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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B247289
(Los Angeles County
Super. Ct. No. CK96434)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ERNEST A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Sherri Sobel, Juvenile Court Referee. Reversed and remanded with directions.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ Ernest A. (Father) challenges the sufficiency of the evidence supporting the juvenile court’s jurisdictional finding against him and the dispositional order placing his three-year-old son in foster care rather than with Father. We reverse the jurisdictional finding against Father and remand the matter for the juvenile court to determine whether the child should be placed with Father.

BACKGROUND

On November 14, 2012, the Los Angeles County Department of Children and Family Services (DCFS) filed a dependency petition under section 300, subdivisions (a) and (b), regarding Father’s three-year-old son, Aiden A. The initial petition did not include any allegations against Father. Aiden came to DCFS’s attention because of allegations that Aiden’s mother, Jasmine R. (Mother),² and her live-in boyfriend had a history of engaging in violent altercations in Aiden’s presence (counts a-1 & b-1). The petition also alleged Mother allowed her boyfriend to be in the home in Aiden’s presence while he was under the influence of alcohol (count b-2). According to the police report, on November 7, 2012, Mother and her boyfriend were arrested for domestic violence after officers from the Downey Police Department responded to their residence and determined that each had inflicted physical injuries upon the other.³ Aiden was taken into protective custody and thereafter placed in foster care. The police report also states Mother and her boyfriend had been drinking prior to the incident of domestic violence. According to DCFS’s November 14, 2012 detention report, an officer informed a DCFS social worker that Mother’s boyfriend was intoxicated at the time of the incident. The social worker noted that Aiden was “neat and clean with no marks, cuts or bruises,” at the time he was taken into protective custody.

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

² Mother is not a party to this appeal.

³ The charges against Mother and her boyfriend were later dropped.

DCFS had not yet made contact with Father at the time it prepared its November 14, 2012 detention report. A police officer informed the social worker that, after Mother was arrested for domestic violence, she “was uncooperative when Law enforcement asked about father and his whereabouts.” The officer did know, however, that Father resided in Santa Maria in the County of Santa Barbara. On November 8, 2012, the social worker had a telephone conversation with Mother’s cousin, Tammy S., who also lived in Santa Maria and wanted to take custody of Aiden. Tammy informed the social worker that Mother (age 20) and Father (age 24) had been involved in child custody proceedings regarding Aiden in a family law court in Santa Barbara County. According to Tammy, the court originally granted Mother and Father joint custody of Aiden. Then, Father went back to court and obtained an emergency protective custody order against Mother—for reasons Tammy did not explain—and the court awarded Father “full custody” of Aiden. Thereafter, Mother went back to court and requested full custody of Aiden after Father was arrested for driving under the influence (DUI). The court awarded Mother full custody of Aiden. Mother and Aiden moved to Los Angeles County with Mother’s boyfriend. The November 14, 2012 detention report does not list the dates of these family law proceedings.

DCFS did not notify Father about the November 14, 2012 detention hearing because it did not have contact information for him. Mother appeared at the detention hearing and requested that the juvenile court release Aiden to her. The court ordered Aiden detained in foster care and granted DCFS discretion to detain Aiden with any appropriate relative or non-related extended family member. The court also ordered monitored visitation for Father, to commence after he contacted DCFS, and for Mother.

In the December 3, 2012 interim review report, DCFS reported that Mother’s cousin Tammy wanted Aiden placed with her and her husband. DCFS was completing its investigation regarding such placement. On November 20, 2012, a DCFS dependency investigator had a telephone conversation with Mother, and Mother stated she wanted Aiden placed in Tammy’s home. Also on November 20, 2012, the dependency

investigator called Father,⁴ and Father stated he did not want Aiden placed in Tammy's home. He wanted Aiden placed with him. Father admitted he had a DUI conviction. Thereafter, on November 27, 2012, Mother told the investigator that Father "has a substance abuse history of cocaine, methamphetamine and marijuana." DCFS reported in the interim review report that it was considering filing a first amended dependency petition after it received the results of its criminal records search on Father and investigated the substance abuse allegations.

On December 11, 2012, DCFS filed a first amended dependency petition regarding Aiden, alleging the following count against Father under section 300, subdivision (b): "The child, Aiden A[.]'s father, Ernest A[.] has a history of alcohol use, which renders the father incapable of providing regular care and supervision of the child. On two separate occasions, the father was convicted of DUI for alcohol. The father's alcohol use endangers the child's physical health and safety, placing the child at risk of physical . . . harm and damage" (count b-3). The first amended petition also included allegations about Mother's violent altercations with her boyfriend in Aiden's presence (counts a-1 & b-1) and Mother allowing her boyfriend to be in the home in Aiden's presence while he was under the influence of alcohol (count b-2).

In its December 11, 2012 detention report, DCFS reported the results of its criminal records search on Father. According to DCFS, on July 15, 2008, Father was convicted of DUI and driving with a suspended license.⁵ He was placed on probation for three years. On August 28, 2009, Father was convicted of grand theft. He was sentenced

⁴ According to statements in the December 18, 2012 jurisdiction/disposition report that DCFS attributed to Father, Father found out that Aiden was in foster care on November 17, 2012 when Mother called him and told him about the dependency proceedings.

⁵ The date of this conviction was October 16, 2008, as DCFS later informed the juvenile court in an "Information for Court Officer" report dated January 23, 2013. It appears from the record that July 15, 2008 was the date of Father's arrest for driving under the influence.

to 90 days in jail and placed on probation for three years. On November 30, 2011, Father was convicted of DUI and sentenced to 30 days in jail. On or about October 5, 2012, Father's probation was summarily revoked after his arrest for an unidentified probation violation. On October 31, 2012, Father was convicted of grand theft and sentenced to 54 days in jail. Apparently Father's probation was reinstated because he was still on probation at the time of the January 23, 2013 jurisdiction/disposition hearing at issue on appeal.

As stated in the December 11, 2012 detention report, a DCFS dependency investigator spoke to Father on December 4, 2012 about his criminal history. Father told the investigator he had two convictions for DUI, and the criminal court in Santa Maria ordered him to complete a three-month DUI program. Father indicated he was enrolled in a program and needed to attend 12 to 15 classes before he would receive a certificate of completion. Father also told the investigator he was on probation for a grand theft conviction. Father provided the investigator with the name and telephone number of his probation officer. The investigator called Father's probation officer on December 5 and 6, 2012, and left a message, but did not receive a return call.

At the December 11, 2012 detention hearing on the first amended petition, Father did not appear and he was not represented by counsel. The juvenile court ordered that Aiden remain detained in foster care.

In the December 18, 2012 jurisdiction/disposition report, DCFS summarized the dependency investigator's November 27, 2012 in-person discussion with Mother regarding the family law proceedings. Mother stated the family law court awarded her full custody of Aiden at a hearing in October 2012 that both she and Father attended. According to Mother, Father "was arrested for a DUI and also for a violation of probation a week prior to [that] family law court hearing." DCFS attached to its jurisdiction/disposition report the October 16, 2012 family law order awarding sole legal and physical custody to Mother and ordering no visitation for Father. The order indicates there was an attachment entitled "Stipulation and Order for Custody and/or Visitation of Children (form FL-355)," but such attachment is not included in the record on appeal.

The jurisdiction/disposition report also addresses the dependency investigator's November 27, 2012 discussion with Mother regarding Father's alcohol and drug use. The report provides: "The mother stated, 'He (father) was arrested for DUI and he was recently arrested for his second DUI.' However, the mother was not able to provide father's arrest date for his DUI. The mother stated, 'I know that he sold weed and I know for a fact that he does meth because he has asked me if I wanted to smoke meth with him and his friend David (mother was not able to provide David's contact phone number). I'm pretty sure he does cocaine. He's been using drugs since I have known him and I've known him for four years. I have witnessed him using drugs lots of times. I've seen him use crack cocaine and make crack cocaine with a [sic] baking soda, water and spoon. I've seen Ernie (father) do meth when I took my boyfriend to celebrate his birthday in Santa Barbara this past April 2012. He wanted to get back with me and we were all at a hotel and Ernie asked me to smoke meth with him and his friend David. I didn't smoke meth but I saw Ernie and his friend David smoking meth as I was getting ready to go to a party. Ernie had a glass pipe and he and his friend David were sharing a glass pipe smoking meth. He also smokes weed and I have smoked weed with him before. I'm pretty sure he smokes weed everyday. Before when I was with him, he was using coke (cocaine) everyday and meth at least five times a month, if he couldn't get coke. He is a chronic drug user. Ernie's girlfriend . . . also has been arrested for a DUI and she smokes meth with him and they currently live together in Santa Barbara. I don't know when he first started using drugs. I don't think that he's been arrested for a possession but he's been arrested for DUI twice that I know of. Four years that I've known him, he has been using drugs and that is the reason why I'm not with him today.'"⁶

According to the jurisdiction/disposition report, the dependency investigator interviewed Father by telephone on December 5, 2012, and Father made the following

⁶ We do not summarize herein the statements in the jurisdiction/disposition report by the parties and witnesses regarding the allegations in the dependency petition against Mother because those allegations are not pertinent to the issues on appeal.

comments regarding alcohol and drug use: “‘I first started drinking when I was in high school. I was drinking beer and I would have about 3 beers and I would drink at a friend’s house.’ The father indicated that he was drinking before his son was born and after his son was born, he stopped drinking. This DI [dependency investigator] reminded father that he informed this DI that he was convicted of a DUI in 2010 and that his son was born in 2009. The father stated that it was more like in 2009. DI asked father if he has substance abuse history for methamphetamine, cocaine and marijuana and any other drugs. The father denied having substance abuse history of methamphetamine, cocaine and marijuana. DI asked father if he has ever experimented with any drugs in the past. The father stated, ‘I have not experimented with any drugs but I smoked marijuana for like 2 days when I was in high school. But after 2 days I didn’t smoke marijuana because I couldn’t concentrate on water polo team sport. I have never been convicted of drug related charges.’ The father stated, ‘I have never used any drugs in my whole life.’”

In the jurisdiction/disposition report, DCFS also summarized the dependency investigator’s December 5, 2012 telephonic interview with Mother’s boyfriend. Regarding Father’s alcohol and drug use, Mother’s boyfriend stated: “‘I’ve met the father a few times for a brief moment. I don’t know the guy well enough to say anything. I heard from Jasmine [Mother] and her sister and father’s Brian [sic] that he has a DUI and possible methamphetamine use, but it’s just [hearsay] and I would not be able to confirm it.”

Finally, the jurisdiction/disposition report discusses the dependency investigator’s December 5, 2012 telephonic interview with Mother’s cousin Tammy. Regarding Father’s alcohol and drug use, Tammy stated: “‘I know that he was recently arrested for a DUI in summer 2012 because he was in the court room in handcuffs at the family law court hearing in early October 2012. He (father) told the judge that he had been arrested for a DUI. I know that he was arrested for drugs (possibly cocaine and marijuana) but I’m not sure. He actually was running from the law at one point in time for violation of probation and there was a warrant issued for his arrest. Ernie has problems with drinking and he was drunk when he came over to my house for the holiday and he brought [a]

bunch of his friends over and this was [a] couple of years ago. Jasmine [Mother] also mentioned to me about Ernie drinking and that he would not come over to visit Aiden. Other than what Jasmine has told me, I really don't have any detail[ed] information about Ernie's problems with drinking and drug use.[']"

DCFS reported in the jurisdiction/disposition report that Father and Mother each wanted Aiden returned to his/her care. DCFS recommended the juvenile court declare Aiden a dependent of the court, order that he remain placed under DCFS's supervision and grant Mother and Father reunification services.

At a hearing on December 18, 2012, Father informed the juvenile court, in response to the court's inquiry, that he was in the process of completing a program and paying off a fine the criminal court had imposed for his DUI conviction. Father explained he would not have a driver's license until he completed the program and paid the fine. The court also asked Father how much contact he had had with Aiden over the past three years. Father responded: "In his three years, pretty much the whole time. It's been like -- I had him for months and then she [Mother] would have him for half a month and then I would take him again. So it's three years of his life." Father's counsel informed the court Father wanted Aiden placed with him. The court granted unmonitored visitation for Father but ordered him not to drive with Aiden. The court stated Father "is to be in compliance with his criminal court requirements" and ordered DCFS "to check and make sure that's the case; that he's still doing a program, that he's still paying off the fine."

In a January 23, 2013 interim review report, DCFS stated Father had not provided DCFS with information regarding enrollment in a DUI program. According to DCFS's report, on December 4, 2012, the dependency investigator asked Father the name of his program and the name and telephone number of his counselor. Father stated he could not remember that information, his paperwork was at home, and he would fax it to the investigator. He did not fax it. On January 16, 2013, Father called the investigator and asked for an e-mail address because he wanted to scan and e-mail the paperwork. The investigator provided an e-mail address, but did not receive an e-mail from Father

attaching the paperwork. On January 18, 2013, the investigator left messages for Father's probation officer and her assistant regarding Father's compliance with his probation requirements and criminal court orders. DCFS also noted in the interim review report that Father stated he was unable to visit Aiden because he could not find a ride from Santa Maria to Los Angeles and he was not permitted to drive.

In a "Last Minute Information for the Court" report, dated January 23, 2013, DCFS informed the juvenile court that Father's probation officer called the dependency investigator on January 22, 2013. The probation officer stated Father was currently on probation for his August 2009 theft conviction. The terms of his probation required, in pertinent part, that he not possess alcohol or drugs, that he report to his probation officer and that he submit to random alcohol and drug testing. The probation officer stated she does not test her probation clients for alcohol and drugs on a regular basis and that she last tested Father a couple of years before her conversation with the investigator. The investigator asked whether the criminal court ordered Father to complete an alcohol counseling program. The probation officer stated DCFS could request that information from the Santa Barbara County Superior Court. The probation officer declined to provide DCFS with the dockets from Father's criminal cases because Father had not signed a release. There is no indication in the record that anyone ever asked Father to sign such a release.

At the January 23, 2013 jurisdiction/disposition hearing, Mother's counsel submitted a waiver of rights form, signed by Mother, stating that Mother was pleading no contest to the allegations in the first amended dependency petition. Mother did not appear at the hearing. The matter proceeded to a contest as to Father only.

After DCFS introduced and the juvenile court admitted into evidence the various reports discussed above, Father's counsel called Janice Chu, the dependency investigator/social worker, as a witness. Ms. Chu is the investigator who contacted Father for the first time on November 20, 2012. From that time, she was assigned to this matter and prepared the reports discussed above, beginning with the December 3, 2012 interim review report.

Ms. Chu testified that Father's first of his two DUI convictions was in 2008, before Aiden was born. Ms. Chu confirmed that DCFS did not have any evidence indicating Father had ever driven with Aiden in the car. Nor did DCFS have evidence indicating Father had "been abusing alcohol since the November 2011 DUI." Ms. Chu acknowledged that Father had requested that he be permitted to submit to an alcohol test for DCFS, but she "advised him to speak to his probation officer" because DCFS does not "have a contract with Santa Maria County [sic]." Ms. Chu also confirmed that DCFS did not have any evidence indicating Father had ever been under the influence of alcohol while caring for Aiden. None of the other parties cross-examined Ms. Chu.

Father's counsel requested that the juvenile court should dismiss the allegation against him (count b-3) and return Aiden to his custody, arguing that DCFS did not "have any evidence that Father's alcohol use is affecting his ability to parent his child in any way." Minor's counsel argued the court should sustain count b-3 because Father had more than one DUI conviction and "we don't have any recent tests, even though he was supposed to test for probation." DCFS's counsel requested that the court sustain count b-3 and decline to return Aiden to Father, arguing: "The indication is if someone has an alcohol problem to the extent where they have two convictions for driving under the influence of alcohol, well, that certainly puts other people on the road at risk and, even more so, it puts a child -- a small child whose care is entrusted to that person at risk. And today's not the day to return that child."

The juvenile court sustained the allegations against Mother in the first amended petition, as amended, under section 300, subdivision (b) (counts b-1 & b-2). The court dismissed count a-1. The court also sustained the allegation against Father in the first amended petition (count b-3 quoted above). The court commented: "The use of alcohol couldn't be worse for a child. A parent's use of alcohol is always a danger to a child, notwithstanding the case that says if the parents aren't using in front of the kid, there is no nexus. . . . There is a nexus when you use alcohol to the extent where you are arrested and convicted, driving, and then it happens again. . . ." The court also stated that Father

“has a lot of things he needed to do for his criminal court and he’s not been able to prove to the Department that he’s done any of it”

The juvenile court declared Aiden a dependent of the court and ordered him removed from Mother and Father and placed under DCFS’s supervision. The court granted Mother and Father monitored visitation and reunification services, including alcohol testing and treatment for Father. Father’s counsel pointed out that the court had granted Father unmonitored visitation at the last hearing. The court stated that Father’s visits would remain monitored until he proved to DCFS (and the juvenile court) that he was complying with the criminal court’s order regarding alcohol treatment.

DISCUSSION

Jurisdiction

Father contends there is insufficient evidence supporting jurisdiction under section 300, subdivision (b), based on the allegation regarding his alcohol use and two misdemeanor DUI convictions.

Jurisdiction under section 300, subdivision (b), is appropriate where “[t]he 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” (§ 300, subd. (b).) In deciding whether there is a substantial risk of serious physical harm, within the meaning of section 300, subdivision (b), courts evaluate the risk that is present at the time of the jurisdictional hearing. “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

In reviewing Father’s challenge to the jurisdictional findings, we apply the substantial evidence test. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574.) “The term “substantial evidence” means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.] [Citation.] ‘In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are

questions for the trier of fact. [Citation.] In dependency proceedings, a trial court's determination will not be disturbed unless it exceeds the bounds of reason. [Citation.] [Citation.]" (*Id.* at pp. 574-575.)

As set forth above, the juvenile court sustained the following allegation against Father: "The child, Aiden A[.]'s father, Ernest A[.] has a history of alcohol use, which renders the father incapable of providing regular care and supervision of the child. On two separate occasions, the father was convicted of DUI for alcohol. The father's alcohol use endangers the child's physical health and safety, placing the child at risk of physical . . . harm and damage" (count b-3). DCFS did not include an allegation in the first amended petition based on Mother's statements regarding Father's illegal drug use. Mother made her statements on November 27, 2012, before DCFS filed the December 11, 2012 first amended petition.

There is insufficient evidence supporting the jurisdictional finding against Father. There is no evidence Father ever used alcohol while caring for Aiden. There is no evidence Father was abusing (or even using) alcohol at the time of the jurisdiction hearing. As the dependency investigator testified, a week or two before the jurisdiction hearing, Father asked the investigator if he could submit to an alcohol test for DCFS, but the investigator told him DCFS could not facilitate a test near his home because it did not have a contract in that county.

Father's first DUI conviction was in 2008, before Aiden was born, and his second conviction was in November 2011, more than a year before the jurisdiction hearing. We do not know how long before the November 2011 conviction date Father actually drove under the influence because the record does not include Father's date of arrest. Mother and her cousin have represented that Father was arrested for DUI in October 2012, but there is no documentation supporting this representation, and Father was not convicted of a third DUI. There is not enough information in the record for this court to determine why the family law court awarded Mother sole custody of Aiden and ordered no visitation for Father at a hearing in October 2012.

DCFS and the juvenile court faulted Father for failing to demonstrate he was enrolled in an alcohol program as the criminal court apparently had ordered. But there is no evidence indicating Father was in contempt of a criminal court order. Moreover, although Father stated the criminal court ordered him to enroll in an alcohol program, Father's probation officer did not confirm this in her conversation with the dependency investigator. The burden was on DCFS, not Father, to demonstrate a substantial risk of harm to Aiden arising from Father's alcohol use. (See *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318 ["The Department has the burden of showing specifically how the minors have been or will be harmed"].) Based on the record before us, substantial evidence does not demonstrate such a risk.

DCFS initiated these dependency proceedings because of Mother's violent altercation with her boyfriend while Aiden was present in the home. This family did not come to DCFS's attention because of Father's alcohol use or any conduct by Father. DCFS learned about Father's two DUI convictions and filed a first amended petition with an allegation against Father. But DCFS has no evidence indicating that Father's alcohol use has ever placed Aiden at risk of harm or might do so in the future.

To uphold the jurisdictional finding against Father on the record before us would mean any child whose parent has a DUI conviction after the child's birth would be subject to dependency proceedings. A parent's DUI conviction or alcohol use without evidence of a nexus to the care of the child is not sufficient for dependency jurisdiction. DCFS must present "evidence of a specific, defined risk of harm to [the child] resulting from . . . [the parent]'s substance abuse." (*In re David M.* (2005) 134 Cal.App.4th 822, 830 [evidence of mother's "substance abuse problem with marijuana" was insufficient to support dependency jurisdiction].) "Certainly, it is possible to identify many possible harms that *could* come to pass. But without more evidence than was presented in this case, such harms are merely speculative." (*Ibid.*)

We reverse the juvenile court's jurisdictional finding against Father (count b-3) because it is not supported by substantial evidence. We also reverse the disposition order

as to Father, which is based on the erroneous jurisdictional finding. Aiden is still subject to the dependency court's jurisdiction based on the sustained allegations against Mother.

Placement

We remand the matter for the juvenile court to determine whether Aiden should be placed with Father under section 361.2. This statute provides: "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).) Section 361.2 applies to the question of Aiden's potential placement with Father because Mother had sole custody of Aiden at the time these dependency proceedings commenced under the family law court's October 16, 2012 order.

DCFS argues Father has forfeited his claim that the juvenile court should have placed Aiden with him under section 361.2. At the jurisdiction hearing, Father requested that the court place Aiden with him, but he did not specifically request that the court conduct an analysis under section 361.2. The court incorrectly ordered Aiden "removed" from Father's custody under section 361, even though Father did not have custody of Aiden. Father's counsel did not point out the court's error. (See *In re John M.* (2013) 217 Cal.App.4th 410, 420 [after upholding jurisdictional finding against Father, this Division concluded father forfeited the issue of child's placement with him under section 361.2 "by his failure to raise it in the dependency court, which would have permitted the court to determine the applicability of section 361.2 and rule on the issue with an adequate record and argument"].)

We conclude Father did not forfeit this claim. It would have been futile for Father's counsel to request that the juvenile court conduct an analysis under section 361.2 regarding placement with Father. It was clear from the court's comments that the court was not going to consider placement with Father given its conclusion that Father's

alcohol use placed Aiden at substantial risk of harm. “Reviewing courts have traditionally excused parties for failing to raise an issue at trial where an objection would have been futile” (*People v. Welch* (1993) 5 Cal.4th 228, 237.)

As discussed above, the court’s conclusion that Father’s alcohol use placed Aiden at substantial risk of harm was not based on sufficient evidence. DCFS did not demonstrate a nexus between father’s use of alcohol and a substantial risk of harm to Aiden. Thus, we remand the matter for the court to consider placement of Aiden with Father under section 361.2 without the taint of a jurisdictional finding that is not supported by substantial evidence.

We express no opinion on whether Aiden’s placement with Father would be detrimental to Aiden’s safety, protection, or physical or emotional well-being within the meaning of section 361.2, subdivision (a).

DISPOSITION

The juvenile court’s January 23, 2012 jurisdiction/disposition order is reversed as to Father only. The matter is remanded for the juvenile court to decide whether Aiden should be placed with Father under section 361.2.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.