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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re RICHELLE M., a Person Coming  
Under the Juvenile Court Law.

B243048

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK89701)

Plaintiff and Respondent,

v.

MICHAEL M.,

Defendant and Appellant.

APPEAL from orders of the Los Angeles County Superior Court.

Terry Troung, Referee. Affirmed.

Maryann M. Milcetic, under appointment by the Court of Appeal, for Appellant  
Michael M.

Office of the County Counsel, John F. Krattli, County Counsel, James M. Owens,  
Assistant County Counsel, and Peter Ferrera, Senior Deputy County Counsel, for  
Respondent.

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Michael M. (Father) objects to the juvenile court's orders which denies him custody of his daughter, Richelle M. We affirm the challenged orders.

### **FACTS**

Richelle was conceived after a whirlwind romance between Father and Jennifer G. (Mother) while Father was in Los Angeles on vacation in September 2010. The couple returned to Father's home in Indiana in December with Mother's mother, Cherie G., and Richelle was born in July 2011. The baby lived with both parents and Cherie until Mother was admitted to the hospital for a breast infection. Richelle stayed with Mother at the hospital. Following her release, Mother brought Richelle back to California in August.

On September 4, 2011, the Los Angeles County Department of Children and Family Services (Department) received a referral from Loma Linda Medical Center. Richelle had been admitted into the hospital for a head injury the night before. There was a visible red mark on her head and her brain was bleeding. Mother told hospital personnel that Richelle rolled over and fell off the bed while she was changing her diaper. Hospital personnel disbelieved Mother's story because Richelle, who was not yet two months old at the time, could not roll over by herself. Richelle was held at the hospital and examined.

The attending physician advised the Department that Richelle had "old and new brain bleeds" and a large skull fracture along the right side of her head. There was internal bleeding at the back of her head. There also appeared to be one rib fracture and two long bone fractures that were at various stages of healing. Due to the existence of subdural hematomas, Richelle had signs of shaken baby syndrome. The examination also showed that Richelle had a small middle brain stroke within the last seven to ten days. The physician concluded that the extent of Richelle's head injuries were not consistent with Mother's story that she fell off the bed. The hospital staff at Loma Linda Medical Center assessed Richelle's safety with Mother and concluded she was "not safe."

Mother told the caseworker that she came back to California to get away from Father, who threatened to kill her and take Richelle away from her. Mother accused Father of shaking Richelle on three separate occasions while in Indiana. Cherie corroborated Mother's allegations. Father was reported to Child Protective Services in Indiana for shaking Richelle. A restraining order was issued to keep Father away from Mother and Richelle. After an investigation by Child Protective Services, the allegation was determined to be unfounded. A medical evaluation in Indiana, including a full body x-ray and head ultrasound, showed no injuries to Richelle's head. The matter was closed when Mother took Richelle back to California.

As a consequence of Richelle's injuries, a detention order was personally served on Mother and mailed to Father in Indiana. An investigation revealed that Father has an outstanding warrant through the San Bernardino County Sheriff's Department for not registering as a sex offender. The Sheriff's Department confirmed that he would be subject to arrest for this violation if he returned to California. Father had previously been reported seven times for being around or interacting with children despite his status as a sex offender. There was also one report of physical abuse by a younger relative of his. She accused Father of touching her "down there."<sup>1</sup> Father has no arrest, booking or police involvement since he moved to Indiana.

Richelle was detained from both Mother and Father upon her release from the hospital and placed in a foster home. A Welfare and Institutions Code section 300<sup>2</sup> petition was filed on September 14, 2011, alleging Father physically abused Richelle by shaking her and hitting her. The petition also alleged Mother failed to protect her and subjected her to violent altercations between Mother and Father. The petition alleged that Richelle's injuries were a result of deliberate unreasonable and neglectful acts by Mother and Father. Father did not appear at the hearing and the Department was ordered to try to locate him.

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<sup>1</sup> There is no indication in the record what happened after the accusation.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

A jurisdiction/disposition report was filed on October 17, 2011, showing Father had been in contact with the Department. Father denied abusing Richelle. He told Child Protective Services in Indiana that he wiggled the baby back and forth gently and then tapped her bottom when he changed Richelle's diaper. He then said he wanted nothing to do with Mother or Richelle but later stated he wanted to see Richelle.

Father also reported that he has a mental health history: he attempted suicide when he was 17 and has twice contemplated suicide as a result of the situation with Richelle. He admitted that he was convicted when he was 17 to having sex with a minor who was 14 or 15 years old. He served two years in the Youth Authority and was required to register as a sex offender. He advised the Department that he has not worked since 1985. His primary source of income is disability in the amount of \$674.00 per month. He owns his own car and home in Indiana, where he has lived for six years.

The Department recommended the parents not be offered family reunification services based on the allegations of severe physical abuse of the baby. Father did not appear for the jurisdictional hearing on October 17, 2011, but was appointed an attorney. Father was deemed Richelle's presumed father at a November 18, 2011 hearing and the Department was ordered to assess paternal grandmother for placement. It was later reported that paternal grandmother had medical disabilities requiring the services of a care giver. The Department indicated it would assess a paternal niece for placement instead. Although Father called Richelle's foster mother on a weekly basis during January and February, he failed to make any contact between March and June 2012.

The juvenile court adjudicated the section 300 petition on July 11, 2012. It heard testimony from Dr. Clare Sheridan of the Loma Linda University Medical Center, who testified on behalf of the Department and Dr. Thomas James Grogan, a pediatric orthopedist, who testified on Father's behalf. Dr. Sheridan repeated the findings made by the hospital regarding Richelle's injuries. She concluded that Richelle's injuries were consistent with being hit in the head or falling or being thrown onto a hard surface. They were not consistent with Mother's story that Richelle rolled over by herself, as she was not able to do so at that time. She believed the head injury was only a few days old

at the time Richelle was admitted into the hospital, but that the arm fractures were “older than three weeks or about three weeks [old].” Dr. Grogan opined that Richelle’s head injury was between seven to ten days old, but that the rib fracture was three weeks old. He also reviewed the medical records from Richelle’s assessment in Indiana and found no visible fractures or hematomas. Father’s attorney argued in closing that Father could not have abused Richelle given the timeline of her injuries.

Following the admission of the Department’s reports and the attached exhibits, the juvenile court found by clear and convincing evidence that a substantial danger existed to Richelle’s physical and emotional health. The juvenile court found Mother knew or should have known Richelle was being abused but failed to protect her. The remainder of the allegations were dismissed and Father was made the non-offending parent. The court believed Richelle was not in Father’s custody at the time of the injuries. The court further ordered monitored visits with Mother and Father. Mother was ordered to take parenting classes involving special needs children. Father was not required to participate in any services except visitation with Richelle.

Father requested that Richelle be released to Father’s custody or, in the alternative, to Jacqueline A., with whom Father was currently living. Father indicated he would be willing to move out of their home if Richelle could stay with Jacqueline A. Both Richelle’s attorney and the Department objected to this request. The juvenile court declined to place Richelle with Father and advised him to visit her and to “[t]ake care of his warrant” if he wanted custody of Richelle. Father appealed from the juvenile court’s orders.

## **DISCUSSION**

### **I. Placement**

Father first challenges the juvenile court’s order denying him custody since he is a noncustodial, nonoffending parent. He contends section 361.2 requires the juvenile court place Richelle with him, but that the trial court failed to consider that section in its ruling. As a consequence, father argues, the removal orders should be reversed and the case

remanded with instructions for the juvenile court to consider placement under section 361.2. We disagree.

Section 361.2 establishes the procedures a court must follow for placing a dependent child following removal from the custodial parent pursuant to section 361. (*In re Phoenix B.* (1990) 218 Cal.App.3d 787, 792.) Subdivision (a) of section 361.2 provides that when a court orders removal of a minor under section 361, the court “shall first determine” whether there is a parent who wants to assume custody who was not residing with the minor at the time the events that brought the minor within the provisions of section 300 occurred. 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 minor. (§ 361.2, subd. (a).) The court is specifically required to make either written or oral findings setting forth its basis for its determination that placement with the noncustodial parent would be detrimental. (§ 361.2, subd. (c).) If the minor is not placed with a noncustodial parent requesting custody, the court orders “the care, custody, control, and conduct of the minor to be under the supervision of the social worker” who may place the minor in any of several placements including a licensed foster family home. (§ 361.2, subd. (e).)

Here, the trial court failed to reference section 361.2 in its written order or its remarks from the bench. However, it found “with regards to both parents by clear and convincing evidence that there is a substantial danger if Richelle were returned home to her physical health, safety, protection, or physical or emotional well-being, and there are no reasonable means by which her physical health can be protected without removing her from her parents’ physical custody. [¶] . . . [¶] With regards to [Father], I am making the removal finding and order, given that [Father] has an outstanding warrant through the San Bernardino County Sheriff’s Department and that he runs the risk of being arrested if he ever returns to the state of California. I do not find that that would be of any benefit to Richelle, who is a special needs child at this point, for her to be placed with him.”

We find that a sufficient statement of detriment under section 361.2, subdivision (c).<sup>3</sup> (See *In re P.A.* (2007) 155 Cal.App.4th 1197, 1212 [finding of detriment under section 366.26 sufficient where court found by “ ‘clear and convincing evidence there exists a substantial danger to the children and there’s no reasonable means to protect them without removal from the parents’ custody.’ ” ].) Accordingly, we decline to remand the matter to the juvenile court for consideration under section 361.2 as urged by Father.

We also find substantial evidence supports the juvenile court’s finding of detriment. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.) The record shows that Father is a sex offender who is subject to arrest should he re-enter California. Although he contends that he would be able to find a caretaker for Richelle if he is arrested and incarcerated, he offers no indication of who that may be and whether he or she would be willing or able to take care of a special needs child. His concern towards Richelle has been inconsistent. While he regularly contacted Richelle’s foster mother in January and February 2012, he failed to make any contact from March until June. That is sufficient evidence to support a finding of detriment under section 361.2.

## **II. Reunification Services**

In the alternative, Father contends we remand the matter to the juvenile court with instructions to establish a reasonable service plan to help him reunify with Richelle. He relies on *In re Luke M.*, *supra*, 107 Cal.App.4th at page 1416 for the proposition that a presumed, non-custodial father seeking custody is entitled to appropriate services. In *In re Luke M.*, the father contended that the juvenile court did not order appropriate reunification services for him. (*Ibid.*) The parties agreed and the appellate court reversed

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<sup>3</sup> Contrary to Father’s assertions, neither *In re Marquis D.* (1995) 38 Cal.App.4th 1813 nor *In re V.F.* (2007) 157 Cal.App.4th 962, require a juvenile court to explicitly cite to section 361.2 when it makes its findings of detriment as to the noncustodial parent. Further, both cases are distinguishable. In each, the juvenile court failed to explore whether placing the children with the noncustodial parent would be detrimental to them. (*In re V.F.*, *supra*, at p. 973; *Marquis D.*, *supra*, at p. 1825.) Here, it is apparent the juvenile court considered whether to place Richelle with Father and found it would be detrimental to her to do so. It merely failed to explicitly reference section 361.2.

and remanded with directions to the juvenile court to hold a new dispositional hearing for the limited purpose of ordering an appropriate reunification plan. The court made no other comment or analysis of what was an appropriate or inappropriate plan for this father. (*Ibid.*) We agree with the *In re Luke M.* court and Father that a presumed, non-custodial father seeking custody is entitled to appropriate services. However, there is no indication here that the reunification plan ordered by the juvenile court was inappropriate. When asked about Father's possible reunification with Richelle, the juvenile court advised Father to take care of his warrant and visit his child. In light of Father's failure to suggest any other services be offered to him, we find the juvenile court's orders to be appropriate.

#### **DISPOSITION**

The challenged orders are affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.