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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Calaveras)

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In re JAMES S. et al., Persons Coming Under the  
Juvenile Court Law.

CALAVERAS WORKS AND HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

MARK S.,

Defendant and Appellant.

C068392

(Super. Ct. Nos.  
10JD5106, 10JD5107)

Mark S. (father) appeals from the juvenile court’s judgment continuing the placement of minors James S. and Jonathan S. in the custody of Tiffany T. (mother) and terminating the dependency, and from the court’s exit order denying visitation to father. (Welf. & Inst. Code, §§ 361.2, 362.4.)<sup>1</sup> He contends the court should have retained

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<sup>1</sup> Further undesignated section references are to the Welfare and Institutions Code.

jurisdiction because the minors' "drug use, educational struggles, and unrepaired relationship with father" established a need for continued supervision. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

On March 5, 2010, Alameda County Social Services (Social Services) filed section 300 petitions as to the 14-year-old minors, alleging: Father had a history of physically abusing the minors, most recently by breaking Jonathan's collarbone and then failing to provide him with medical attention. Father also had a history of domestic violence with the minors' mother and stepmother. The minors feared further physical abuse if returned to father's custody.

According to the detention report, father and the minors' stepmother, who were separated and getting a divorce, had been sharing physical custody of the minors. Father claimed he had been wrongly blamed for disciplining the minors, who were out of control.

The jurisdiction/disposition report recommended placing the minors with mother, offering her family maintenance services, and offering father reunification services. (§ 361.2, subd. (b)(3).) Court supervision for mother was advised because she had a history of alcohol abuse.<sup>2</sup>

After her short-lived marriage to father, mother had married David T. and now lived with him and his son in Copperopolis (Calaveras County). She shared legal custody of the minors with father and had had regular visits with them.

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<sup>2</sup> Mother was arrested in 1999 and convicted of DUI. She admitted being drunk once in 2009 while Jonathan was visiting, but said it was an isolated incident and nothing had happened since then.

James originally said he did not like visiting mother and felt she was "not a good influence" because of her substance abuse arrest. Later, however, he said she had changed, was not drinking anymore, and was acting more like a parent than before.

The minors wanted to live with mother and only to visit the stepmother and father. James complained father was calling and texting the minors, trying to pressure them to “get over it.”

The minors were failing most of their classes. They acted aggressively and defiantly at school, and James had possessed marijuana with intent to sell. If not for their domestic situation, the school would have expelled them.

Jonathan said he was held back in school because his troubles at home had caused his grades to fall. The minors were in counseling, but father did not want to pay for it.

Father wanted to start reunification services, but believed “his sons [were] the problems.”<sup>3</sup>

On March 29, 2010, the juvenile court in Alameda County ordered the minors detained and placed with mother immediately.

On April 22, 2010, at the jurisdiction/disposition hearing, father submitted on jurisdiction and disposition, requesting only supervised visitation. The court sustained the allegations of the section 300 petitions, placed the minors with mother under dependent supervision, ordered family maintenance services for mother and reunification services for father, and ordered “therapeutic visitations” between the minors and father to occur at Social Services’ discretion after consultation with the minors’ therapist, father’s therapist, and father’s counsel.

The six-month status review report recommended continuing the existing placement and services and transferring the case to Calaveras County.

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<sup>3</sup> Father told the social worker that the stepmother, whom he called “crazy,” had placed a restraining order on him and gotten him evicted from his home. Although he claimed to be concerned about her influence on the minors, he could not give any examples of abuse or neglect by her.

Mother engaged in individual and family therapy and drug tested negative. She showed appropriate parenting skills and discipline. She ensured the minors would be assessed for an Individual Educational Plan (IEP). The minors felt safe in her home.

Father was charged with three felonies arising out of the incident that led to the dependency.

Father had completed a parenting program, was enrolled in temper control and domestic violence programs, and was engaged in individual therapy; his counselors and therapist reported he had made progress. He said he wanted healing in the family and would support coparenting with mother. Father had no in-person visitation with the minors, as he requested. The minors, who were still upset about father's behavior toward themselves and others, did not want to see him.

The minors, father, and their therapists spoke by telephone conference call in September 2010. One of the minors' therapists, John Pool, said the minors expressed their anger toward father, who stayed mostly calm. Both of the minors' therapists (Pool and Dennis Carmona) opposed in-person visits by father at this time because the minors would not feel safe with him.

On October 7, 2010, the juvenile court ordered the matter transferred to Calaveras County, which accepted the transfer on October 26, 2010.

The status review report, filed March 11, 2011, recommended terminating father's reunification services, terminating jurisdiction, and dismissing the dependency, with legal and physical custody of the minors granted to mother.<sup>4</sup>

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<sup>4</sup> The report was said to be made under section 364 (in-home status review). However, Calaveras County Works and Human Services Agency (the Agency) asserted section 361.2 controlled because the minors were originally placed with mother as the nonoffending, noncustodial parent.

The minors adjusted well to living with mother, had reestablished their relationship with her, and bonded with her. Mother actively participated in individual and family counseling, fully complied with her case plan objectives, and demonstrated she could meet the minors' physical, educational, and emotional needs. The minors were participating in counseling and appeared to benefit from it.

The minors continued to struggle in school: Jonathan was failing most of his courses in the most recent quarter, and James was failing English and algebra. Mother was working with their school to try to establish IEPs for them.

Jonathan had Attention Deficit Hyperactivity Disorder (ADHD), which impaired his ability to focus; mother was consulting his counselor and doctor about medication. Jonathan felt anxious about testifying against father in the upcoming criminal trial.

Father continued to deny any responsibility for breaking Jonathan's collarbone. In a recent telephone conversation with the social worker, father said he was "not going to condone [the minors'] lying." Because father provided no signed releases for his temper control, counseling, and domestic violence programs, he was not in compliance with his case plan. He still wanted visitation with the minors, but the minors did not, and their therapist thought they were not emotionally ready for it.

An addendum report filed March 25, 2011, informed the juvenile court that therapist Pool believed father should not receive further reunification services because he had not acknowledged his "errant behavior" toward the minors and blamed others for his own misconduct.

Pool's attached report noted the minors lacked the academic tools to succeed in school, partly because father had not participated in their education. The minors saw themselves as academic "losers" and "f\*\*k-ups." They had been diagnosed with ADHD, which is often linked with "Oppositional Defiant Disorder" and substance abuse; medication, which had never been tried consistently before, was being explored as an

option. Mother and the school counseling staff were working together to put together IEPs, which were not established in the minors' first semester at their new school.

According to Pool, mother worked hard to parent the minors, despite stress due to illness, financial strains at home, and pressure at work. The minors felt far more security and safety in her home than ever before.

Before the case was transferred to Calaveras County, father made clear to Pool in telephone conversations that he saw himself as the victim and the minors as the offenders.

An addendum report filed April 18, 2011, noted father finally provided signed releases and his service providers' reports showed moderate progress with temper control, counseling, and domestic violence; however, he recently violated the stepmother's restraining order against him.<sup>5</sup> Jonathan provided a letter about his history of domestic violence with father, which included the statements, "This isn't even half of the stories I could tell you about the abuse," and, "I do not want to live with my dad."

The contested 12-month hearing took place on April 21 and 28, 2011. Social worker Tamara Davis, therapist Pool, and James testified.

Davis testified mother was meeting all of the needs of the minors and there were no concerns about her ability to continue to do so. The minors were happy living with her. They opposed any contact with father because they feared him and felt unsafe with him. Father said he did not mean to harm Jonathan in the incident that led to the dependency. Father showed no remorse after injuring Jonathan, instead he blamed Jonathan for defiantly instigating the incident. Based on father's recent outburst in court

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<sup>5</sup> The addendum also cited father's behavior during the court hearing on March 29, 2011, as evidence he "continue[d] to struggle with his abilities to maintain his emotions." At that hearing, after the court said it would proceed on schedule even though father's counsel was not yet present, father exclaimed, "Wow. Unbelievable[,]" and told the court he would stand outside.

and his violation of a restraining order, Davis concluded father could not yet apply what he had learned in services outside the treatment setting.

Davis also testified the minors told her they had experimented with marijuana with their “sister” and friends in the Bay Area. Davis did not know whether the marijuana use had continued, but she did not think the minors displayed the characteristics of habitual users. Davis did not know whether the minors had excessive absences in school, or whether the issue of medication for the minors’ ADHD had been followed up on.

Pool, a licensed marriage and family therapist, testified he saw each minor for approximately 40 hours over the last year, and had also seen mother in family counseling. In general, mother followed Pool’s recommendations and reported back to him on the success or failure of the recommendations.

The minors suffered primarily from Post-traumatic Stress Disorder (PTSD), associated with “oppositional defiance,” brought on by the incident in which father broke Jonathan’s collarbone; they also suffered from ADHD, dysthymia (low-grade depression), anxiety, and (in Jonathan’s case) “explosive disorder.” PTSD was a strong factor in causing the minors’ behavior problems and poor grades in school.

Pool thought medication should be used to treat the minors’ ADHD, even though it had not worked before. Numerous drugs had not been tried yet, and those that were tried were not properly monitored.

The minors told Pool about their use of marijuana; they did not say they used any other substances. James said he recently used it seven or eight times, then went two or three weeks without it, “trying to . . . cope with everything without it.” In Pool’s opinion, they were using marijuana to self-medicate. Pool directed them to his cotherapist to work on that issue.

According to Pool, the minors said father was emotionally as well as physically abusive: he deprived them of basic needs, tried to keep them isolated, and was generally unpredictable. This upbringing led them to take normal adolescent tendencies toward

seeking freedom and rebelling against authority to an extreme. However, they were now in a healthier psychological situation, thanks to mother's parenting.

The minors wanted to stay with mother. Pool felt very strongly that would be best for them. Mother could provide for their psychological needs and knew where to go for help. She was actively involved with instructors and school administrators to deal with the minors' educational needs.

The minors felt no attachment to father. Even hearing his voice on the telephone caused them great discomfort. They would not feel safe with him even in a supervised visit. They would perceive a court order for visitation as "revictimization."

James testified he witnessed the incident in which Jonathan's collarbone was broken. After a conflict between father and Jonathan about using a house phone, father grabbed Jonathan by the neck, lifted him, and slammed him to the floor, knocking him unconscious for a few seconds. While he was on the floor, father kicked and punched him. Father then looked at James and said, "[D]o you want some?"<sup>6</sup> Afterward, Jonathan's collarbone was obviously misshapen and he was in a lot of pain, but father refused to take him to the hospital and told him to stop crying. The next day, which was a school day, Jonathan got out of the car to go straight to the office to tell about what had happened; father told James to watch after Jonathan and make sure he did not "do anything stupid."

Since then, according to James, father has never admitted responsibility for breaking Jonathan's collarbone. During their one telephone conversation, father avoided the subject. James did not want to see him or talk to him even in supervised visits; James would not feel safe around him. Because of all that father had put the minors and other family members through, James wanted nothing more to do with him.

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<sup>6</sup> James also had physical fights with father.

James testified that he had recently smoked marijuana probably seven or eight times; the last time was three weeks ago. He did not smoke it at home. He had used it because he was “really stressed out,” but did not think he was addicted to it or needed treatment; he had quit.

After hearing argument, the juvenile court found and ruled:

The question at issue was whether there was a continuing need for dependency, not whether father could reunify with the minors. Because the minors could safely be returned to the home of mother, there was no further need for dependency, and father’s services (even though he had made adequate progress) were terminated. Finally, father would not receive visitation because it would be detrimental to the minors: they feared him with good reason and would soon have to testify against him in a criminal trial.

#### DISCUSSION

Father contends the juvenile court should have maintained jurisdiction because continued supervision was needed “to address the minors’ use of illegal drugs,” “to address the minors’ educational struggles,” and “to repair the minors’ damaged relationship with father.” We disagree.

This case comes under section 361.2 because mother originally received custody of the minors as the nonoffending, noncustodial parent. As authorized under that statute, the juvenile court provided mother with home maintenance services and father with reunification services. (§ 361.2, subd. (b)(3).) When the court has so ordered, it must determine at subsequent review hearings which parent, if either, shall have custody of the child. (*Ibid.*; *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451.) In deciding whether to terminate jurisdiction under section 361.2, the court must determine whether there is a need for continuing supervision; if not, the court may properly terminate the dependency. (*In re Janee W.*, *supra*, 140 Cal.App.4th at p. 1452.)

We normally review the juvenile court's decision to terminate a dependency for abuse of discretion.<sup>7</sup> (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1082; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300; *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1135.) We conclude the court did not abuse its discretion by finding that there was no need for continuing supervision.

Citing *In re Austin P.*, *supra*, 118 Cal.App.4th at page 1134, for the proposition that jurisdiction must continue “where a child has not clearly stabilized under a new placement order,” father asserts that the minors’ use of marijuana and difficulties in school up to the time of the 12-month hearing showed continuing supervision was needed. We are not persuaded.

First, *In re Austin P.* does not state the broad rule asserted by father.<sup>8</sup> It holds only, on the facts presented, that substantial evidence supported the Agency’s recommendation for continuing supervision because the minor was transitioning into the home of his father, whom he had seen only sporadically over the past 10 years, and was more closely bonded with his mother even though she had physically abused and neglected him. (*In re Austin P.*, *supra*, 118 Cal.App.4th at p. 1134.) Since no similar facts exist here and the Agency did not recommend continuing supervision, *In re Austin P.* does not assist father.

Second, the juvenile court was within its discretion to conclude, based on all the evidence before it (including the opinions of social worker Davis and therapist Pool), that

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<sup>7</sup> Father attacks only the termination of dependency, not the exit order denying visitation.

<sup>8</sup> Father cites to this case and its purported rule with the signal, “See e.g.” This citation signal is meant “to introduce opinions cited as examples of the stated proposition’s application.” (Cal. Style Manual (4th ed. 2000) § 1.4, p. 10.) Since neither *In re Austin P.*, nor any other case we have found states the proposition for which father cites *In re Austin P.*, his method of citation is improper.

with the help of the minors' therapists, teachers, and school counselors, mother could adequately cope with the minors' problems. In particular, the court could reasonably have concluded that once the minors had achieved stability in mother's custody (as they were well on the way to doing), received medication for their ADHD, and undergone further therapy for their other psychological problems, their drug use and academic difficulties would be resolved.

But even if such problems might continue, that possibility alone would not justify continuing court supervision. Minors in the juvenile dependency system, as here, have often suffered grave injuries arising out of years of parental abuse and neglect. Such injuries usually cannot be entirely healed in six or 12 months. Thus, the test for whether a dependency should continue cannot be whether the minors' problems have already been solved. The only purpose of maintaining jurisdiction over a parent who received custody in the first place under section 361.2 is the need for further maintenance services to assist that parent, in this case, mother.<sup>9</sup> Here, father has shown no such need.

Father points out that a minor's ingestion of drugs or lack of education can constitute harm to the minor for purposes of section 300. (Cf. *In re Janet T.* (2001) 93 Cal.App.4th 377, 389; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 825.) However, the issue here is not what is required for the juvenile court to *assume* jurisdiction under section 300, but what is required for the court to *maintain* jurisdiction under section 361.2. Father's cited cases are therefore inapposite.

Lastly, father asserts that continuing supervision was needed "to repair the minors' damaged relationship with [him]." His argument here appears to be mainly a complaint about his failure to receive visitation, which comes too late because he never contested

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<sup>9</sup> Father asserts in passing that mother's history of substance abuse presents such a need. He is wrong. The evidence shows without dispute that she had successfully addressed her substance abuse problems long before the 12-month hearing.

the original visitation orders. So far as father means that the court should have maintained jurisdiction indefinitely on the vague hope that the minors would someday change their minds about wanting to see him, he cites no authority holding that a juvenile court may properly maintain jurisdiction for such a purpose, and we know of none.

To put it another way, it is not the juvenile court's duty to repair the damage a parent's abuse has done to his relationship with his children. The court's duty is to "provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.) It is true that in carrying out this role "[t]he focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child" (*ibid.*), but this does not require the court to square the circle by trying to "repair" parent-child relationships that are irretrievably broken. The court here properly focused on preserving that part of the family which could be preserved: mother's relationship with the minors. That was sufficient.

#### DISPOSITION

The judgment is affirmed.

NICHOLSON, Acting P. J.

We concur:

BUTZ, J.

DUARTE, J.