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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

B237286  
(Los Angeles County  
Super. Ct. No. CK79000)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DEREK B. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County,  
Rudolph A. Diaz, Judge. Affirmed as to Derek B; dismissed as to F.L.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant  
and Appellant Derek B.

Lee Gulliver, under appointment by the Court of Appeal, for Defendant and  
Appellant F.L.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant  
County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and  
Respondent.

## ***INTRODUCTION***

A father appeals from the dependency court's orders following a permanency review hearing pursuant to Welfare and Institutions Code section 366.22, terminating the father's reunification services and placing his "medically fragile" daughter in a long-term living arrangement. We affirm.<sup>1</sup>

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

In August 2009, the Department of Children and Family Services (the Department) received a referral alleging four-year-old Regina B. and her seven siblings were at risk of general neglect.<sup>2</sup> Regina has "cerebral palsy with spastic quadriplegia, profound mental retardation, seizures," and a "g-tube." She is blind, in a special wheelchair with leg braces and is non-verbal. She is "medically fragile." An earlier case had been closed after Regina's mother M.W. voluntarily placed Regina in a long-term medical care facility. M.W. was "overwhelmed" and wanted Regina placed "immediately." However, since placing Regina in the facility and visiting her once in April, M.W. had made no further contact with Regina or the facility, and the pediatric surgery clinic's repeated attempts to reach M.W. to obtain necessary authorization to replace Regina's g-tube were unsuccessful. The other seven children and M.W. reportedly lived with F.L., the father of five of Regina's siblings. The Department tried to reach Regina's father Derek B. without success.

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<sup>1</sup> Appointed counsel for another father (F.L., father of Shan. L., Sham. L., F.L. Jr., G.L. and M.L.) filed an opening brief but "was unable to find any arguable issues" with respect to the dependency court's orders. Pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, the brief set forth the applicable facts and law, and F.L. was advised he could request permission to file his own brief, but he failed to do so. Therefore, F.L.'s appeal is dismissed as abandoned.

<sup>2</sup> As Derek B. appeals from the dependency court's orders with respect to his daughter Regina only, this factual and procedural summary focuses on information relevant to Regina and Derek.

In September, the Department received a call from Regina's maternal aunt who said four of the children (Shan. L., 13; Sham. L., 12; F.L. Jr., 7; and M. L., 6) were living with a cousin in Kern County but she did not know the whereabouts of M.W.'s other three children (G.L., 11; Aaliyah B., 3; and Joseph W., 8 months); she said M.W. was "strung out on drugs." M.W. had left the children with her mother who is disabled with Alzheimer's disease so this cousin had brought the children to her home. The social worker contacted the two eldest children who said their mother left them and their siblings alone and unsupervised for extended periods of time; Shan. could not remember the last time she had seen her mother. M. L. said their mother's cousin and their uncles took care of them. Sham. said G. L. was with her "auntie," Joseph was with his father (Christopher M.) and Aaliyah was with her father Derek.

Later that month, Derek contacted the social worker and reported M.W. was homeless and on drugs (crack cocaine); he said M.W. had left Aaliyah with him in July. He said he had been released from prison in April so he had not participated in reunification services. When the social worker asked Derek about the circumstances of his incarceration, the phone was disconnected and when she tried to call him back, the call went to voicemail. The Department had received numerous referrals regarding the family dating back to 1998.

The Department filed a Welfare and Institutions Code section 300 petition on behalf of the children alleging M.W.'s medical neglect of Regina, general neglect of her siblings and substance abuse placing the children at risk. (All further statutory references are to the Welfare and Institutions Code.) The Department alleged Derek had failed to provide for Regina's and Aaliyah's support.

At the September detention hearing, Derek was found to be Regina's and Aaliyah's presumed father. The dependency court found a prima facie case for detaining the children, and over the Department's objection, released Aaliyah to her father's custody.

In the October jurisdiction and disposition report, the Department advised the court of efforts to contact M.W. When the social worker called her cell phone number, Derek answered. He denied living with M.W., indicating he only had contact with her when she called. The older children confirmed M.W.'s drug use and failure to supervise them. Derek said M.W. had lost her house and became homeless when Regina was placed in the medical care facility; he claimed M.W. had only used drugs for two or three months. He denied he had failed to provide for Regina and Aaliyah and said he was doing what he could.

The Department next reported that Derek had a 34-year criminal history, with felony convictions for robbery, assault with a deadly weapon on a police officer or firefighter, multiple convictions for possession or purchase of cocaine base for sale, possession of a controlled substance, obstructing or resisting an executive officer and tampering with a vehicle. He said he had been in prison four or five times, and the last time was in 2006-2007. He said he had a 2009 conviction for the federal offense of conspiracy to distribute drugs for which he was sentenced to four years probation and was supervised through the Department of Probation in Inglewood. He did not have his own home. He and Aaliyah were living with his sister and her three children in a three-bedroom apartment, and Aaliyah slept with his sister and a cousin. In the Department's assessment, Derek "[wa]s really not prepared to be a parent." Although he had numerous drug arrests, he had never participated in drug treatment or counseling. He denied using drugs or alcohol. Regarding his criminal record, he said, "[W]hat black man growing up in the ghetto doesn't have a criminal history?" It was suggested he would benefit from drug treatment, parenting classes and extensive individual counseling to address his pattern of criminal behavior. Aaliyah was detained and placed in foster care.

At a hearing on October 20, the Department informed the court Aaliyah had been detained and an amended petition would follow; the court ordered monitored visitation for Derek with Regina at the medical facility. Derek said he was in touch with M.W. and would have brought her to court that morning if he could have. In the first amended petition, the Department alleged Derek's 34-year history of substance abuse, cocaine use,

status as a registered controlled substance offender and criminal history rendered him incapable of providing ongoing care for his children and placed them at risk of harm. In the accompanying report, the Department advised Derek had admitted to the lengthy criminal history; the social worker had been unable to follow up with him because he was not at the paternal aunt's home and his phone had been disconnected.

At the October 23 hearing, Derek's counsel requested Aaliyah's placement with the paternal aunt with whom she had been living; Derek had moved out. He said he would be homeless if he could not live with her. Later, the Department advised the court that when it tried to assess the paternal aunt's home for Aaliyah's placement, the aunt would not allow the social worker into her home, saying she was unable to take full responsibility for her. She said she wanted to wait to see if Aaliyah would be returned to Derek; if not, she said, she would allow the assessment and placement in her care.

In its December report, the Department advised the social worker had interviewed M.W., and she denied smoking or using drugs or alcohol. She said she met Derek in 2002, but denied she was with him when he was selling drugs and said she was raising all of her children on her own; she said she did not get any help from anyone. She said she was "tricked" into placing Regina in the medical care facility and then stopped receiving the money she had been receiving for Regina's care so she was homeless. She said Derek did take care of Aaliyah, communicating with her all the time and buying her new clothes. Derek denied having a substance abuse problem. He said he was "just a petty crook in the streets," "only trying to make ends meet, but I won't be doing anything else illegal." "[Y]ou make mistakes to earn a quick buck in the streets." He said he did struggle with the police officer, "but how could you not struggle? I was wrong, served time, paid my debt, and I am a new man. I received probation because I am a new man. I can't discuss the case because it is sealed." He said he knew how to care for Regina, knew how to administer her medications in her g-tube, how to feed her, how to work her nebulizer. He said he knew her body temperature cannot change on its own, she has a "very weak immune system" and "[h]er bed has to be spotless."

Derek's probation officer told the social worker he could not disclose certain and specific information regarding his probation terms and services because "there are problems with probation releasing information to outside agencies," but said Derek had been in full compliance since his release from jail. Derek had attended a parenting class but the facilitator said Derek had slept through the meeting; Derek was asked not to return because he could not identify any behaviors he needed to change and the program did not assist parents involved with the Department. He was not enrolled in any other parenting classes. He was enrolled in but had not yet attended individual counseling. The Department recommended Aaliyah's continued placement.

Regina was hospitalized with a high fever, coughing and heavy secretions. She had previously been hospitalized with the same symptoms and pneumonia for two weeks in August, two weeks in October and 11 days in November. Doctors were planning to perform a tracheotomy to help with Regina's breathing and extra secretions. Regina was receiving special education services twice a week.

The Department filed a second amended petition in December. At the time of the interim review report filed that month, the pediatrician (Dr. Soberano) at Regina's medical care facility (Gerelyn Pediatrics) indicated Regina would not be readmitted due to her repeated hospitalizations and need for a higher level of care; she required "deep suctioning and 24-hour licensed nurse care" which Gerelyn Pediatrics was unable to provide. M.W. was refusing to cooperate with the Department. She came to a November meeting with Derek but stayed in the car while he participated. She did not appear for subsequent appointments and efforts to contact her were unsuccessful as her listed phone number was out of service and her address could not be verified. The Department noted Derek's criminal history did include violent offenses, and the social worker was awaiting a return call from Derek regarding specifics on his enrollment in parenting and participation in counseling. Derek had reported that he had visited Regina twice since her hospitalization and was in communication with her doctors.

As of January 2010, Regina remained hospitalized but was scheduled to be discharged to Totally Kids in Sun Valley. The social worker was still attempting to confirm Derek's enrollment in court-ordered programs. He was visiting both Regina and Aaliyah frequently. At the adjudication hearing on January 25 and 28, the dependency court declared the children dependents within the meaning of subdivisions (b), (g) and (j) of section 300, and the matter was continued for a contested disposition hearing.

As of March, Regina had received a tracheotomy tube to help with her breathing, had been placed with Totally Kids and was doing well. Derek had not visited her since her placement. Aaliyah was placed in a foster home with her half-sisters, Shan. and G.L. Derek had been referred for on-demand drug testing and all results were negative. He was reportedly cooperative in the S.E.A. Parents Helping Parents program. He had completed 11 of 20 sessions. He was seen by a Dr. Clark at Kedren Community Mental Health for weekly individual counseling who said he would write a progress letter regarding Derek's attendance. The Department recommended Aaliyah's return to Derek's custody. The dependency court ordered Aaliyah's release to Derek on condition that he continue participating in court-ordered services with negative drug testing results.

At the disposition hearing in April, the children were declared dependents. The dependency court ordered Aaliyah placed with Derek under the Department's supervision and ordered Regina placed under the Department's supervision for suitable placement. Derek was ordered to continue random drug testing with completion of a drug program upon any missed or dirty test, and he was ordered to complete parenting and individual counseling to address the issues leading to the children's detention, including his 34-year criminal and drug history. The dependency court advised, "Before there can be reunification, the parents will have to demonstrate the ability to meet the physical and emotional needs of the children and the ability to provide stable and appropriate housing."

In May, Regina was hospitalized again. According to her treating physician's report, she was a "severely neurologically impaired, former 30-w[ee]k preterm girl with cortical blindness, seizure disorder, static encephalopathy, gastrostomy and tracheostomy tubes," and she was now febrile with nasal flaring and "convulsing all four extremities with incessant coughing." Dr. Lin noted spending 90 minutes coordinating services for her. It was anticipated she would be discharged once she could remain afebrile and "off a ventilator with good respiratory status." Later Regina was discharged to Totally Kids.

As of the Department's status review report in October, Derek had completed parenting classes in June and was participating in individual counseling. He continued drug testing with negative results, and his probation officer had confirmed his continued compliance. However, Derek was arrested in September for making criminal threats and filed a complaint against police because they had strip searched him; he said he was only charged so he could be searched and then charges were dropped. He said he received a letter two weeks later indicating he was being charged with domestic violence, and officers had seen him grab M.W. by the arm. In January 2010, he had been charged with a misdemeanor domestic violence offense, but he provided the social worker with a copy of a dismissal of those charges. M.W. said there had been a misunderstanding; they had been arguing and someone called the police.

According to the latest police report, M.W. said Derek "approached her angry" because she had not called him. She said they had an "off and on" dating relationship for the last seven years. He grabbed her with both hands and pushed her against the wall, saying, "You make me take this to the next level." She told officers this was the phrase he had used in the past before physically assaulting her. Two weeks earlier, she said, he had used the same phrase before causing a laceration to her lip with his fist. At the time of the current incident, he had been pushing her toward the alley, saying, "Let's go to the alley so I can set you straight." M.W. told police she was in fear for her safety and was relieved the witness had called the police. Although no charges were ultimately filed, the social worker could not confirm whether M.W.'s non-cooperation was the reason.

The social worker further reported Derek and M.W. had been seen together in the courthouse, with Derek attempting to hold her hand. The Department expressed concern about Derek's relationship with M.W., particularly with Aaliyah in his custody, given the unresolved domestic violence issues and M.W.'s continued drug use. Aaliyah was doing well in Derek's care and said she like living with him and going to kindergarten.

Regina remained at Totally Kids, and "despite her medical condition," remained stable. During visits with Regina, the social worker observed her to be "well cared for" there, with good personal hygiene, staff "very attentive to her needs," and her room "always well kept and clean." She reportedly appeared "happy" but was "not able to respond." Given her overall condition, Totally Kids remained the "appropriate plan," and the Totally Kids facility ensured Regina's medical, social and therapeutic needs were met. The social worker with Totally Kids (Melanie Ellis) reported that Derek needed to complete an independent 48-hour training in order to care for Regina but the training would not be scheduled until Derek found a "back-up helper."

Ellis reported Derek visited three times per week and was "very active" and participated in Regina's care, asking many questions in this regard. Derek said he was still living with his sister but was in the process of finding his own home and looking for a backup caregiver so he could begin his 48-hour training.

As of the review hearing in October, the Department's counsel noted prior incidents of domestic violence involving M.W. and Derek, and it appeared they were in a relationship. Two weeks earlier, M.W. was under the influence of drugs and Derek was with her at the time. In light of the circumstances, the Department requested an order for Derek's participation in domestic violence counseling which the children's counsel joined. Noting this new information was "a concern," the dependency court ordered Derek to complete a domestic violence program. Derek was found to be in partial compliance with his court-ordered services. He was advised that failure to participate in and make substantial progress in court-ordered treatment constituted prima facie evidence that return to his care would be detrimental. The matter was continued to November for 12-month review. (§ 366.21, subd. (f).)

Derek was given referrals for domestic violence counseling in late October, and he told the social worker a maternal aunt would be his backup caregiver for Regina but he could not give her a name.

In its November status review report, the Department informed the court Derek had not completed the “necessary medical training” and had not found appropriate housing. Although he was “making significant progress,” the Department stated, “he is not ready to care for [Regina] due to [her] significant[,] fragile medical condition.” The Department recommended another six months of reunification services for Derek. Derek requested a contested hearing.

As of the January 2011 progress report, the Department indicated Derek was to start domestic violence counseling that month. He and a prospective backup caregiver (Shameka K.) had completed half of the 48-hour nursing and respiratory training to care for Regina, and they were to complete the remaining 24 hours in January. The Department reported Regina could not leave her current placement due to her ongoing medical condition. Even if Derek completed the remaining 24 hours of training, the Department could not recommend Regina’s placement with Derek as he had just enrolled in a domestic violence program and did not have appropriate housing. He was living with his sister and said there was no room for Regina.

At the January hearing, the Department’s counsel said Regina was a “very special needs child,” with “a myriad of serious and potentially life-threatening medical conditions,” who had been hospitalized throughout the pendency of the case. She said Derek was living in his sister’s apartment, and she had already expressed she was unable to care for Aaliyah, a child with no medical disabilities or specialized needs. She said Derek’s ongoing relationship with M.W. involving domestic violence and lengthy criminal history was “really distressing,” particularly because there was “absolutely no disclosure” by Derek. Therefore, he appeared “pseudo-compliant,” but progress was lacking. She requested an order for Regina’s continued suitable placement with Totally Kids with continued services for Derek.

Regina's counsel joined in the Department's request, emphasizing her numerous medical conditions and arguing the "quality of care [Regina] require[d wa]s very high," but it appeared Derek was not in a position to provide such care.

Derek's counsel argued he was in full compliance and Regina should be placed in Derek's custody. The dependency court applauded Derek's desire to be as involved in Regina's life as he had demonstrated. However, the court emphasized, "[Y]our two children are situated differently." Regina is a "very medically fragile child." As his own counsel had acknowledged, Derek did not have room for Regina and he still needed to complete a 52-week program. The dependency court ordered Regina to remain suitably placed, with family preservation services for Derek to include assistance in paying for and getting a bigger apartment for him and Aaliyah with room for Regina. Reunification services for M.W. were terminated. The matter was continued to March.

Meanwhile, in January, the Department filed a section 342 petition as to the children after Shan. disclosed her mother's former boyfriend (Joseph's father Christopher) had sexually abused her. Derek told the social worker he knew the allegations were true. He said he knew for a fact M.W. made her eldest daughter "do sexual things for Christopher," and said he (Derek) "got [M.W.] on tape confessing everything that happened." He said he had told her he would tell the social worker if she did not get help for her "crack habit" but she never did. He said the social worker only knew about the reported incident that had occurred in 2008, but said it was not the first time, and he recounted a number of other instances of drug use and sexual conduct involving Shan. with Christopher and other minors in front of the children, including while M.W. was giving birth to Joseph at home in the next room, but he (Derek) said nothing until Shan. disclosed the abuse in 2011. (Christopher denied the allegations; he said Derek had a problem with the baby conceived while he (Derek) was in prison, said he would "put us through hell," and "caused this thing to snowball like this.")

In another interview, Derek reiterated that he had knowledge of the sexual abuse and said Shan. performed oral sex on Christopher. He again described another sexual incident involving Shan., Christopher and M.W. together, saying he (Derek) had lived with the three for a time.

In its March status review report, the Department said Derek was attending individual counseling and participating in domestic violence counseling. In February, the Department had agreed to provide \$3600 toward move-in fees and first month's rent to assist him in finding a home, and the landlord was expected to receive the money "in the next couple of weeks." Derek and his backup caregiver had completed the 48-hour training, and he continued to visit Regina three times a week for three hours. Family preservation services were to start. A meeting was scheduled for March 15 to help Derek obtain medical equipment and in-home nursing. Once home, Regina would receive Social Security Income (SSI), In Home Supportive Services (IHSS) and Cal-Works assistance; Derek was already receiving Cal-Works assistance for Aaliyah. Derek said Regina would stay at Totally Kids until his home was ready. The Department recommended Regina's placement with Derek once he obtained appropriate housing and a home of parent order could be made.

Upon Regina's counsel's request, the dependency court set the matter for a contested 18-month permanency review hearing. (§ 366.22.) Regina's counsel noted there was no information from any treating professionals addressing the level of care Regina needed and said it was critical to understand what Regina needed in terms of 24-hour care as she was non-verbal and non-ambulatory.

Later that month, the social worker and her supervisor met with Totally Kids staff and Regina's attending physician to discuss her care. Dr. Weiss said Regina had made a lot of progress and was doing well. A discharge planner was reportedly helping Derek assemble necessary medical equipment and supplies, and Regina would qualify for 16 hours of in-home nursing care. It was anticipated Derek would move into his new home on March 24 and Regina's anticipated discharge date was May 13. Totally Kids staff provided the following list of physician's orders. Regina was to (1) have her vital signs

checked every four hours, then every six hours if stable; (2) have her g-tube cleaned every eight hours; (3) have her tracheotomy tube and site cleaned daily; (4) receive water flush before and after administration of medication and have her g-tube placement checked for patency prior to feeding and medication administration; (5) have her diaper changed and be cleaned and wiped with petroleum jelly applied after every diaper change; (6) have her g-tube flushed with 155 ml of water every four hours for hydration; (7) receive all of her medications through her g-tube; (8) have a gastric residual checkup every hour; (9) have her g-tube connector changed weekly; (10) have her tracheotomy tie changed daily within one hour after a shower or bath; and (11) be suctioned every two hours. The Department continued to recommend Regina's discharge and placement in Derek's custody.

At the contested hearing in April, Regina's counsel withdrew her request for contest. Derek's counsel said the Totally Kids medical team would be able to release Regina earlier than May; they were only waiting for the dependency court's orders. The Department wanted to assess Derek's new home later in the month so the matter was continued to May 5 for the assessment to take place. According to last minute information for the court, medical equipment was to be delivered to his home on May 9 for Regina's discharge on May 11, but the Department reported Derek had not made himself available for the Totally Kids social worker (Ellis) to make a home assessment on April 21 as scheduled. The matter was continued to June 23.

On May 10, the Department reported Totally Kids had delivered the necessary medical equipment, but Ellis had concerns about Derek's ability to care for Regina. She said Derek was rushing the situation and was not doing his part. She said he did not have a plan for Regina's transportation and was concerned with his housing as he only provided \$600 toward his \$1200 rent. Derek's counsel told the court Derek had a plan and had secured a van for Regina's transportation. She said the issue of Derek's payment of rent would not be a problem as long as Regina would be released to his custody because he would get money for the month of June for her care.

Regina's counsel said she had to express her ongoing concern about the circumstances and said she was not convinced Derek was ready to take on Regina's day-to-day care. The court was also "concern[ed]" with the uncertainty surrounding the landlord's willingness to allow Derek to remain awaiting further payment and with his transportation for Regina. The matter was continued to the following day.

In another last minute information for the court, the Department reported receipt of a letter from Totally Kids indicating Derek had procured a van that was inadequate for Regina's transportation. The transport coordinator (Ana Castillejo, LVN II) said there were several problems and she was "extremely concerned." The van was "extremely dirty inside and out," was "full of dust" which was extremely bad for a patient like Regina with a trach, there were many loose and dirty tools, clothes, laundry, boxes and other items scattered, the doors were not functional and handles were missing, and there was no car seat. Totally Kids would transport Regina in her wheelchair, but Derek did not have the ability to transport the wheelchair and did not have an appropriate car seat for Regina who cannot hold herself up. Castillejo believed the van was "very unsafe and harmful to Regina's health" and was not comfortable with Regina going home in the van the following day. The air conditioner did not appear to be working, but Regina needed air conditioning to prevent heat-manifested seizures. The Department was unable to recommend Regina's placement in Derek's custody.

Noting the Department's change of position, Derek's counsel asked to set the matter for contest, and the matter was continued to June 14. In a further last minute information for the court, the Department reported Totally Kids' unwillingness to release Regina to Derek's care because of the unsuitable van he had presented for this purpose. In addition, he had failed to make himself available for a family preservation services appointment on May 24 and did not want to reschedule or participate in services. Further, his new home was in Lancaster and he did not have a backup caregiver there. His backup in Los Angeles was not close enough to help in the event of an emergency. He was dependent on the income to be received for Regina's care to pay his rent and

other monthly obligations. The Department again said it could not recommend Regina's return to Derek's custody.

In August, the Totally Kids social worker (Ellis) reported Derek's new local backup caregiver (Tracy P.) had not kept scheduled appointments for the necessary medical training. Derek had met him at a consignment store and asked him to help with Regina. He had also asked a family member of another resident at Totally Kids to be his backup caregiver. The Department opined Derek did not understand the seriousness of Regina's medical care as demonstrated by the "random" selection of a local backup caregiver. In addition, the Department's investigator had learned M.W. was living in Derek's van. There were also concerns about Derek's care of Aaliyah who was "sometimes hungry." The Department requested additional time to investigate and could not recommend Regina's return.

At the hearing on August 23, M.W. said she was homeless, only saw Derek when she ran into him on the street and could not remember the last time she had seen him. She denied living in his van and said she lived in an alley. She said she did not know how she knew about the day's hearing, stating, "I don't remember, sweetheart. I'm being honest with you. I smoke drugs, so I don't remember, you know." Derek testified to his knowledge of Regina's care and visitation and said he lived down the street from a pediatrician who would be Regina's new doctor.

He said his house had a ramp, Regina had her own room with a refrigerator, the home had air and all medical equipment necessary would be delivered. He said he had proper transportation as well. He said his refusal regarding family preservation services was a misunderstanding and he would now accept those services. The hearing was continued to September.

In another last minute information, the Department reported Tracy P., Derek's backup caregiver had not yet completed medical training. The Department expressed concern about Tracy P. and wanted to complete a background check on him. The Department said Derek had shown poor judgment in attempting to transport Regina in an

unsuitable van, refusing family preservation services and depending on the money he would receive for her care for his rent.

In September, Melanie Ellis, the social worker at Totally Kids, said she had sent Derek a letter at his Lancaster home address and it had been returned, but his landlord confirmed he was there. Derek said he had a friend living there to make the rent, but the friend would move out once Regina was released to him. The social worker reminded Derek his backup caregiver still needed to submit a background check.

At the September 9 hearing, Derek testified that when he was told his backup caregiver in Los Angeles was too far away, he asked Tracy P. who was one of the first people he met in Lancaster. He met him through a friend at a thrift store and Tracy would give him rides; he was not “random.” He also testified about his white van and said M.W. had never been inside the van, and he had never given her a ride in it.

The Department then called a witness (Gloria Apt) in court that day who had seen Derek and M.W. in the van in the parking structure. She testified she had been an attorney involved with the case for some time and knew the parties. She could see Derek driving the van with M.W. sitting in the passenger seat.

Ana Castillejo, the transport coordinator with Totally Kids, testified regarding all of her concerns with the white van, particularly the fact that Derek had believed he could transport Regina in such a dusty, dirty and unsafe van after receiving medical training on Regina’s care. Although she did not see Regina on a daily basis but only when Regina needed transport, she did not believe Derek was “stepping up,” citing as an example an incident where Regina was drooling, and Castillejo had to show him how to wipe Regina’s mouth because he was hesitating and would not care for Regina in Castillejo’s presence.

Melanie Ellis testified she had been working with Regina for two years. Derek had been visiting Regina once every two weeks and would spend about 30 minutes with Regina. In the beginning, as reported, he had been visiting more often. She testified Derek did not assume Regina’s care when he visited. She also said Live-Scan background documents submitted for Tracy P. were not valid, and she had concerns

about him. When he arrived at Totally Kids, he did not know he was scheduled for training and did not know Regina's name. She said Derek had finished his training, but it was suspended for a time after he exchanged words with a nurse. Regarding her comment in the reports that Derek was "active," she was not saying he was active in Regina's care, but rather active with attending visits, training appointments and family counseling meetings.

Derek said his visits with Regina had only dropped off because he had moved and it had been easier to visit when he lived in Los Angeles. He said he had appropriate transportation. He acknowledged Apt's testimony had been accurate. He said, "Yeah, I forgot, I dropped [M.W.] off down at the bottom, downhill," and she was only in his van for a minute or two.

The Department's and Regina's counsel argued any order placing Regina in Derek's care would be harmful to her care, her well-being and her life. Regina's counsel said that although Derek had testified he understood what was required for her care, he had not demonstrated that understanding based on his action. Derek's counsel said he had completed all court-ordered services and the Department was trying to make him look bad.

The dependency court stated, "I can't see releasing [Regina] to [Derek] today. There's just too much at risk here, and we are way beyond the 18-month date." In fact, the court observed, it had been 24 months. Initially, the court had been "quite impressed" with Derek, but "as circumstances have developed," the court had "concerns about [Derek's] credibility." "I don't think he's ready to assume the responsibility, and I do think that Regina's at risk to do so." Accordingly, at the 18-month permanency review hearing (§ 366.22), the court found continued jurisdiction was necessary as Derek had not demonstrated the capacity and ability to complete the full objectives of the treatment plan and provide for Regina's safety and terminated reunification services for Derek.

Derek appeals.

## *DISCUSSION*

Derek says the dependency court's order finding him unable to assume Regina's care is not supported by substantial evidence. We disagree.

As the dependency court stated, Derek's apparent interest in Regina was initially impressive, but when it came time to follow through and demonstrate the understanding and ability to care for such a medically fragile child, Derek failed to do so, especially as evidenced by the van he believed he could use to transport Regina—even after completing training (and acknowledging his own awareness of) her special needs. Compliance is not the sole concern when considering a child's return. (*In re Constance K.* (1998) 61 Cal.App.4th 689, 704.) Derek's demonstration of only limited awareness of Regina's true need supported the dependency court's decision. Moreover, the court expressly noted Derek's lack of credibility in light of his misrepresentations and conspicuous omissions to the court throughout the proceedings. “[T]he question whether to return a child to parental custody is not governed solely by whether the parent has corrected the problem that required court intervention; rather, the court must consider the effect such return would have on the child.” (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 901.) In light of the risk to Regina as supported by this record, Derek has failed to demonstrate prejudicial error. (*Ibid.*)

Derek also says services must have been inadequate if Regina could not be returned to his care after he completed them. Again, he misses the point. The problem is not with Derek's training but rather with his failure to appreciate the seriousness of Regina's medical needs, even after receiving such training. The order is properly affirmed. (*In re Joseph B., supra*, 42 Cal.App.4th at p. 901.)

***DISPOSITION***

The order challenged in Derek's appeal is affirmed. F.L.'s appeal is dismissed as abandoned. (*In re Phoenix H., supra*, 47 Cal.4th at pp. 843-846.)

**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**JACKSON, J.**