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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re GABRIEL H., a Person Coming  
Under the Juvenile Court Law.

MENDOCINO COUNTY DEPARTMENT  
OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MANUEL H.,

Defendant and Appellant.

A145964

(Mendocino County Superior  
Ct. No. SCUKJVSQ151721601)

Manuel H., the presumed father of Gabriel H., (appellant) appeals from the dispositional order of the Mendocino Juvenile Court declaring Gabriel a dependent child, with custody placement entrusted to respondent Mendocino County Department of Social Services (Department). Appellant contends two findings made by the juvenile court are not supported by substantial evidence. We disagree, and we affirm.

**The Jurisdictional Finding**

The juvenile court sustained allegation b-5, by which the Department argued appellant “failed to protect his child from the mother . . . when they had separated, he stated he knew she had substance abuse and mental health issues and did not seek assistance to insure the safety of his child.” This was one of the allegations which the Department believed brought Gabriel within Welfare and Institutions Code section 300,

subdivision (b).<sup>1</sup> Appellant contends this jurisdictional finding is not supported by substantial evidence.

However, appellant does not make the same claim regarding any of the sustained allegations concerning Gabriel’s mother.<sup>2</sup> Any one of those sustained allegations would, each by itself, suffice to justify the asserting of juvenile court jurisdiction. (See, e.g., *In re Joshua G.* (2005) 129 Cal.App.4th 189, 202 [“the court has jurisdiction over the children if the actions of either parent brings the child within one of the statutory definitions in section 300”]; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397 [“a jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring her [the minor] within one of the statutory definitions of a dependent”].) Thus, even if appellant succeeded in overturning the jurisdictional finding sustaining allegation b-5, we could not reverse the dispositional order. To do that, appellant would have to convince us that none of the sustained allegations are sound.

Nevertheless, we are not insensitive to appellant’s desire for review of a finding he sincerely believes was erroneously made. We will therefore reach the merits of his contention, which is to be evaluated in light of well-established principles of review:

“The issue of the sufficiency of the evidence in dependency cases is governed by the same rules that apply to all appeals. If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary conclusion.

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<sup>1</sup> Statutory references are to this code unless otherwise indicated. Another allegation against appellant was not sustained by the juvenile court. However, the “Findings and Order—Dispositional” filed on July 15, 2015, erroneously recites that the allegation—denominated “b-4”—was sustained. We will modify the order to delete this statement.

<sup>2</sup> The couple lived together from 2008 until 2011, but never married.

[Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250–251.)

Appellant successfully objected to material in the social worker’s jurisdictional report concerning the allegation that was not sustained, but he did not object to the following material concerning the allegation that was sustained:

“On 05/07/15, the presumed father, Manuel H[.] stated that he had lived with the mother . . . and his son Gabriel until 2012 when [the mother] . . . kicked him out. Mr. H[.] stated that he was aware of [the mother’s] substance abuse and possible mental health issues. Mr. H[.] had a visit with his son prior to being incarcerated in 2013 [*sic*<sup>3</sup>]. Mr. H[.] stated that upon release from prison he didn’t do anything to protect his son because he didn’t know where [the mother] lived. [However,] Mr. H[.] and [the mother] appeared before the family law court for a custody matter on 02/28/14.”

Actually, appellant *did* know that the mother and Gabriel were in Mexico, but he testified he did not think there was anything he could do. Two days after he was released from prison (see fn. 3, ante), appellant visited Gabriel. Appellant testified Gabriel’s mother “flipped out” and threatened to “call the cops on me for no reason,” causing appellant to leave. There were no further visits. Appellant further testified:

“Q. Regarding the . . . incident where the mother asked you to leave the home and you did . . . , what did you do to protect your son after that? Did you make any attempts to try to protect him?

“A. No.

“Q. Did you contact the police?

“A. No.

“Q. Did you contact CPS?

“A. No.

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<sup>3</sup> It is undisputed that defendant was convicted of felony hit-and-run involving death (Veh. Code, § 20001) and was incarcerated from May 29, 2012 to June 6, 2013.

“Q. Did you try to hire a lawyer?

“A. No. I didn’t do nothing.

“Q. Why didn’t you do anything?

“A. Scared.

“Q. What were you scared of?

“A. Just got out of prison.”

There was additional testimony by appellant as follows:

“Q. The custody case regarding your son, the family law custody case, those hearings all took place after you were released from custody; isn’t that true?

“A. . . . I don’t know what you mean.

“Q. Were you in custody when the family law case was filed?

“A. No.

“Q. And were you in custody when the hearings took place in the family law case?

“A. No.

“Q. Did you ever file any custody actions requesting visitation with your son?

“A. I did at one point when we broke up, but my lawyer when I was going to incarceration he requested me not to.

[¶] . . . [¶]

“Q. . . . Did you ever file anything in the court requesting custody or visitation of your son?.

“A. No, Sir.

“Q. And isn’t it true you knew that the mother was going to go to Mexico with your son in advance?

“A. Yes, I did.

“Q. And before she went to Mexico did you take any action to stop her from going to Mexico?

“A. Yes, because she was requesting me to sign a paper from the post office that she wanted me to sign where she can go to Mexico. I kept telling her no.

“Q. Other than refusing to sign a paper did you do anything to prevent her from going to Mexico?

“A. I just kept telling her no.”

This evidence was obviously accepted as credible by the juvenile court,<sup>4</sup> and is ample substantial evidence. (§§ 281, 355, subds. (b), (c); *In re Malinda S.* (1990) 51 Cal.3d 368, 381–382; Cal. Rules of Court, rule 5.684, subds. (c)-(d).)

### **The Custody Finding**

The social worker advised the court that the mother had sole legal and physical custody from March 2014 until Gabriel was detained in May of the following year. Appellant had no right of visitation. The social worker reported that appellant “has begun visitation and it is going well.” Although this was “encouraging,” appellant “has shown minimal effort to follow through with services recommended and he has been dishonest in regards to having attended parenting classes.” The court was further advised that the Department “is worried that any continued inaction by Manuel, as well as the contentious nature of the relationship between [the] parents . . . will impede their ability to safely co-parent, which places Gabriel at risk for loss of a protective parent in his life, and also creates risk of serious emotional . . . and physical harm.” Neither parent had completed the home assessment form. Gabriel was doing well at his current “relative placement.” Although the social worker recommended that appellant receive reunification services, “[h]e still needs to create a stronger relationship in order for the [Department] to consider placement.”

At the dispositional hearing, counsel for the mother supported the Department’s recommendation for continued “out of-home placement,” and not placing Gabriel with appellant. So did Gabriel’s counsel. Counsel for appellant argued that appellant has been

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<sup>4</sup> “I do find . . . sufficient evidence to sustain the allegation as to . . . the failure to protect theory by a preponderance. In spite of the risks he observed and the behavior he observed and the anger to him and others and her erratic behavior he didn’t really take any action, he didn’t follow up on the court case and when he got out of custody he didn’t . . . follow up. [¶] And when you’re on parole I realize initially there are concerns. You just want to stay out of trouble, but he never did anything until this case came up.”

making progress and, with reunification services, could be entrusted with Gabriel's custody. Gabriel was repeatedly described as a "high needs child," who, with his "impulsive and oppositional behavior"<sup>5</sup> would clearly present "a very big challenge."

After the court broached the possibility of "having the psychological evaluation of the child occur right away so we can . . . consider a trial home placement with father," all concerned agreed to the court hearing testimony from the social worker, Jeanine Dael. She was asked "what are the reasons you do not support return to the father at this point in time?" She answered:

"Based on the fact that he hasn't had a lot of time with his son. It's been years since he had any time with his son. To our knowledge, he has never taken care of Gabriel on his own. During the visits—[h]e does have two one-hour visits per week—during that time he has asked on numerous occasions why his son is behaving that way to the Social Worker Assistant who's been observing the visits, as well as asking her for advice on what to do during those visits." Dael also testified that the Department had "run Structured Decision Making" on appellant, who came out "high risk."

Dael believed that appellant's lack of honesty was also significant: "I am concerned that . . . if he's willing to be dishonest about attending parenting classes . . . he would be dishonest about problems in the home with baby Gabriel and inability to meet his needs." Because "Gabriel's behaviors are very extreme and unpredictable, . . . Gabriel really needs to be in therapy."

Citing the case worker's "Structured Decision Making" risk assessment, Gabriel's "difficult behaviors," the fact that appellant had "no parenting history with this child," and his inability to cope with "the child's behaviors," the court concluded it was "indicative of the need to offer the father [reunification] services and to stabilize the child before he can be safely placed in the father's home. [¶] So, for these reasons, the Court

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<sup>5</sup> Appellant's counsel characterized Gabriel's behavior as "combative[,] violent, hitting, throwing things." Counsel for the Department noted that Gabriel "acts out," and at one point "ran off."

will make the finding[] required under [section] 361.2,<sup>6</sup> that it is not appropriate to place the child with the father at this time.”

“ ‘To comport with due process, the detriment finding must be made under the clear and convincing evidence standard.’ ” (*In re Liam L.* (2015) 240 Cal.App.4th 1068, 1081.) Appellant contends “it does not appear” the juvenile court made the detriment finding according to this standard. Although the juvenile court did not expressly recite that it was going to apply the clear and convincing proof standard, that omission does not benefit appellant. “When a public official is obligated to fulfill a duty before acting, the law presumes that, because the official acted, the duty must have been fulfilled beforehand. [Citation.] In the absence of evidence that the official duty was not performed, the presumption is conclusive.” (*In re Angelina E.* (2015) 233 Cal.App.4th 583, 588.) Appellant points to no such evidence.

Appellant also contends substantial evidence does not support the juvenile court’s finding. The dispositional report, which had to be received in evidence (§ 358, subd. (b)), is by itself substantial evidence. So was case worker Dael’s testimony. (Evid. Code, § 411.) Together they constitute ample substantial evidence supporting the finding that it was not yet time to entrust Gabriel’s custody to appellant.

The dispositional order is modified to delete this sentence in paragraph 6: “Allegation (b-4) as amended of the 1st Amended Petition filed May 21, 2015 is true.” As so modified, the order is affirmed.

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<sup>6</sup> “When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a).)

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Richman, Acting P.J.

We concur:

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Stewart, J.

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Miller, J.

A145964; *Mendocino DSS v. M.H.*