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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re L.F., JR., et al., Persons Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

L.F., SR., et al.,

Defendants and Appellants.

D061338

(Super. Ct. No. SJ10206D-E)

APPEALS from a judgment of the Superior Court of San Diego County, Garry G. Haehnle, Judge. Affirmed.

L.F., Sr., and Liliana A. (together, the parents) appeal following the dispositional hearing in the juvenile dependency case of their son L.F., Jr., and daughter Paloma F. (together, the children). The parents contend that the court erred in denying them an evidentiary hearing on their request for relative placement. Additionally, L.F., Sr., contends that the court erred in removing the children from his care, and Liliana contends that the

court erred in denying her reunification services. The parents join in each other's contentions. We affirm.

## I

### BACKGROUND

In November 2011, the San Diego County Health and Human Services Agency (the Agency) filed dependency petitions on behalf of one-year-old L.F., Jr., and newborn Paloma. (Welf. & Inst. Code, § 300, subd. (b).)<sup>1</sup> The petitions alleged that L.F., Jr., had been exposed to violent confrontations between the parents. On August 17, in L.F., Jr.'s presence, Liliana scratched L.F., Sr.'s, face and punched his girlfriend. On August 31, L.F., Sr., refused to let Liliana out of his car, and had a friend grab her hair and cut it off with scissors. Liliana kicked the car's lights, grabbed L.F., Jr., and walked away. Liliana had a history of domestic violence with another man and had failed to reunify with two other children due to that violence.

Paloma's petition additionally alleged that she had tested positive at birth for methamphetamine. Liliana had also tested positive. Liliana admitted having used methamphetamine three times while she was pregnant with Paloma, and acknowledged that she knew that using drugs was not healthy for the baby. Liliana had no prenatal care. L.F., Sr., was incarcerated<sup>2</sup> and was unable to stop Liliana's drug use.

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

<sup>2</sup> L.F., Sr., had been charged with possessing a controlled substance, possessing a controlled substance while armed and illegally possessing a firearm and ammunition.

The children were detained in foster care. The court gave the Agency discretion to detain the children in the approved home of a relative with notice to the children's counsel. Sometime between December 8, 2011, and January 3, 2012, L.F., Sr., was released from custody on bail.

On January 20, 2012, the court entered true findings on the petitions. The court denied the parents an evidentiary hearing on their requests for relative placement. The court ordered the children removed from the parents' custody (§ 361, subd. (c)(1)) and granted L.F., Sr., reunification services. The court denied Liliana services (§ 361.5, subd. (b)(10)) and found, by clear and convincing evidence, that reunification with her was not in the children's best interests (§ 361.5, subd. (c)).

## II

### *The Issue of Relative Placement Is Not Ripe*

#### A

##### *Background*

The social worker spoke with Liliana on November 15, 2011, two days before the petitions were filed. Liliana told the social worker that she would like the children to be placed with maternal aunt A.V. or maternal uncle Mario V.<sup>3</sup> L.F., Jr., had been in the care of A.V. at the time he was detained. At the November 18 detention hearing, Liliana's counsel said that L.F., Jr., had been moved to a foster home because the maternal aunt's home had not been "cleared." Liliana's counsel requested "clearances . . . on an emergency

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<sup>3</sup> There is no further information in the record regarding Mario.

basis" and that the children be detained with the maternal aunt.<sup>4</sup> L.F., Sr.'s, counsel asked that all relatives be evaluated, and stated that L.F., Sr., had listed two paternal relatives for immediate evaluation.<sup>5</sup> The social worker explained that the Agency was in the process of evaluating several relatives and that it had obtained information about the maternal aunt and her fiancé from the Department of Justice. Because the maternal aunt's fiancé had a criminal history, the Agency would "need to get waivers and other things put in place."

According to the jurisdictional and dispositional report, written on December 6, 2011, L.F., Sr., wanted to have paternal aunt Alma W. and the paternal grandmother considered for placement. The parents were initially unable to reach a compromise regarding placement, but on December 14, Liliana agreed to placement with Alma.

During the Agency's assessment of Alma, she stated that she had never been arrested or involved in domestic violence. One week later, the Agency learned that she been involved in a violent relationship for several years and had been arrested for domestic violence. When confronted with this information, Alma said that "the last time she was harassed and stalked was in December" 2011, and claimed that the relationship had "ended officially" sometime that month. She acknowledged that she had not attended any domestic violence support groups or created a safety plan. The Agency gave Alma referrals to

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<sup>4</sup> This was apparently a reference to A.V.

<sup>5</sup> The names of these two paternal relatives were not mentioned.

support groups, "and asked her to create a safety plan before proceeding with her as a potential placement."<sup>6</sup>

At a January 12, 2012, hearing, L.F., Sr.'s, counsel asked the Agency to "follow-up" on placement with the paternal grandmother. By January 18, the parents had agreed to placement with the paternal grandmother.<sup>7</sup> The Agency had immediately begun an evaluation, but was concerned that the fact that the paternal grandmother's residence was in Riverside County would hinder visitation.

At the January 20, 2012, dispositional hearing, the parents' attorneys stated that relative placement was one of the issues to be litigated. The court responded, "I don't do trials on relative placement because I don't have the necessary approvals or I can't place in a nonapproved home unless certain conditions are met. . . . In order for the court to . . . allow placement with a relative there has to be an approved home. I haven't heard and I don't know and I haven't read in the reports there has been any denial of any approved homes which would lead the court then to be able to look into the reason for the denial. . . . I cannot place and I don't have the authority I don't think to place and set and hear trial issues on relative placement."

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<sup>6</sup> The record does not reveal the dates of these conversations, which were recounted in a report written on January 18, 2012.

<sup>7</sup> The record does not disclose exactly when the parents reached this agreement. It appears to have occurred sometime between January 12 and 18, 2012.

## B

### *Applicable Law and Analysis*

"[T]he 'ripeness requirement' . . . 'prevents courts from issuing purely advisory opinions, or considering a hypothetical state of facts in order to give general guidance rather than to resolve a specific legal dispute' [citation] . . . ." (*In re Joshua S.* (2007) 41 Cal.4th 261, 273.) The requirement "is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy. On the other hand, the requirement should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question." (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.) " 'A controversy is "ripe" when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.' [Citation.]" (*Id.* at p. 171.)

The parents' challenge to the juvenile court's denial of an evidentiary hearing on relative placement is, in essence, a challenge to the court's failure to place the children with a relative. That issue is not ripe for review.

At the time of the dispositional hearing, the Agency was in the process of evaluating several relatives. The maternal aunt's fiancé had a criminal history (*In re M.L.* (2012) 205 Cal.App.4th 210, 223), and the paternal aunt had withheld critical information from the Agency. Neither of these two relatives had been ruled out for possible placement, but it was

not yet clear that either of them would be able to care for the children safely. Moreover, less than a week before the hearing, the parents had both agreed to placement with the paternal grandmother. The Agency had begun to evaluate the paternal grandmother, but was concerned that the fact that she resided outside of San Diego County would impede visitation, and wanted to make sure that the parents understood this.

At this juncture, the juvenile court has not denied placement with any relative. The above circumstances demonstrate nothing more than a possibility that the court ultimately might not approve one or more relatives for placement, and that the children might not be placed with any of those relatives. If that does occur, the parents may object. If, on the other hand, one of the relatives is approved and the children are placed with that relative, there will be no controversy to resolve. At present, any opinion on the issue would be " 'purely advisory' " and would be based on " 'a hypothetical state of facts.' " (*In re Joshua S.*, *supra*, 41 Cal.4th at p. 273.)

### III

#### *There Is Substantial Evidence to Support the Order Removing the Children from L.F., Sr.'s, Custody*

To remove a child from a parent's custody, the juvenile court must find, by clear and convincing evidence, that "[t]here is or would be a substantial danger to [the child's] physical health, safety, protection, or physical or emotional well-being . . . , and there are no reasonable [alternative] means" of protecting the child's physical health. (§ 361, subd. (c)(1).) "[T]he . . . minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground by *Renee J. v. Superior Court* (2001) 26 Cal.4th

735, 748, fn. 6.) The court may consider the parent's past conduct and current situation and determine whether he or she has progressed sufficiently to eliminate any risk to the child. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; cf. *In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1221.)

On appeal, L.F., Sr., has the burden of showing that there is no substantial evidence justifying removal. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) "We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts." (*Ibid.*) L.F., Sr., has not met his burden.<sup>8</sup>

L.F., Sr., has a history of methamphetamine use and repeated incarcerations. In November 2003 he was convicted of robbery and, in November 2005, he was convicted of first degree robbery and illegal possession of firearms.<sup>9</sup> After L.F., Jr.'s, birth in January 2010, L.F., Sr., violated parole several times. As a result, L.F., Sr., had had limited contact with L.F. On October 5, 2011, L.F., Sr., was arrested for yet another parole violation. At

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<sup>8</sup> L.F., Sr., is the presumed father of L.F., Jr., and is the biological father of Paloma. It appears that Paloma was never in L.F., Sr.'s, custody. If that is the case, the juvenile court should have proceeded pursuant to section 361.2. That section states: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a [noncustodial] parent . . . 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).) In the juvenile court, detriment must be proven by clear and convincing evidence, and on appeal the substantial evidence test applies. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.) Although in Paloma's case the court did not rely on section 361.2, it is clear that L.F., Sr., could not have prevailed under that section. (*In re Natasha A.* (1996) 42 Cal.App.4th 28, 38 ["we review the lower court's ruling, not its reasoning; we may affirm that ruling if it was correct on any ground"].)

<sup>9</sup> At the dispositional hearing, the court examined the court files from the robbery cases and stated that L.F., Sr., had been convicted of attempted robbery in one of those cases, not robbery. Those files are not part of the appellate record.

the time of his arrest, he was in possession of methamphetamine and a semiautomatic handgun. When Paloma was born in November, L.F., Sr., was in jail. The jail allowed no more than two visits per month, and the record does not reveal whether L.F., Sr., had any visits with the children. After his release, L.F., Sr., failed to appear for a visit with Paloma on January 17, 2012. He rejected a plea offer for a six-year prison term, and at the time of the dispositional hearing, was awaiting trial on four felony counts.

Additionally, L.F., Sr., has a history of domestic violence with Liliana. On August 30, 2011, he was the perpetrator. That day, L.F., Sr., drove Liliana and L.F., Jr., to a condominium complex, went inside and returned to the car with a female. L.F., Sr., and the female forced Liliana out of the car. The female told Liliana "[h]e wants your wig." Liliana and the female fought, and the female cut Liliana's hair with scissors. L.F., Jr., was present during the entire incident. L.F., Sr., continued seeing Liliana, and a few days before the dispositional hearing, they asked to visit the children together.

At the time of the hearing, L.F., Jr., was not quite two years old and Paloma was two months old. L.F., Sr., had no relationship with Paloma and virtually none with L.F., Jr. L.F., Sr., had recent histories of domestic violence, incarceration and involvement with illegal drugs and firearms. There is no evidence that he had received treatment in any of these areas, and he remained in contact with Liliana. There is thus substantial evidence that there would be a substantial danger to the children and that the children's physical health would be at risk if they were in L.F., Sr.'s, custody.

## IV

### *The Court Did Not Err in Denying Liliana Reunification Services*

#### A

##### *Applicable Law and Contentions*

Section 361.5, subdivision (b) provides exceptions to the general entitlement to reunification services set forth in section 361.5, subdivision (a). "Reunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence," that the exception set forth in section 361.5, subdivision (b)(10) applies. (*Id.*, subd. (b).) That exception allows the court to deny reunification services if the court terminated reunification services for a sibling or half sibling because the parent failed to reunify after the sibling's or half sibling's removal, and the parent made no subsequent reasonable effort to treat the problems that led to the sibling's or half sibling's removal. (*Id.*, subd. (b)(10).)

" '[O]nce it is determined one of the situations outlined in [section 361.5,] subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.] ' [Citation.]" (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.) Thus, "[t]he court shall not order reunification for a parent . . . described in [section 361.5, subdivision (b)(10)] unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subd. (c).) "The burden is on the parent to . . . show that reunification would serve the best interests of the child." (*In re William B.*, at p. 1227.) The best interests determination encompasses a consideration of the

parent's current efforts, fitness and history; the seriousness of the problem that led to the dependency; the strength of the parent-child and caretaker-child bonds; and the child's need for stability and continuity. (*Id.* at p. 1228, citing *In re Ethan N.* (2004) 122 Cal.App.4th 55, 66-67.) A best interests finding also requires a likelihood that reunification services will succeed. (*In re William B.*, at p. 1228.) "In other words, there must be some 'reasonable basis to conclude' that reunification is possible before services are offered to a parent who need not be provided them. [Citation.]" (*Id.* at pp. 1228-1229.)

Liliana does not challenge the court's findings that her three oldest children were removed from her custody, she failed to reunify with them and that the court terminated reunification services. She does challenge the finding that she made no subsequent reasonable effort to treat the problems that led to the removal of the three oldest children, i.e., domestic violence and substance abuse. She also contends that the court erred by finding that reunification was not in the children's best interests.

## B

### *Background and Analysis*

Liliana became involved in her first relationship in 1997. The relationship was a violent one. She began using drugs sometime between 1999 and 2001. Her drugs of choice were marijuana and methamphetamine.

In February 1999, Liliana's two oldest children were removed from her care due to domestic violence. She failed to complete her reunification services and, in November 2001, the court ordered permanent plans of guardianship for those two children. In 2001 Liliana was convicted of assault with force likely to cause great bodily injury.

In October 2003, Liliana's third child was removed from her care after the police found drugs and drug paraphernalia within the child's reach. At the time of the removal, there was an open child welfare referral including allegations of drug sales in the home, domestic violence and child neglect. Liliana failed to reunify with her third child and, in June 2005, the court ordered a permanent plan of guardianship. In 2005 Liliana was convicted of carrying a concealed weapon in a vehicle.

During the dependencies of her three oldest children, Liliana was offered all available reunification services. She participated in drug rehabilitation and domestic violence programs, therapy and parenting courses. After failing to reunify with those three children, Liliana continued to engage in the behaviors that had led to their removal. In 2006 she was convicted of possessing a controlled substance for sale and related offenses, and was sentenced to two years in prison. She claimed that she participated in inpatient drug treatment from 2008 to 2009 and that she stopped using drugs. Liliana acknowledged that she was involved in an incident of domestic violence with L.F., Sr., in July 2010. In addition, she used methamphetamine in 2011 while she was pregnant with Paloma.

The genesis of the instant dependency case was Liliana's substance abuse and domestic violence, the same problems that prevented reunification with her three oldest children. On November 15, 2011, the Agency provided Liliana with referrals to voluntary services and, by December 1, it had given her referrals for all relevant services. Liliana contacted a substance abuse treatment program on December 8, and began the ParentCare Family Recovery Center (ParentCare) program on December 28. At ParentCare, Liliana attended classes on drug abuse, domestic violence, anger management and parenting. Her

drug tests were clean, but by the time of the dispositional hearing, she had not participated in ParentCare long enough to allow her progress to be assessed.

At the time of the hearing, Liliana had been involved in violent relationships for nearly 15 years and had used illicit drugs for at least 10 years. Her engaging in domestic violence and her substance abuse had defeated reunification efforts in the dependency cases of her three oldest children. The only evidence of a subsequent effort to treat those problems is her asserted participation in substance abuse treatment from 2008 to 2009, and her documented participation in ParentCare for three weeks prior to the hearing. In the context of her extensive history of violence and drug abuse, these efforts cannot be viewed as anything more than "lackadaisical or half-hearted" and far short of reasonable. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 99.) Thus, there is substantial evidence to support the court's finding that section 361.5, subdivision (b)(10) applied. (*Id.* at p. 96.)

The court also found that Liliana had not met her burden of showing that reunification would be in the children's best interests. The court cited Liliana's statement that she had used drugs while pregnant with Paloma, knowing that it would hurt the baby, as evidence that Liliana did not "have the best interests of the children in mind." Liliana has not met her burden on appeal to show that the court abused its discretion in making this finding. (*In re A.G.* (2012) 207 Cal.App.4th 276, 281-283.) Her actions over the years and during the pendency of this case show a lack of concern for the children's welfare.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

McINTYRE, Acting P. J.

O'ROURKE, J.