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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B251112  
(Los Angeles County  
Super. Ct. No. CK58042)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of the County of Los Angeles,  
Margaret Henry, Judge. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and  
Appellant.

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

## INTRODUCTION

J.A. (father), the nonoffending father of the minor, A.A., appeals from the juvenile court's disposition order refusing to place A.A. with father in Texas and instead placing him in foster care. According to father, there was insufficient evidence to support the juvenile court's finding under Welfare and Institutions Code section 361.2, subdivision (a)<sup>1</sup> that placement of A.A. with father would be detrimental to A.A.

We hold that there was substantial evidence in support of the juvenile court's detriment finding under section 361.2. We therefore affirm the disposition order placing A.A. in foster care.

## FACTUAL AND PROCEDURAL BACKGROUND

In a June 7, 2013, detention report, the Department of Children of Family Services (DCFS) reported that, three days earlier, a children's social worker (CSW) responded to an immediate referral concerning the physical abuse of A.A. by his mother, C.M. (mother), and his maternal grandmother. The mandated reporter who made the referral told the CSW that she saw A.A. with two scratches on his face near the corner of his eye and another scratch on his stomach. He told her that the night before, he and mother were "play fighting," but "then it got serious." At one point, mother had her knee on A.A.'s neck and he could not breathe. When A.A. "tapped out," to indicate that he had given up, mother continued to keep her knee on his neck.

The CSW reviewed records and discovered that the family had a previous dependency court case between February 2005 and January 2007 based on substantiated allegations of physical, emotional, and alcohol abuse by father and substance abuse and general neglect by mother. According to the records for that prior case, mother had failed to reunify with A.A. because, inter alia, she continued to test positive for drugs and had stopped submitting to the required testing. During that case, father participated in anger

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

management counseling, individual counseling, and conjoint counseling with A.A. based on substantiated allegations against him of domestic violence, sexual abuse of a sibling, and alcohol abuse. That case concluded with a family law order granting father full physical custody of A.A. and joint legal custody with mother, whose contact with A.A. was limited to monitored visits.

Despite the family law custody order awarding father full physical custody of A.A., mother informed the CSW in this case that father was in Texas and had no contact with A.A., except by telephone. When the CSW asked about the family law order granting father full physical custody of A.A., mother informed her that father had “addressed the custody issue” and given her a “piece of legal size paper giving her full custody of [A.A.]” DCFS detained A.A. from mother on June 4, 2013, placed him in a foster home, and filed a petition under section 300, alleging that mother physically abused A.A. The petition, however, did not assert any allegations against father.

At the June 7, 2013, detention hearing, the juvenile court noted that father was a nonoffending parent and found father to be the presumed father of A.A. The juvenile court released A.A. to father’s custody, but DCFS invoked the automatic seven-day stay provided for in Code of Civil Procedure section 917.7.

In a June 14, 2013, supplemental report, DCFS advised the juvenile court that mother had been coparenting A.A. with father for three years, i.e., since 2010. During that time, A.A. would stay at his maternal grandmother’s home, or mother would stay with him at his father’s home while father was working. Father moved to Texas in January 2012, and, thereafter, the maternal grandmother also moved to Texas, leaving A.A. in mother’s sole custody, and both of them homeless.

At the June 14, 2013, continued detention hearing, the juvenile court refused to release A.A. to father’s custody in Texas and trailed the matter to allow DCFS to confer with the Texas child welfare agency. The juvenile court then made emergency detention findings. On June 19, 2013, the juvenile court allowed the previously made detention findings to remain in full force and effect.

At the August 1, 2013, jurisdiction/disposition hearing, the juvenile court denied father's motion to dismiss the section 300 petition and sustained the petition. The juvenile court then held a disposition hearing, during which father's counsel requested that A.A. be placed with father. Citing section 361.2, the juvenile court denied father's request and found that father was a parent of A.A. with whom A.A. was not living at the time the petition was filed. The juvenile court further found by clear and convincing evidence that placing A.A. with father would be detrimental to A.A. because, inter alia, there was a risk that father would abandon A.A. and leave him with mother, as he had done in the past. The juvenile court ordered reunification services for mother and placed A.A. under the supervision of DCFS for suitable placement in foster care. Father was granted unmonitored visits with A.A. in Los Angeles, and DCFS was ordered to continue to assess father to determine what services father needed.

## **DISCUSSION**

### **A. Applicable Law and Standard of Review**

Father contends that because there was insufficient evidence to support the juvenile court's detriment finding, the juvenile court's disposition order refusing to place A.A. with father, and instead placing him in foster care, was erroneous. The juvenile court made that order under the authority of section 361.2, subdivision (a). "Section 361.2, subdivision (a) evinces the legislative preference for placement with the noncustodial parent when safe for the child. (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1132 [13 Cal.Rptr.3d 616].) It states: '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).)

[¶] The juvenile court must make the detriment finding by clear and convincing evidence. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426 [132 Cal.Rptr.2d 907]; *In re Isayah C.* (2004) 118 Cal.App.4th 684, 700 [13 Cal.Rptr.3d 198].) We review the record in the light most favorable to the court’s order to determine whether there is substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that placement would be detrimental to the child. Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt. (*In re Luke M.*, at p. 1426.)” (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262, italics added.)

The California Supreme Court stated as follows: “In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “The ‘clear and convincing evidence’ standard of proof applies only to the trial court, and is not the standard for appellate review.” (*In re Phillip B.* (1979) 92 Cal.App.3d 796, 802.)

## **B. Substantial Evidence of Detriment**

Father argues that A.A. expressed a desire to live with him and that there was no showing of a risk of abandonment. The evidence showed that A.A.’s family had been the subject of a prior dependency proceeding between February 2005 and January 2007.

During that proceeding, it was established that father had engaged in domestic violence against mother, sexual abuse of a sibling, alcohol abuse, and was a registered sex offender. It was also established during the prior proceeding that mother had engaged in methamphetamine and alcohol abuse, failed to protect A.A. from father's sexual abuse of a sibling, and had mental and emotional problems that placed A.A. at risk. Although father eventually reunified with A.A. and was awarded sole physical custody of him, mother failed to reunify due to her continued substance abuse and, as a result, lost physical custody of A.A. Nevertheless, in or about 2010, within a few years of the family law custody order, mother reported that father was allowing her to coparent A.A. and, in 2012, he abandoned A.A. and moved to Texas. When A.A.'s maternal grandmother also moved to Texas, mother and A.A. were left homeless.

Father's conduct in abandoning A.A. and leaving him homeless with mother, who had a history of unresolved substance abuse and mental problems, was problematic. In doing so, father ignored the family law custody order and exposed A.A. to substantial risk, which risk eventually resulted in the physical abuse by mother that was the basis of the current dependency petition. Given the evidence of what can be viewed as father's reckless disregard for A.A.'s well being, it was not unreasonable for the juvenile court to conclude that there was a substantial and current risk that father would again leave A.A. with mother if he was entrusted with custody of A.A. The evidence of that risk of detriment was therefore sufficient to support the juvenile court's refusal to place A.A. with father and its decision to instead place him in foster care.

## DISPOSITION

The trial court's disposition order refusing to place A.A. with father in Texas and instead placing him in foster care is affirmed.

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MOSK, J.

We concur:

KRIEGLER, J.

MINK, J.\*

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