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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re B. A., a Person Coming Under the  
Juvenile Court Law.

B236350  
(Los Angeles County  
Super. Ct. No. CK82564)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

E. S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,  
Marguerite D. Downing, Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant  
and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant  
County Counsel, and Peter Ferrera, Senior Deputy County Counsel, for Plaintiff and  
Respondent.

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## ***INTRODUCTION***

While under the influence of methamphetamines, a mother abandoned her four-year-old, and the child was detained and placed in foster care. The mother had a history of substance abuse and mental and emotional problems. At the six-month review hearing, the dependency court found a substantial risk of detriment preventing the child's return to her mother at that time, but noted the mother's efforts to comply with her case plan and ordered continued reunification services as well as an evaluation of the mother and her home in Mexico through the Mexican social services agency known as DIF (Desarrollo Integral del la Familia). The mother appeals, asserting there was insufficient evidence supporting the dependency court's orders at the six-month review hearing. We affirm.

## ***FACTUAL AND PROCEDURAL SUMMARY***

In April 2010, the Department of Children and Family Services (the Department) received a hotline referral concerning four-year-old B. S. According to the reporter, B.'s mother E. S. told the reporter she (E.) was very stressed out, had a history of using "crystal" and was afraid she would start using drugs again. E. said she had separated from the child's father three weeks before but took B. to visit with him; she suspected the father had sexually abused B. one year ago. She said she took B. to the doctor but the doctor found nothing wrong, and the father said he had never done anything to B., but E. did not believe him. One week earlier, the father had asked B. if she wanted to spend the night at the father's house. B. told E. (in Spanish) "I don't want to mommy because then it will hurt."<sup>1</sup>

A social worker and police officer interviewed E. She said B.'s biological father (Antonio S.) had moved to Texas before her birth; she knew her stepfather (Jose A.) as

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<sup>1</sup> Throughout the reports, B.'s and E.'s words are quoted in Spanish with an English translation provided in parentheses.

her father, and his name was on her birth certificate.<sup>2</sup> E. said she was home with B. in the winter of 2008 when B. said, “Mama me duele” (Mom, it hurts). When she asked B. where it hurt, B. said, “La colita” (my bottom). E. asked why, and B. answered, “My papi me pico y me dolio” (my dad poked me and it hurt). E. confronted Jose who was sleeping or pretending to sleep in the next room, but he denied doing anything. She said she took B. to a doctor who said he found no evidence of abuse and perhaps Jose had hurt her while changing her diaper. E. said she did not contact police because she wanted to believe the doctor but continued to feel uncomfortable and the thought something might have happened to B. made her feel horrible.

E. acknowledged using crystal methamphetamine. She said the last time she used was about three years ago and she used for about a year. She started using cocaine about six years ago and used it “on weekends when she would drink.” She admitted she had snorted “a little bit” of cocaine the day before the interview but said (in Spanish), “I promise you that I am not going to use anymore. I don’t want to lose my child.” The social worker told E. her substance abuse was “a big concern.” E. said she understood but was not addicted and could stop. She denied having any mental health issues or suicidal thoughts.

The social worker reported E.’s home was untidy, with pots and pans on the stove with what appeared to be food from the previous day and bags of clothing and clothing scattered throughout the home. E. said she had just moved in two weeks before and had not had the chance to organize. She signed a safety plan, agreeing to complete on-demand drug and alcohol testing and to be assessed for substance abuse and mental health issues as well as promising to clean up by the next visit.

B. initially denied her father had ever hurt her but using a doll indicated he had touched her inside her “tamalito” (vagina) and on her “colita” (bottom) and said it did hurt her and she was afraid of him. She was not afraid of E. and said E. had not seen her

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<sup>2</sup> The Department’s reports identify B.’s stepfather as Jose A. but there are also references to Jesus A. B.’s stepfather is not a party to this appeal.

father touch her. A couple of days later, B. underwent a forensic exam but the examiner was unable to confirm or rule out sexual abuse. B. was noted to have “poor hygiene,” and the social worker spoke with E. about the importance of bathing B. at least every other day. The examiner described E. as “alert” but “giddy, child-like, with questionable judgment,” and “strange.” The examiner commented, “Please continue to monitor this mo[ther] and child.” Six days after the initial interview, E. tested negative for illegal drugs.

After meeting with E. and B., the doctor who was conducting a mental health assessment intended to refer E. for supportive services and to refer B. for weekly visits by an outside agency because the process was “long and involved” for a child of B.’s age. The following month, however, E. told the agency she was not interested in receiving services. When the social worker inquired, E. told the social worker the agency was rude to her. The social worker asked if E. would return for the intake appointment if the social worker spoke with the agency, and E. was willing but said she did not want anyone to be disrespectful to her or B.

On June 3, the Department received a second referral. A woman (E.) had gone to the Sacred Heart Catholic Church in Compton and said “duendes” (elves) were trying to kill her and the little girl with her (B.). E. asked the people at the church to light two candles for the child and “fled the scene” in a black truck, leaving B. behind. E. reportedly told church staff she was “no longer able to care for her daughter.” As church staff approached, they saw melted candle wax all over the truck’s interior.

When the social worker spoke with B., she was not wearing shoes and her feet were dirty. She said her mother had her shoes and had left her at the church. When she and E. woke up in the morning, B. said, her mother told her “monitos”—“doll[-]like creatures”—were in the home and they wanted to touch B.’s “behind/bottom.” B. did not see them. She had not had any breakfast.

E. was located and arrested for child endangerment, child abandonment and being under the influence of a controlled substance. Her home was found to be “substandard,

cluttered, filthy and infested with cockroaches.” E. was wearing a “see-through tank top” and a dirty skirt and said she had not showered for days. She admitted smoking methamphetamine the night before, adding that the devil wanted to take her child away from her. She told officers she used methamphetamine on a daily basis to fight the devil and said she had abandoned her child to purchase methamphetamine. She was described as displaying objective signs of being under the influence of methamphetamines; she was paranoid, fidgeting, sweating, her pulse was elevated and her pupils were dilated.

When the social worker spoke with E. in jail, she was disheveled, disoriented and crying. She told the social worker, “I never thought gnomes existed, but they do.” For the past week, she said, she had been fighting with three gnomes who wanted to take her child to the devil. “Nobody believes me.” She said, “I feel like they make love to me and try to make love to my child too.” She said she had tried to stay up all night to ensure they did not touch B. The social worker asked why E. had not told her any of this as they had spoken on June 2 (the day before E. left B. at the church). E. said she was planning to tell everything once she got rid of the gnomes and everything was back to normal. Asked why she didn’t take B. to the Department office instead of the church, E. said the gnomes couldn’t get her there. The gnomes told her they could get to B. wherever E. took her and they were going to kill her. She got on her knees and asked a nun at the church to go with her to fight the devil. “I did it all for my child!” She said she had used methamphetamines because she “needed the strength to deal with everything.” She said she fought the devil with prayer and candles.

On June 8, the Department filed a petition on B.’s behalf, alleging E. had abandoned her at the church without making any plans for her ongoing care and supervision, and E. was a current user of methamphetamines with mental and emotional problems, including auditory and visual hallucinations and delusions. In addition, the Department alleged, B.’s father Jesus had sexually abused her and failed to provide for her. (Welf. & Inst. Code, § 300, subs. (b), (d) & (g) [all further undesignated statutory references are to the Welfare and Institutions Code].)

At the detention hearing, the dependency court found a prima facie case to detain B., ordering supervised visits for E. and no visitation for B.'s father pending further order.

According to the Department's jurisdiction and disposition report, as of July 6, E. had seen a clinician from the Department of Mental Health and was no longer hearing voices or seeing gnomes. However, E. said she still believed everything she had seen and heard was real. She admitted she had used methamphetamines for many years before B. was born and had started using again two weeks earlier. B. said, "I don't want to go with my mom because she hits me," and "[her foster mother] takes care of me." According to the foster mother, B. often reacted with fear when she felt she had done something wrong and would often ask, "Are you going to hit me?"

On August 6, a dependency investigator received a call from a woman who identified herself as E. and said she had been released from jail and deported to Mexico. When the investigator asked for her contact information, the caller became irate, said, "You are trying to take my daughter from me," and hung up. A few days later, a social worker received a call from a woman who identified herself as E. and provided an address in Mexico. She said she wanted to reunify with her daughter and was in the process of obtaining a permit to return to the United States to be with her daughter. The Department mailed notice of the next court hearing to the address provided in Mexico.

In September, the social worker reported she had received a phone call from E. saying she was living with her sister in Mexico and needed to comply with court orders for drug testing, substance abuse group, psychiatric evaluation, individual counseling and parenting classes. She said she was currently participating in a drug rehab group every day and was scheduled for drug testing and a psychiatric evaluation. She had first names of social workers and an incomplete telephone number for them. She said she had spoken with her attorney and interpreter and would comply with the court's minute order and wanted B. to come to Mexico with her. She agreed to provide documentation from her service providers. A Mr. Lopez Ramirez said E. was attending group meetings every

day and said he would provide a letter once E. had been in the program for a period of time. He said she had started September 1.

At the adjudication hearing in November, the dependency court sustained the allegations relating to E.'s abandonment of B. at the church, her drug use and mental and emotional problems; the court sustained the allegation of sexual abuse but deleted the identification of her stepfather as the perpetrator but sustained the allegation he had failed to provide for her. Jose was deemed B.'s presumed father.

At the disposition hearing two weeks later, the dependency court declared B. a dependent child and removed her from her parents' physical custody, with the Department ordered to provide reunification services to both parents. The court ordered E. to attend a drug rehabilitation program with random drug testing, individual counseling and parenting classes. In addition, E. was ordered to have a mental health evaluation and comply with orders for any prescribed medication. Jose was ordered to attend parenting classes and conjoint counseling with B.

As of the six-month review hearing in May 2011, the Department reported B.e remained placed with a non-relative extended family member with whom she shared a close bond. B. called her caregivers "Mom" and "Dad" and referred to her mother as "Blanca." The social worker expressed concern that B. sometimes behaved in a "flirty manner" with adult males inappropriate for her age, would touch Jose's chest area during visits and he would not redirect her. She was being assessed for therapy. She wanted to remain in her caregiver's home.

E. was living in Mexico and did not visit but would call every afternoon. According to documentation forwarded to the Department from providers in Mexico, E. had been enrolled in substance abuse treatment since September 22, 2010. She had started therapy with a psychologist as well as parenting class in October and the Department was in the process of verifying her enrollment. She had a negative drug test for April 2011 and had participated in Alcoholics Anonymous that month as well. The Department recommended continued reunification services.

At the continued hearing on June 20, the Department reported contact with a social worker in Mexico helping E. with her services. E. was reportedly participating in therapy, parenting classes and a substance abuse program including a twelve-step program and drug testing. She was also receiving mental health services on a monthly basis for medication. Her treating psychologist had not yet provided further information, but the social worker advised the court such information would be provided upon receipt. The social worker requested that E. and her home be assessed by the social welfare agency DIF (Desarrollo Integral del la Familia) “in order for the Department to make a proper recommendation for B.’s placement.” E.’s social worker in Mexico said she would request the assessment from DIF and provide the Department with additional information upon receipt. The dependency court stated, “All right. The court is going to order an ICPC.” On July 12, the court signed an order stating: “Department to initiate an international ICPC to assist in assessing . . . E. . . . for return of B. . . . The mother’s home is in . . . Mexico.”

On July 29, the Department reported receipt of a letter from E.’s mental health provider indicating she was observed to be “well aware of time, persons, her whereabouts, her vocabulary, her logic and is coherent,” she was participating in parenting education in a positive manner and she had a negative drug test in June. She continued to receive mental health, psychological and social services, including orientation, medical attention and psychiatric services. The International ICPC unit reported that the Department required the addition of the following information to the court’s minute order: “[The Department] to initiate an international *home study request* on E. . . . who is the mother of minor B. . . . who lives in . . . Mexico.” (Italics added.) The Department requested inclusion of this information in the court’s minute order.

Meanwhile, the foster family had told the social worker E. was calling them “constantly” and “on several occasions . . . threatened to have [B.] removed from their home.” E. reportedly called the foster father at work when he could not answer the phone; although she was aware of his working hours, she continued to call at

inappropriate times. She also called other family members in an effort to speak with B. and “spoke in a very negative manner” when she could not reach the foster parents, and they said they would not allow her to continue to harass them.

B. continued to speak with E. on the phone, but did not want to speak every day, especially if she was playing with friends. According to the foster mother, when B. wanted to go play, she would find a way to end the conversation, such as pushing buttons on the phone, dropping it or leaving it on the couch. The foster mother said she did not keep B. from speaking with E., but B. was only five and did not have much to say. The Department recommended continued family reunification services.

On July 29, at the contested hearing pursuant to section 366.21, subdivision (e), E.’s counsel asked the dependency court to order B.’s return to E., arguing E. was in full compliance with the case plan. If the court did not order B.’s return, she requested “a progress hearing with an update on the DIF assessment.” B.’s attorney agreed with the Department’s recommendation for extended reunification services. Counsel for the Department noted E. had not had contact other than telephone calls because she lived in Mexico. “[A]lthough the Department has been in contact with DIF, the Mexican counterpart to the [Department], they don’t have a report on her home environment and whether that’s a safe environment for her. I had requested an international ICPC. I’d ask that we get a minute order today, a signed minute order, so we can move that process forward.”

The dependency court found continued jurisdiction was necessary as conditions which justified the court’s jurisdiction continued to exist. The court found by a preponderance of the evidence that B.’s return to her parents would create a substantial risk of detriment to B.’s safety, ordering continued reunification services and finding a substantial probability B. would be returned by the 12-month date in November. Although she appeared to be in compliance with her case plan, the court noted E. had apparently drug tested only once. “For appellate purposes, I would indicate that with respect to return to mother, the court’s unwilling to do so at this time because I don’t

have DIF information.” The court also expressed concern about the phone calls “with respect to B.’s safety given mother’s mental health issues.” “The court will sign an international home study” using the language specified in the Department’s report. A progress hearing was scheduled for September 6, 2011, “to update the court on the status of the international ICPC.”

On September 19, 2011, E. filed notice of her appeal from the dependency court’s July 29 orders.<sup>3</sup>

### ***DISCUSSION***

According to E., insufficient evidence supported the dependency court’s substantial risk of detriment finding. We disagree.

In citing to *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, a case in which the Department had never advised the father he would have to move out of his sister’s home in order to regain custody of his daughter, and asserting she is “[j]ust like David,” E. minimizes the seriousness of the circumstances leading to B.’s detention in this case. Although it appeared E. was in compliance with her case plan and was participating in services, there was limited information available; the information that was available caused the court concern in light of E.’s past mental health concerns (and minimal recent drug testing). Contrary to E.’s characterization, the Department requested and the court’s order contemplated DIF assessment of *E. and* her home, not merely her home environment. As E. concedes, the notion of risk of detriment “depends on the context of the inquiry.” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1490.) Given the dependency court’s observation of current concerns in light of E.’s admitted history of substance abuse and relapse as well as recent mental health issues, the dependency court’s order was supported by substantial evidence.

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<sup>3</sup> We requested copies of minute orders subsequent to the July 29, 2011 order from which E. appeals and note that the dependency court has specifically requested supplemental reporting (and continued the matter) to address E.’s progress in treatment and the status of the “*D.I.F.* evaluation,” then to address the *D.I.F.* evaluation and thereafter to address documentation subsequently received from E.

E. also says the Department did not provide reasonable services to overcome the problems leading to B.'s detention if her phone calls and her home justified the dependency court's detriment finding. As we have explained, E. has mischaracterized the dependency court's concerns in the context of the issues originally leading to B.'s detention, including E.'s methamphetamine use, hallucinations and delusions, abandonment of her daughter and mental health concerns (with her continued insistence on the existence of gnomes thereafter). The court's concern was not for E.'s home in the same sense at issue in *David S. v. Superior Court, supra*, 123 Cal.App.4th 786, but rather with E.'s progress in addressing her substance abuse and mental health issues in the context of evaluating B.'s safe return to her mother's care. On this record, we find no error.

Finally, E. says it was reversible error for the dependency court to order an ICPC because she is B.'s parent. In a supplemental brief, she added the argument it was error to order an ICPC for a parent living in Mexico. It is clear from the record that, although the court was imprecise in its use of the term ICPC, it was adopting the Department's recommendation for an assessment of E. and her home through *DIF* in Mexico as the court attempted to clarify in its orders. (See *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1421 ["utilization of DIF services for dependent children placed in Mexico is well-established".]) We find no error in this regard.

***DISPOSITION***

The order is affirmed.

**WOODS, Acting P. J.**

**We concur:**

**ZELON, J.**

**JACKSON, J.**