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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JASON J., JR., et al., Persons Coming  
Under the Juvenile Court Law.

B249585

(Los Angeles County  
Super. Ct. No. CK83691)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOANNA A. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County, Mark A. Borenstein, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant Joanna A.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Appellant Jason J., Sr.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

## **INTRODUCTION**

Jason J., Sr. (Father), and Joanna A. (Mother) appeal from the dispositional orders regarding their children, Jason J., Jr., and Sarah J., who were declared dependents of the juvenile court. Father contends the court erred by ordering him to participate in random drug testing because the jurisdictional findings sustained against him did not involve drug abuse. Both parents appeal from the court's dispositional orders awarding them only monitored, daytime visits with the children. Because we conclude that substantial evidence supports the dispositional orders, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

In July 2012, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition pursuant to Welfare and Institutions Code section 300<sup>1</sup> relating to Jason J. (born in June 2009) and Sarah J. (born in Oct. 2011). The petition alleged that the children's parents engaged in domestic violence in the children's presence, that the parents failed to administer proper medical care to Jason for multiple medical problems, that Mother suffers from mental and emotional problems that interfere with her ability to care for the children, and that Jason previously had been declared a dependent of the juvenile court based on his exposure to domestic violence between the parents. On July 24, 2012, the juvenile court ordered Jason and Sarah to be removed from parental custody and detained in the home of the maternal grandparents.

The previous dependency action involving Jason arose in August 2010, when Jason was removed from parental custody based on Mother's substance abuse and the parents' domestic violence. At that time, Father refused to comply with court-ordered services and was verbally abusive to the social worker. In July 2011, the juvenile court terminated Father's family reunification services due to his noncompliance with court-ordered programs. Mother gave birth to Sarah in October 2011, but the court did not

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

initiate court proceedings on behalf of Sarah at that time because Mother had complied with court-ordered services. In January 2012, the juvenile court awarded full legal and physical custody of Jason to Mother and granted Father monitored visits. The juvenile court terminated its jurisdiction over Jason in January 2012.

Five months later, in June 2012, the family again came to the attention of DCFS because medical personnel reported Mother was not meeting Jason's medical needs by administering required medication. Jason's medical problems include panhypopituitarism, hypothyroidism, epilepsy, and strabismus. Jason is required to take medication for growth hormone deficiency. Medical personnel stated that failure to give Jason daily growth hormone therapy would result in his having a diminished lifespan. A nurse involved with Jason's care reported that Mother believed the growth hormone therapy was causing the child to have seizures, and therefore she stopped giving him the medication and canceled delivery of the medication. This resulted in medical personnel making the report to DCFS of medical neglect. Thereafter, Jason began receiving daily injections of the growth hormone. His neurologist indicated he had been given the wrong dose of seizure medication and had suffered seizures twice during July 2012. DCFS considered Jason to be a medically fragile child and referred his case to the medical case management services unit within DCFS.

Mother was hospitalized in July 2012 for psychiatric problems after the parents engaged in a violent altercation in the presence of the children and maternal relatives. According to the maternal grandmother, Rosa A., during the altercation Father shoved Mother to the floor and threatened to leave Mother and to beat her to death. Rosa reported that Father had been residing in the family home in defiance of the juvenile court's previous orders. She considered Father to be very dangerous, and other maternal relatives agreed. Rosa and the maternal aunt indicated that Father physically abused Mother.

During Mother's psychiatric hospitalization in July 2012, she was found to be psychotic, gravely disabled, and unable to provide self-care. She had lost 60 pounds in three months. While hospitalized, Mother had threatened to hurt other people and to

harm herself. She appeared to be having auditory hallucinations and paranoid delusions. She had been hospitalized on prior occasions for similar problems. She told hospital personnel that she has a medical marijuana card and used marijuana twice per day.

DCFS reported that Father's criminal history dated back to 1991 and included juvenile detentions for receiving stolen property, burglary, and cultivation of marijuana. In 2000, he was convicted of a misdemeanor count of use of force, and in 2009 he violated his probation by possessing a firearm. He was arrested for driving under the influence of marijuana (in 1999) and of alcohol (in 2010).

Father was incarcerated in 2011, and the maternal aunt reported that Father had resumed living with the family as soon as he was released from incarceration. She said Father smoked marijuana frequently. She had seen a marijuana pipe in the family's bathroom and said the apartment smelled like marijuana. Mother told the maternal aunt that Father had a medical marijuana card, and the maternal aunt also saw a medical marijuana card in Mother's wallet although she had never seen Mother smoke marijuana. Father admitted to the social worker that he had smoked marijuana since he was 12 years old. He said he smoked it occasionally and that it helped him with eating, sleeping, and anxiety. He said it was legal and he had a medical license for it.

The DCFS section 300 petition was amended in September 2012 to add allegations that both parents had a history of substance abuse and were current users of illicit drugs, including marijuana.

When interviewed by the children's social worker in September 2012, Father said that in the previous dependency case he had completed all court-ordered programs but still lost custody of the children. He asked why he should spend money on anger management classes instead of saving the money to pay for the children's college. He refused to pay for court-ordered programs, calling them a waste of time and money, although he agreed to participate in reunification services if they were free. Father blamed all of the family problems on Mother's mental instability. He also stated that Jason suffered only from hypoglycemia. Father said Jason did not need the growth

hormone therapy and believed the doctor only prescribed it in order to take advantage of the family and sell them expensive medication.

In September 2012, Mother was interviewed by the children's social worker. Mother did not want to talk to the social worker unless Father was present. Mother was alternately crying, aggressive, angry, and hostile to the social worker's questions. She tried to insist that the social worker ask questions only about the children rather than about her and Father. She blamed her mother and her mother's family for all of the problems that were occurring, saying her mother wanted to take the children away from her. Mother did not want to speak to the social worker about her hospitalization, diagnosis, or mental issues. She admitted that she had been prescribed two medications to treat a mood disorder, but she denied having a mood disorder. Mother refused to sign a consent form to release her medical information to DCFS. Mother denied that she used marijuana.

The social worker met with the maternal grandmother, Rosa, in late August 2012. At that time, Rosa reported that Mother and Father had visited the children only once. When Jason walked into the room and saw his parents, he said, "This is not a happy time." A few days later Jason told the social worker that he was angry at Mother because she was busy and did not come to see him. Beginning in late September, however, the parents began attending monitored visits more regularly. The social worker observed that the children were comfortable in the parents' presence and that the parents were gentle and loving with the children. They both played with the children and responded well to their needs. After conflicts arose between the maternal relatives and Father, the juvenile court ordered that the parents were not to visit the children at the same time. The children were both thriving in the home of their maternal grandparents. Jason's medical needs were being met, and both children were meeting developmental milestones.

In October 2012, Mother submitted two drug tests. She tested positive for marijuana on one test, and the other test was negative. She was receiving medication management services, but the case manager said Mother was in denial about her mental

health issues. She was guarded and secretive with her mental health care provider and initially failed to disclose her involvement in dependency proceedings.

During the previous dependency case, Father had threatened to assault DCFS staff members. Because of his threats, a new social worker was assigned. During the current case, Father repeated the behavior, threatening the new social worker. The social worker telephoned Father in late October 2012, and Father said he was considering enrolling in online parenting and anger management courses. The social worker advised him to confer with the social services workers before enrolling in such classes. She told him that DCFS was recommending that no family reunification services be provided to Father but the court might order otherwise. Father became irate and told the social worker she should be ashamed of herself and should apologize to his children for making false accusations. He swore at her and said that if she called him again he would call the police. DCFS reported in November 2012 that Father had left a voicemail saying he was going parachuting and wanted the social worker to go with him. He promised to “take real good care of her, pack her parachute myself.”

DCFS reported in December 2012 that Mother was progressing with her mental health treatment. She had submitted three additional drug tests and all were negative. Mother was not participating in substance abuse counseling or in domestic violence or parenting programs. Mother said she had separated from Father. Mother apparently had moved into the maternal grandparents’ home, but DCFS had not been informed of that fact. DCFS expressed concern because it had not authorized her to move in with the grandparents, and it feared the maternal grandmother would allow Mother to have unmonitored access to the children.

As of February 2013, however, Mother and Father were living together again. The parents had enrolled together in an outpatient domestic violence program, refusing to take separate classes even though the program director told them it was inappropriate for them to take the classes together. Both parents stopped participating in the program in March 2013. Mother missed a drug test in December 2012, submitted negative drug tests during January 2013, and tested positive for morphine in March 2013. Mother reported to the

social worker that she was having unmonitored visits with the children every weekend at the maternal grandparents' home, falsely claiming that the juvenile court had liberalized her visits. Mother brought Father to the visits, during which he sometimes engaged in angry altercations with the maternal relatives, occasionally becoming violent. Father continued to be hostile and disrespectful toward the social workers.

After a lengthy but largely unavoidable delay, the adjudication hearing was held in April 2013. DCFS submitted numerous reports into evidence. The court found true the allegations that Mother and Father had engaged in domestic violence that placed the children at substantial risk of harm and had neglected Jason's medical needs by failing to administer his prescribed medication. The court found that Mother's use of illicit substances, especially given her mental health issues, also placed the children at risk of harm. The court concluded, however, that although DCFS had established that Father used marijuana, it had failed to meet its burden of proving that such use placed the children at risk of harm. The court found that the parents had violated prior dependency court orders by having Father reside in the home with Mother and the children and by exposing the children to continued domestic violence and substance abuse. The court declared the children dependents of the juvenile court and continued the matter for a contested disposition hearing the following month.

The disposition hearing took place on May 10, 2013. DCFS submitted into evidence its addendum report of that date, as well as a last minute information form dated April 26, 2013. At the hearing, Mother requested that she be given monitored overnight weekend visits at the maternal grandmother's home. The court responded, "My inclination on that is not to order that today, give them discretion to do that. And I probably wouldn't do it without some more clean — without some clean tests anyway, but I'll make that clear." The court ordered Mother to participate in a domestic violence support group program and parenting classes, to submit to 12 random or on-demand drug or alcohol tests and, if any test was missed or dirty, to participate in a full substance abuse rehabilitation program, to comply with all recommendations indicated by her mental health assessment, and to take all prescribed psychotropic medications.

The children's counsel argued that Father should be granted reunification services. Counsel for DCFS suggested that Father should be required to participate in parenting education, drug rehabilitation counseling with random testing, and a 52-week domestic violence program. Father's counsel argued Father should not have to participate in a drug program or to drug test because the court had dismissed the count alleged in the amended section 300 petition regarding Father's substance abuse.

After hearing argument, the court ordered Father to submit to 12 random or on-demand drug tests; if he missed any tests or tested positive, he was required to participate in a full drug rehabilitation program. He was further ordered to participate in a 52-week batterer's intervention program, parenting classes, and individual counseling to address anger management issues. Visits for both parents were ordered to be monitored by a DCFS approved monitor at any approved location, and DCFS was granted discretion to liberalize visits, first to short unmonitored day visits and eventually to overnight weekend visits at the home of the maternal grandparents. The parents were ordered not to visit together.

These timely appeals by both Mother and Father ensued.

## **DISCUSSION**

Mother and Father both appeal from portions of the dispositional orders entered by the juvenile court. "At the dispositional hearing, the juvenile court must order child welfare services for the minor and the minor's parents to facilitate reunification of the family. (§ 361.5, subd. (a); Cal. Rules of Court, [former] rule 1456(f)(1) [now rule 5.695(h)].) The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104; *In re Eric B.* (1987) 189 Cal.App.3d 996, 1005.) We cannot reverse the court's determination in this regard absent a clear abuse of discretion. (*Ibid.*)" (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) "On appeal, the juvenile court's findings are subject to review for

substantial evidence. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361-1362.) Substantial evidence is any evidence which is of ponderable legal significance but it is not synonymous with *any* evidence; rather it must be ‘reasonable, credible and of solid value . . . .’ (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.)” (*In re Jasmine C.* (2003) 106 Cal.App.4th 177, 180.) We will first discuss Father’s challenge to the juvenile court’s dispositional order requiring him to submit to drug testing, and then address both parents’ challenges to the court’s order of monitored, daytime visitation.

### **I. Father’s Appeal From the Order Requiring Drug Testing**

Father argues on appeal that the juvenile court abused its discretion by ordering Father to submit to random drug tests after dismissing the count in the amended petition alleging that Father is a chronic abuser of illicit drugs. He argues there was no substantial evidence that demonstrated that drug testing or treatment would help eliminate the need for dependency court intervention.

“The juvenile court has wide latitude in making orders necessary for the well-being of a minor. By statute, the court may make ‘all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child . . . .’ (§ 362, subd. (a).) However, the same statute *limits such orders to those that are designed to eliminate the conditions that brought the minor to the attention of the court.* (§ 362, subd. (c).)” (*In re Jasmine C.*, *supra*, 106 Cal.App.4th at p. 180, italics added.)

In *Jasmine C.*, *supra*, 106 Cal.App.4th 177, the juvenile court declared three siblings to be dependents based on a single incident of violent and abusive behavior by the father. No allegations were brought regarding the mother, including regarding any failure on her part to protect the children from the father. The social worker never considered removing the children from the mother’s custody. Nonetheless, at disposition the juvenile court ordered the mother to participate in parenting classes. Mother appealed from that portion of the dispositional order, contending there was no evidence to support the court’s order in that regard. The appellate court commented that, “The trial court imposed the parenting class condition on mother without making any findings or giving

any explanation. Even more troubling, nothing in the record supported the order, which apparently was based on a rote assumption that mother could not be an effective single parent without parenting classes, something belied by common sense and experience in 21st-century America.” (*Id.* at pp. 181-182.) In reversing the dispositional order requiring the mother to participate in parenting classes, the court said, “Our task here is to review the evidence to determine whether it is legally sufficient to support the trial court’s implied conclusion that mother’s attendance in parenting classes is reasonably necessary to avoid a repetition of father’s emotional and physical abuse of the minors. We conclude that no evidence, let alone substantial evidence, supports such a conclusion.” (*Id.* at p. 180.)

The case before us is readily distinguishable. Here, Father admitted that he used marijuana. Father’s criminal record included convictions for cultivating marijuana and driving under its influence. The maternal aunt described Father as a frequent user of marijuana. The juvenile court specifically found that Father used marijuana, but that DCFS had failed to meet its burden of proving that such use placed the children at substantial risk of harm. Thus, substantial evidence (including Father’s own admission) established that Father used marijuana, and the trial court made the finding that Father did in fact use marijuana. The court impliedly found that it was prudent to evaluate the extent of Father’s drug problem and to order drug rehabilitation if he were found to have a substance abuse problem. Treating such a problem would of course be reasonably necessary to avoid repetition of the problems that led to assumption of jurisdiction, including medical neglect of Jason and domestic violence between the parents. Jason is a medically fragile child and needs sober, clear-thinking caregivers to safely tend to his needs. Similarly, in order to benefit from domestic violence intervention and anger management training, it stands to reason that Father should be sober and free of substance abuse issues that might otherwise impede his progress toward reunification with his children. Thus, we readily conclude that, despite the fact that the court dismissed the count of the section 300 petition alleging that Father’s drug abuse had endangered the

children's safety, the court did not err by ordering Father to submit to 12 drug tests and to participate in drug rehabilitation if he missed any of those tests or tested positive.

## **II. Father's and Mother's Appeals From the Visitation Order**

Father and Mother both appeal from the juvenile court's order granting them only monitored daytime visitation with Jason and Sarah. The focus of Father's dispute is that he should have been granted unmonitored visitation. Mother argues she should have been allowed to have monitored overnight visitation in the grandparents' home. As we now explain, we find no abuse of discretion in the juvenile court's visitation order.

An order setting the terms of visitation in a dependency proceeding is reviewed under the abuse of discretion standard. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.) A juvenile court's determination with regard to the visitation that will best serve a dependent child's best interests may be reversed only upon a clear showing of an abuse of discretion. (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.) Section 362.1, subdivision (a)(1)(A) provides that, "In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, . . . any order placing a child in foster care, and ordering reunification services, shall provide as follows: [¶] . . . Subject to subparagraph (B), for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child." Subdivision (a)(1)(B) provides: "No visitation order shall jeopardize the safety of the child. . . ." (See *In re C.C.* (2009) 172 Cal.App.4th 1481, 1489-1490.)

Mother argues it is in the children's best interest to visit with her as often as possible because they miss her and need to spend time with her to maintain their bond. Mother further argues that the record discloses that she has good parenting skills and that the children will be safe having overnight visits with her in the maternal grandparents' home because they will be monitored. While we agree that an overriding tenet of juvenile dependency law regarding visitation is to allow for as much visitation as

possible, we find no abuse of discretion here. The juvenile court had before it evidence that although Mother had been compliant with her psychiatric services and had good parenting skills, she had tested positive for morphine in March 2013. The court indicated it would not order overnight visitation until Mother had demonstrated sobriety over the course of 12 drug tests. In addition, the court had before it evidence that Mother had briefly moved into the maternal grandparents' home in December 2012 without informing DCFS of that fact. The grandparents permitted her to do so without informing DCFS. DCFS expressed concern that the maternal grandparents would allow Mother to have unmonitored access to the children. Thus, the court had reason to be cautious about allowing overnight visitation because it could not be confident that the visits would remain monitored and because Mother's drug use had not been resolved. We find no abuse of discretion in the court's order regarding Mother's visitation.

Father argues, "The parents' history of domestic violence—and their related violation of exit orders from the prior dependency case—only presented a risk to the minors when the parents were together. That risk did not impact the minors' interests in visiting [Father] alone. [¶] Nothing in the record suggests that [Father] presented a direct risk to the minors when he was apart from [Mother] and involved in dependency proceedings." Even if that is true, and we express doubt in that regard given Father's unresolved anger management issues, the record provides ample evidence that the parents repeatedly defied court orders, including that they were to visit the children separately. Father moved back into the family home after his release from jail, in defiance of an order that Mother was to have sole physical custody. Father and Mother appeared inseparable, even attending a domestic violence class together although they had been told it was inappropriate for them to do so. The juvenile court did not abuse its discretion in denying Father's request for *unmonitored* visits with the children as it was highly likely that Father would visit the children while Mother was present, thus presenting a risk to the children—a risk he acknowledges exists. We will not interfere with the court's visitation order regarding Father.

**DISPOSITION**

The dispositional orders are affirmed in full.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EDMON, J.\*

We concur:

EPSTEIN, P. J.

MANELLA, J.

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\*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.