns following shoulder surgery.

The Bureau’s April 21, 2105 Update

In an April 21 update, the Bureau reported that Benjamin and Amber had been interviewed at the Children’s Interview Center. Neither child disclosed any further information suggesting that they were the victims of sexual assault by an adult.

Benjamin confirmed that there were sexual behaviors with friends in the neighborhood when he was under his parents’ care, most of which was at the direction of one of the older neighborhood boys.

The Bureau also reported that the social worker met with Edward on April 1 to discuss his history. Edward told the social worker that when he was 13 years old, he lost his mother in a tragic car accident, which greatly disrupted his life. He turned to drugs and alcohol, got into trouble, and became estranged from his father. When he was 24 years old, he was involved in a serious motorcycle accident, shattering his shoulder and suffering other severe injuries that resulted in a lengthy hospital stay. During that time, he reconnected with his father.

After the motorcycle accident, Edward married and had two children (a boy and a girl, both in their mid-20s). When that marriage ended, he entered a period of heavy addiction. He subsequently participated in a two-year rehabilitation program from which he graduated in 2000. He claimed to have been clean from methamphetamine since then, although he admitted one recent use that resulted in his positive test. He and Tracy met in 2004 and they got married when she became pregnant with Benjamin. He said their relationship was very on and off, describing Tracy as a good person with a serious substance abuse problem.

Edward had worked for one construction company for 15 years but had been on disability since 2014. He recently underwent shoulder replacement surgery and would need physical rehabilitation and possibly more surgery.

In this conversation, Edward admitted to the social worker that he had molested his daughter, claiming he had never really denied it. He said that while she was sitting on his lap, he touched her breast, which gave him an erection. His older son was in the room at the time. He admitted his guilt to avoid subjecting his daughter to a trial. He participated in the SAFER Program for three and a half years. He denied any further sexual abuse of any kind.

The Bureau's June 9, 2015 Update

In a June 9 update, the Bureau informed the court that since the end of April, Tracy had been participating in an inpatient substance abuse treatment program, was attending nine NA/AA classes per week, and had a sponsor. She was attending anger management classes and would be participating in parenting education and domestic violence counseling.

Benjamin and Amber continued to reside with their maternal grandmother and were thriving.

Edward had been participating in supervised visitation of two hours per month. Visits had been going well, and Benjamin enjoyed visiting with his father.

Disposition Hearing

Tracy submitted on the Bureau's dispositional recommendation. A contested dispositional hearing as to Edward was held on June 10, 2015. Social worker Nadine Hendricks was the sole witness at the hearing. She testified that Edward had been visiting with Benjamin since the case began and was currently visiting every other week for two hours. During a visit that Hendricks observed, Edward was appropriate with his son, who appeared attached to his father. Their interaction was positive, and Benjamin appeared to enjoy the visit.

According to Hendricks, Edward was seeking services through A Step Forward, a service and counseling organization primarily for sexual assault victims and perpetrators.

She did not refer Edward to the program, having only referred him to a substance abuse treatment program. She confirmed that throughout the case, Edward had expressed a willingness to participate in services.

After lengthy argument on whether services should be ordered for Edward, the court adopted the Bureau's recommendation and bypassed services, offering the following rationale:

"I want to also acknowledge that . . . I think [Edward] loves Ben very much. I think he loves Amber too. But I know that he loves Ben very much. And both of these parents who are before the Court have had their own tragic circumstances growing up, which I think has contributed much to their struggles in terms of substance abuse issues and other issues that bring them before the Court.

"There is no doubt that these children were subjected to inappropriate neglect and behavior, because both children appear to the Court to be very sexualized. There's no evidence that [Edward] has molested these two children that appear before this Court. However, that really is not the issue.

"First of all, given how this case began and the circumstances that presented themselves in the home when the [Bureau] conducted their investigation, there is well beyond clear and convincing evidence that these two children were at substantial risk of harm in the care and custody of both [Edward] and [Tracy]. I agree with much of what Ms. Frey [counsel for the Bureau] had to say in terms of the substance abuse issues and exposing the children to Mother's substance abuse issues. But also quite frankly, [Edward] has abuse issues as he has tested positive before this Court.

"And Benjamin has clearly struggled in the lack of structure in that home and the lack of support and oversight, such that he was placed at risk when he was allowed to go to the store and hang out in the neighborhood with no oversight whatsoever, and appears at least according to him, to have been victimized by other young people in the neighborhood. So there are layers of issues as has been described by the attorneys here.

“I struggle today not from the perspective of Ben but really more from the perspective of [Edward]. [Edward] is a sympathetic person. And he’s a likable person and a likable individual. And his devotion to his child is so clear. That’s why I struggle.

“But when you read the law and apply the law to the facts presented in this case, it reads to support the recommendation of the Department.

“That being said, I believe Ben does love his father and has a connection that needs to be supported. And I would encourage [Edward] on his own to continue to seek out help through A Step Forward. It is a very good program. I am familiar with A Step Forward because it is a program utilized not only by Children & Family Services but by the Probation Department. And their work that they do there is quite good.

“And I believe, [Edward], that it would be very important for you and for your relationship with your son, for Ben, that you continue with those services on your own.

“I also believe it’s very important that you engage in some substance abuse treatment and support. So I would encourage you to do that as well.

“But . . . [Edward] is a registered sex offender. And when I look at the risk in the home based on [his] . . . resumption of use of substances, and even if I don’t consider the denial of the activity itself, there is a basis, a legal basis for the bypass. And when I go to the provision that I’m required to go to, the Court shall not order reunification for a parent described in one of the above paragraphs, which is the sex registrant paragraph unless the Court finds by clear and convincing evidence that reunification is in the best interest of the child.

“Given the circumstances that Benjamin has presented, I do not make that finding by clear and convincing evidence. And it doesn’t—it’s a difficult decision for the Court because . . . I believe you love your son very much. I would really encourage you to continue your services, because I am going to order continued visitation. I think your relationship with your son is an important one. And I view it through the child’s lens in terms of reasonable services. And a reasonable service to Benjamin is to have as frequent visitation with you as he can have. Because he looks up to you and he loves you very much.

“So for those reasons that I’ve stated here on the record, I am adopting the recommended findings as they have been modified here in open court.”

Edward filed a timely notice of appeal challenging both the jurisdictional and dispositional orders.

DISCUSSION

The Court’s Jurisdictional Findings Were Supported by Substantial Evidence

In his first argument, Edward challenges the jurisdictional findings on counts b-1, b-3, d-1, and d-2, arguing they were not supported by substantial evidence.

As a preliminary matter, the Bureau contends that the court’s jurisdictional findings are nonjusticiable because “any decision this court might render on the allegations involving [Edward] will not result in a reversal of the court’s order asserting jurisdiction.” This is so, the Bureau explains, because the court had jurisdiction over Benjamin due to the true finding on Tracy’s substance abuse allegation (count b-2), which Edward does not challenge. And, as confirmed in *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492, “an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence.”

Edward, on the other hand, argues that his challenge falls within exceptions to the general rule that a reviewing court need not consider whether certain jurisdictional findings are supported by substantial evidence when jurisdiction over the child exists on other grounds. As the court in *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*) explained, “[W]e generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation].” (*Id.* at pp. 762–763.) We need not resolve this issue of justiciability, because even if we agree with Edward that the court’s jurisdictional findings are justiciable, we conclude they were supported by substantial evidence. (See *In re P.A.* (2006)

144 Cal.App.4th 1339, 1344 [challenge to jurisdictional finding is reviewed for substantial evidence].)

We first address the allegation that Edward’s drug abuse put Benjamin at substantial risk of harm (count b-3). Section 300, subdivision (b) provides for juvenile court jurisdiction over a child where, as pertinent here, it is shown that the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left . . . , or by the inability of the parent or guardian to provide regular care for the child due to the parent’s . . . substance abuse.”

Edward, by his own admission, had a history of heavy substance abuse that ultimately led him to participate in the Delancey Street treatment program from 1998 to 2000. While he continued to attend 12-step meetings after graduating from Delancey Street, he ceased attending those meetings in 2005. There was no evidence that between 2005 and 2014 (when the Bureau received the referral), Edward engaged in any ongoing treatment or had a relapse prevention plan. Instead, he was married to and lived with Tracy, who was a drug addict.

On top of this history, there was evidence that Edward had resumed drug use. He tested positive for methamphetamine on October 29, 2014—the month after the Bureau began investigating the family.⁶ Edward knew the detention hearing was scheduled for October 29, at which time he faced removal of Benjamin from his care, yet he could not resist the urge to use drugs despite the risk of losing his child. This alone was cause for alarm and was certainly compelling evidence that Edward continued to suffer from a substance abuse problem. Additionally, he admitted that he continued to consume

⁶ He also had a positive drug test in March 2015, but this was after the jurisdictional hearing so we do not consider it when evaluating the evidence of his substance abuse at the time of the jurisdictional hearing.

alcohol, which suggested compromised judgment by someone with a history of substance abuse.

Despite his positive drug test at the time of detention, Edward did not engage in any substance abuse treatment program after he “slipped.” Again, this suggested he had returned to addiction or, if not yet, that there was a very real possibility he might do so in the near future.

In short, Edward’s history plus his recent use was ample evidence from which to conclude that he was suffering from a substance abuse problem that was putting Benjamin at substantial risk of harm. (§ 300, subd. (b).)

In arguing a lack of substantial evidence supporting count b-3, Edward places undue reliance on his claim that he had only used drugs once since 1998. At the jurisdictional hearing, the trial court expressly found his testimony to this effect “completely incredible”: “It was very awkward, quite frankly, to have to watch father squirm on the witness stand, which he did. And the pregnant pauses in between answering questions really spoke volumes; that he only used once, and a random person approached him with the drugs. It’s just not at all credible.”

We also reject Edward’s reliance on a distinction made in *Drake M.*, *supra*, 211 Cal.App.4th at pp. 764–765, between substance *abuse* and substance *use*. He contends that his single positive drug test evidenced at most drug *use*, which was insufficient to support a finding of substance *abuse* as required by section 300, subdivision (b). *Drake M.* is not controlling here.

In *In re Christopher R.* (2014) 225 Cal.App.4th 1210 (*Christopher R.*), the court provided this analysis of *Drake M.*:

“As the *Drake M.* court explained, when the Legislature rewrote section 300, subdivision (b), in 1987 to include as a basis for dependency jurisdiction a parent’s inability to provide regular care for his or her child due to substance abuse, it included no definition of the term ‘substance abuse’ in the statute. (*Drake M.*, at p. 765.) Similarly, the legislative history revealed no specific discussion of how the term should be defined

in practice. As a result, ‘[d]ependency cases have varied widely in the kinds of parental actions labeled “substance abuse.” ’ (*Ibid.*)

“To avoid inconsistencies, the *Drake M.* court proposed a definition of substance abuse based on the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM-IV-TR), a definition that had also been used in an earlier dependency decision involving a somewhat different issue, *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322. (See *Drake M.*, *supra*, 211 Cal.App.4th at p. 765.) Following *Jennifer A.*, the *Drake M.* court held, ‘a finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient to (1) show that the parent or guardian at issue had been diagnosed as having a current substance abuse problem by a medical professional or (2) establish that the parent or guardian at issue has a current substance abuse problem as defined in the DSM-IV-TR. The full definition of “substance abuse” found in the DSM-IV-TR describes the condition as “[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: [¶] (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household); [¶] (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use); [¶] (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct); and [¶] (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).” (DSM-IV-TR, p. 199.)’ (*Drake M.*, at p. 766.)” (*Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1217–1218.)

Despite recognizing “the *Drake M.* formulation as a generally useful and workable definition of substance abuse for purposes of section 300, subdivision (b),” the *Christopher R.* court went on to note that “it is not a comprehensive, exclusive definition

mandated by either the Legislature or the Supreme Court” And the court was “unwilling to accept [the mother’s] argument that only someone who has been diagnosed by a medical professional or who falls within one of the specific DSM-IV-TR categories can be found to be a current substance abuser.”⁷ (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218.) We agree with *Christopher R.*, and conclude that the *Drake M.* formulation does not govern here.

In a final argument relating to count b-3, Edward argues there was no evidence that Benjamin had been harmed by his drug use. This argument fails because as the court noted in *Christopher R.*, *supra*, 22 Cal.App.4th at pp. 1215–1216, “Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citation.] The court may consider past events in deciding whether a child presently needs the court’s protection. [Citation.] A parent’s ‘ “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.’ [Citation.]”

Turning to the remaining three jurisdictional allegations (counts b-1, d-1, and d-2), all alleged a risk of sexual abuse due to Edward’s conviction for sexually abusing his daughter and status as a Penal Code section 290 registrant.

Section 300, subdivision (d) provides a basis for juvenile court jurisdiction if “The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian . . . , or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.” Section 355.1, subdivision (d) creates a rebuttal presumption that a parent who has been convicted of sexual abuse as defined in Penal

⁷ The court also noted that “the DSM-IV-TR’s definition of ‘substance abuse’ . . . has been replaced in the more recent Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), published in May 2013 after the decision in *Drake M.*, by a more broadly defined classification of ‘substance use disorders’” (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218, fn. 6.)

Code section 11165.1⁸ or is required to register as a Penal Code section 290 sex offender poses a substantial risk of harm to a child in his or her care or custody. “The prior sexual abuse conviction functions as prima facie evidence of risk and imposes on the parent the burden of producing some evidence to show he or she does not pose a substantial risk of harm to the child. If evidence is introduced that would support a contrary finding, the presumption disappears and the matter must be determined based on all the evidence presented, including the fact of the prior conviction and reasonable inferences derived from it.” (*In re Quentin H.* (2014) 230 Cal.App.4th 608, 610.) The trial court here found that Edward failed to rebut the section 355.1, subdivision (d) presumption, a finding Edward contends was erroneous. Again, we need not address this contention because the trial court alternatively found that even if the presumption had been rebutted, the Bureau met its burden of proving the jurisdictional allegations arising out of Edward’s sexual assault conviction. And that finding was supported by substantial evidence.

As noted, in 2001, Edward was convicted of sexually abusing his 11-year-old daughter. While he completed a three-and-a-half year treatment program, he nevertheless denied the abuse when asked about it by the social worker. Both Edward’s therapist from the treatment program and the court considered this very significant, with the court finding that this indicated Edward had lost the tools he had gained in the treatment program. Compounding this was his resumption of drug use, a factor the juvenile court considered significant on the likelihood of Edward reoffending. Resumed drug use suggests a lack of control and sound decision making which may increase the likelihood of reoffending. (See, e.g., *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 222 Cal.App.4th 149, 163 [evidence of father’s drug use was “relevant to a finding of risk [under section 300, subdivision (d)] because it demonstrates that father lacks the structure and insight to refrain from behaviors and patterns that led to earlier violent sex crimes against young boys”].) This was substantial evidence supporting the court’s finding regarding the risk of sexual abuse.

⁸ Penal Code section 11165.1 includes lewd and lascivious acts upon a child, as defined in Penal Code section 288.

The Dispositional Order Removing Benjamin from Edward’s Custody Was Supported by Substantial Evidence

Following the completion of the contested disposition hearing, the court found, by clear and convincing evidence, that reasonable efforts had been made to prevent or eliminate the need for Benjamin’s removal from his home but that, pursuant to section 361, subdivisions (c)(1) and (c)(4), there was substantial danger to Benjamin’s health, safety, protection, or wellbeing, that he was at substantial risk of sexual abuse, and that there were no reasonable means by which he could be protected without removing him from his parents’ custody.⁹ Edward contends this finding was erroneous, as he was able to parent Benjamin and there were reasonable means for preventing his removal. We conclude there was substantial evidence supporting the court’s finding. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [dispositional findings are reviewed for substantial evidence].)

A removal order is proper if it is based on clear and convincing evidence of parental inability to provide proper care for the child and resulting detriment to the child if he or she remains with the parent. (*In re Jeanette S., supra*, 94 Cal.App.3d at p. 60.) Edward’s denial of the sexual abuse and his resumed drug use, discussed at length above, supported the removal finding. So, too, did the evidence that Benjamin (and possibly Amber) had been victimized by older children in the neighborhood when he was allowed to hang out with them unsupervised. Both children exhibited overly sexualized behavior, raising a concern that they had been subjected to sexual abuse (even if not by Edward) or exposed to sexual content. While living at home, Benjamin exhibited troublesome behavior, but his behavior greatly improved under the care of his grandmother. All of this suggests a lack of supervision and structure in the home. There was no evidence that Edward’s proposed alternatives to removal—such as him moving out of the house so

⁹ While there is considerable overlap between the findings necessary for jurisdiction and removal, the jurisdictional finding must be supported by a preponderance of the evidence (§ 355; *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248), rather than the clear and convincing evidence necessary for removal. (*In re Jeanette S.* (1979) 94 Cal.App.3d 52, 60.)

Benjamin could remain in the home with Tracy or family maintenance services with Benjamin in the custody of one of his parents—were viable. There was no evidence that Tracy was capable of safely caring for the children given her substance abuse problem. And Edward had not engaged in substance abuse treatment despite two positive drug tests (in October 2014 and March 2015) and admonishments from the court at a March 23, 2015 hearing that he do so. His failure to recognize that he needed help with his relapse was the antithesis of demonstrating that Benjamin was safe in his care.

The Court’s Order Denying Reunification Services for Edward Was an Abuse of Discretion

In his final argument, Edward challenges the court’s order bypassing reunification services for him. He acknowledges a presumption that reunification services were to be bypassed due to his conviction for lewd and lascivious conduct on a child under 14 years old. He contends, however, that the court’s finding that reunification was not in Benjamin’s best interest was unsupported by substantial evidence and, as such, its order bypassing services was an abuse of discretion. We agree.

“When a child is removed from the custody of his parents, reunification services must be offered to the parents unless one of several statutory exceptions applies. (Welf. & Inst. Code, § 361.5, subd. (a).) If a parent is described by an exception, the juvenile court ‘need not’ provide him or her reunification services. (§ 361.5, subd. (b).) Under most of the exceptions, the juvenile court ‘shall not’ order reunification services unless it finds, by clear and convincing evidence, that reunification is in the best interests of the child. (§ 361.5, subd. (c).) Thus, ‘ “[o]nce it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]” ’ [Citation.]” (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227, fn. omitted.)

Two circumstances identified in section 361.5, subdivision (c) applied here: where the parent has been convicted of a violent felony as defined in Penal Code section 667.5, subdivision (c) (§ 361.5, subd. (b)(12)) and where the parent is required to register

a sex offender. (*Id.*, subd. (b)(16).) Accordingly, the court here was prohibited from ordering reunification services for Edward unless it found by clear and convincing evidence that reunification was in Benjamin’s best interest, which it did not.

We review the court’s factual findings under section 361.5 for substantial evidence. (*In re G.L.* (2014) 222 Cal.App.4th 1153, 1164.) “ ‘A juvenile court has broad discretion when determining whether . . . reunification services would be in the best interests of the child under section 361.5, subdivision (c). [Citation.] An appellate court will reverse that determination only if the juvenile court abuses its discretion.’ [Citation.]” (*Id.* at pp. 1164–1165; see also *In re William B.*, *supra*, 163 Cal.App.4th at p. 1229.)

It has been said that “[t]he concept of a child’s best interest ‘is an elusive guideline that belies rigid definition. Its purpose is to maximize a child’s opportunity to develop into a stable, well-adjusted adult.’ ” (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66 (*Ethan N.*)) Consistent with that objective, the court in *Ethan N.* identified the following factors as relevant to the best interest question: a parent’s current efforts and fitness as well as the parent’s history; the gravity of the problem that led to the dependency; the strength of the relative bonds between the child and both the parent and the caretakers; and the child’s need for stability and continuity. (*Id.* at pp. 66–67; accord, *In re S.B.* (2013) 222 Cal.App.4th 612, 622–623; *In re D.F.* (2009) 172 Cal.App.4th 538, 547; *In re William B.*, *supra*, 163 Cal.App.4th at p. 1228.) “A best interest finding requires a likelihood reunification services will succeed; in other words, ‘some “reasonable basis to conclude” that reunification is possible’ [Citation.]” (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1116.)

There is no indication in the record that the court or the Bureau considered the *Ethan N.* factors. Rather, both focused almost exclusively on Edward’s conviction, his denial to the social worker that the abuse happened, and his resumed drug use. An evaluation of the *Ethan N.* factors, however, reveals indisputable evidence that reunification was in Benjamin’s best interest.

Throughout the dependency proceeding, Edward was actively engaged in the process and consistently expressed a desire to do whatever was necessary to regain custody of Benjamin. Consistent with that desire, he was making an effort to remedy the problems that led to the dependency proceeding. While he had two positive drugs tests earlier in the proceeding (one at detention in October 2014 and one on March 4, 2015), his test on March 23 was negative. By his successful completion of the Delancey Street program in 2000, he had demonstrated that he could successfully complete a drug treatment program and maintain sobriety for a prolonged period of time. There was reason to believe that with another treatment program, he could reverse his recent relapse. Edward had also taken the initiative to participate in A Step Forward, a program for sex offenders.

Both the Bureau and the court placed heavy emphasis on Edward's denial to the social worker that the sexual abuse ever took place. In the dispositional report in which it recommended that Edward be bypassed for services, the Bureau repeatedly asserted that Edward was "currently" in a state of denial about the sexual abuse, telling the court that he "denies molesting his daughter and reports that she has since recanted her story." This, quite simply, was not true. When confronted in October 2014 by the social worker about his conviction, Edward denied the abuse and said his daughter was recanting the allegations. But at the contested jurisdiction hearing in February 2015—four months before the dispositional hearing—he admitted the abuse, explaining the he denied it to the social worker because he "panicked" about losing the children because of it. And he again acknowledged it when he met with the social worker on April 1. Thus, to the extent the Bureau's bypass recommendation and the court's bypass order were based on Edward's supposed ongoing denial of the abuse, any such reliance was misplaced.

As to the gravity of the problem that led to the dependency proceeding, Edward's sexual abuse of his daughter was unquestionably grave. But the abuse had occurred in 2000—14 years before this proceeding began—and had happened one or two times. There was no evidence Edward had engaged in any inappropriate sexual conduct since 2000. There was no evidence he had sexually abused Benjamin or Amber (or anyone

else) or had behaved in any way inappropriately around them. Further, Edward had graduated from a three-and-a-half year sex offender program in which he was a very active and open participant, and he had reengaged in treatment at A Step Forward on his own initiative.

Benjamin, like all children, needed stability and continuity. But this was not a situation where the family was involved in successive dependency matters in which Benjamin was repeatedly removed from and returned to the family home. Rather, this was the first time Benjamin had been removed from his parents' custody. And there was evidence that, while the home life was by no means perfect, Edward was capable of providing a stable life for the family. Prior to his disability, he had maintained a well paying job, having worked for the same construction company for 15 years. Benjamin felt safe in the home and believed his father would protect him. In short, the evidence showed that Edward provided financially and emotionally for the family (including for Amber who was not his biological child), functioning as a parent who met the children's needs.

Perhaps one of the most compelling factors evidencing that reunification was in Benjamin's best interest was the very strong bond Edward and Benjamin shared, which the juvenile court itself recognized. Benjamin was eight years old at the time the dependency proceeding commenced. He had lived with his father for a majority of his life and had a positive and established relationship with him. In the words of the court, Edward's "devotion to his child is so clear" and "Ben does love his father and has a connection that needs to be supported." During the dependency proceeding, Edward was consistent with his visits, the visits were appropriate, and Benjamin was attached to his father and enjoyed spending time with him. Benjamin's grandmother, Kathryn, characterized the relationship between Edward and Benjamin as "great," and she had no concerns about Edward caring for his son. While Benjamin was doing well under her care, there was no reason to believe that their relationship would be severed if he was reunited with his father.

Given the foregoing, we can only conclude that reunification was in Benjamin's best interest and there was a reasonable likelihood reunification services would be successful. While Edward's drug abuse combined with his substance abuse history and sexual assault conviction were substantial enough to support the court's jurisdictional findings and removal order, they were not enough to justify denial of reunification services. The court's bypass order was thus an abuse of discretion that must be reversed.

DISPOSITION

The disposition order denying reunification services to Edward is reversed. In all other regards, the jurisdiction and disposition orders are affirmed.

Richman, J.

We concur:

Kline, P.J.

Stewart, J.

A145468; *In re B.S.*