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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

R.R.,

Defendant and Appellant.

E053787

(Super.Ct.No. SWJ002438)

OPINION

APPEAL from the Superior Court of Riverside County. Michael J. Rushton,
Judge. Affirmed in part; reversed in part with directions.

Megan Turkat-Schirn, under appointment by the Court of Appeal, for Defendant
and Appellant.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,
for Plaintiff and Respondent.

I

INTRODUCTION

R.R. (father) appeals from juvenile court jurisdiction and disposition orders, sustaining jurisdiction over his only child, C.R., and ordering her placed in foster care. (Welf. & Inst. Code, § 300, subds. (b) & (g).)¹ Father challenges the juvenile court's jurisdiction findings that he should have known about C.R.'s mother's drug abuse, even though he was a noncustodial parent living in Nevada. The court also found that father permitted C.R. to live with inappropriate caretakers and failed to intervene. Father further argues that the juvenile court erred in requiring an approved Interstate Compact on the Placement of Children (ICPC) assessment before placing C.R. with father. Father asserts that the court erred in denying his request to place C.R. in his custody under section 361.2, subdivision (a), since there were no findings or evidence of detriment to C.R.

We conclude there was sufficient evidence to support the juvenile court's jurisdiction findings but the court erred in rejecting father's request for placement of C.R. in his home under section 361, subdivision (c). Because father was a noncustodial parent, the court was required under section 361.2, subdivision (a) to place C.R. with father unless the court found that placement with father would be detrimental to C.R.'s safety, protection, or physical or emotional well-being. (§ 361.2, subd. (a).) The court failed to make the requisite express findings of detriment (§ 361.2, subd. (c)) and the

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

evidence in the record does not support such findings. We further conclude the court erred in ordering an ICPC as to father's home since an ICPC is improper as to parents.

We affirm the jurisdiction order but reverse the disposition order regarding C.R. and father, and remand this case for a new disposition hearing for purposes of the juvenile court reconsidering placement of C.R. with father under section 361.2, subdivision (a).

II

FACTS AND PROCEDURAL BACKGROUND

Mother has five biological children, including T.C. (age nine), C.R. (age 12), R.R. (age 15), and twins (ages 11), whom mother lost to adoption because they were born with heroin in their system in 2000. Mother and father were together for about five years but never married. Father lives in Nevada with his girlfriend.

Before the instant juvenile dependency proceedings involving T.C., C.R., and R.R., mother came to the attention of the Department of Public Social Services-Child Protective Services (CPS) in 2000, 2009, and April 2010. In 2000, mother was offered family reunification services, which included substance abuse treatment, drug testing, mental health, and parenting education services. Mother reunified with C.R., T.C., and R.R., but parental rights were terminated as to mother's twins in 2004. During the proceedings, father left mother, complied with his case plan, and moved to Nevada.

In 2009, the CPS received a referral alleging general neglect and physical abuse of C.R. by her maternal great-grandmother. During the investigation, mother admitted smoking marijuana. Mother was advised to participate in substance abuse treatment and

the allegations of general neglect and physical abuse were deemed unfounded. Mother signed a safety plan agreeing to refrain from using marijuana and not use physical discipline.

On April 19, 2010, the CPS received a referral alleging general neglect by mother as to C.R. and T.C. Reportedly, C.R. and T.C. were not able to return home to mother because mother had not been home for three days. The children had not attended school for three weeks and did not have a ride to school. Mother reportedly was using methamphetamine and had a house full of men. CPS never made contact with mother, as the children were located at the home of their cousin, Ms. H. The girls and mother had previously moved into Ms. H.'s home, in January 2010, and then mother left the girls with Ms. H. in April 2010, without contacting the girls or providing financial support for them. CPS suggested Ms. H. file for legal guardianship of the girls.

On December 17, 2010, the CPS received another referral of general neglect, which led to CPS filing the instant juvenile dependency petition. Mother allegedly left her children, R.R., T.C., and C.R. with a series of nonrelative caretakers. CPS's investigation revealed that none of the children were being cared for by their parents, and had not been in the care of mother for over a year. T.C. and C.R. were currently in the care of Ms. H.'s godparents, Mr. and Mrs. P. Mr. P. was under investigation for sexual abuse. Before living with Mr. and Mrs. P., the girls resided with Ms. H. until she was incarcerated in December 2010.

During the initial investigation, R.R. was in juvenile hall, facing pending burglary charges. CPS's investigation further revealed that mother had an extensive drug history

and admitted using methamphetamine. Mother also had an unresolved mental health history. Mother gave Mrs. P. written consent to physical custody of T.C. and C.R. Mrs. P. reported that mother had not had contact with her children since April 2010. There were also allegations that father had sexually abused one of C.R.'s relatives and had fondled C.R. Mrs. P. told the CPS social worker that father had had no contact with C.R.

On February 7, 2011, the CPS social worker interviewed C.R. C.R. said that in March 2010, she was living with her mother and Ms. H. Mother left during the summer. C.R. did not know why. C.R. had liked living with Ms. H. C.R. denied that father had fondled her inappropriately. She said someone in the family was trying to get her to say he did something, but he did not do anything wrong. C.R. said she had spent time with father two summers ago (2009) and speaks to him once in awhile. She did not call him often. C.R. liked living with Mr. and Mrs. P. and their children.

The next day, the social worker interviewed mother. Mother said she was aware of the sexual abuse allegation by C.R.'s aunt against father and did not believe it was true. Mother said she lived with Ms. H. and the children until August 2010. Mother said she was unstable and could not keep an apartment for the girls. She believed Ms. H. could care for her children. Mother then met her current boyfriend and lives with him. He has children and mother did not want to complicate things for him by having her children live with them. Mother preferred to have her children live with Mrs. P. Mother admitted using methamphetamine within the past two days. When asked about father, mother said she did not have his telephone number and believed father would try to get custody of C.R., since he had wanted custody of C.R. for awhile.

On February 8, 2011, the social worker called father and told him the children had been placed in protective custody because of mother's substance abuse and inability to care for them. Father requested that C.R. live with him. Father denied the sexual abuse allegations. He also denied having any criminal, mental health, sexual abuse, child abuse, or domestic violence history. He said he was living with his girlfriend in a two-bedroom apartment and had been employed for the past three years with the same employer. He had had sporadic contact with C.R. She had spent the summer of 2009 with him for a month and a half but was unable to spend the following summer with him because of the sexual abuse allegations. Father also had had contact with C.R. during the holidays, when mother permitted C.R. to visit him. C.R. had mentioned to him that she was living with Ms. H. He did not approve of this. Father said he had not requested the court to intervene because the court had given mother custody of C.R. and he was waiting until C.R. turned 14 years old. Then she could select who she wanted to live with. Father said he was unaware C.R. had been living with Mrs. P. for over a month and did not know who the caregiver was. Father suspected mother might be using drugs but could not be certain because she seemed fine when he saw her.

On February 9, 2011, C.R. and T.C. were detained in protective custody because the CPS social worker discovered that law enforcement was investigating Mr. P for the misdemeanor, soliciting oral copulation from a minor. On February 14, 2011, CPS filed a juvenile dependency petition as to R.R., C.R., and T.C. under section 300, subdivisions (b) and (g). The petition alleged, as to father, that he "knew or reasonably should have known that the mother abuses controlled substances and left the child in the care of

inappropriate caregivers. Furthermore, the father failed to intervene on behalf of the child.” The petition also alleged father “has a history with Los Angeles County Child Protective Services, and has failed to benefit from Family Reunification services provided to him for the children, [the twins], resulting in his parental rights being terminated.” Later it was determined that father was not the twins’ father and the allegation was stricken. In addition, the petition alleged that mother left the children without any provision for support and was not prepared to have custody of them.

The social worker concluded in the detention report filed on February 14, 2011, that father failed to adequately provide for C.R. He failed to intervene despite disapproving of C.R. living with Ms. H. The social worker speculated that this might be because father had a poor bond with C.R. Father left it up to C.R. to contact him and up to mother to allow visitation on holidays. Mother did not want C.R. visiting father because mother feared father would keep C.R. from mother. The social worker reported it had conflicting information as to father previously receiving reunification services for substance abuse and father had been accused of sexual abuse. The social worker recommended father participate in drug testing, substance abuse treatment, case management, family counseling, parenting education, and other services. It was also recommended that father be offered supervised visitation, with C.R. remaining in foster care.

At the detention hearing, father denied the petition allegations. The court adopted the CPS’s recommendations and ordered the children detained and placed in foster care. The court also authorized reunification services and supervised visitation for father.

In March 2011, CPS reported in its jurisdiction/disposition report that father visited C.R. in March 2011, and maintained telephone contact with her. When the social worker interviewed father in March, he again told the CPS social worker that he was unaware of mother's relapse and wanted C.R. to live with him. Father's February 2011 drug test and March 2011 hair follicle test were both negative. CPS did not recommend placing C.R. with father because he had a positive saliva test for marijuana during the "initial investigation" and because of the maternal aunt's sexual abuse accusations. Father was being investigated for lewd and lascivious acts against C.R. and C.R.'s aunt (§ 288, subd. (a)). Father did not have a criminal arrest history. Father said he was unaware mother was abusing drugs, since he had not had contact with her. Mother also told the CPS during her interview in March 2011 that father did not know anything about mother using controlled substances or leaving the children with inappropriate caregivers because mother and father did not have contact with each other. Mother stated that if C.R. was not returned to her care, she wanted C.R. placed with C.R.'s maternal grandmother or father.

At the jurisdiction hearing on March 16, 2011, the juvenile court set a contested jurisdiction hearing. Father requested placement of C.R. with him. He told the court the detective on the sexual abuse allegations had told him the day before that the Los Angeles County investigation of the allegations had been terminated. Father also said he had lived in Nevada for the past five years and had come all the way from Nevada for the hearing, hoping to resolve the matter and have C.R. placed with him. Father said he was frustrated because he had done everything that was requested of him. The court ordered

CPS to contact the Los Angeles County District Attorney Office and find out the status of the sexual abuse allegations against father. The matter was continued for a contested jurisdiction/disposition hearing.

On April 18, 2011, CPS received a report from the Los Angeles Sheriff's Department, stating that the sexual abuse allegations against father had been submitted to the Los Angeles District Attorney for consideration and the district attorney declined to prosecute because there was insufficient evidence. The sheriff's December 2010 report stated that while C.R.'s maternal aunt was incarcerated in December 2010, the aunt accused father of molesting her when she was five to 12 years old, from 1996 to 2002. The alleged abuse included digital penetration and an incident of sexual intercourse when she was 10. The aunt reported that C.R. had indicated to her that she, too, had been "touched" by father when she was five years old.

Los Angeles Sheriff's Detective David Johnson investigated the allegations in January 2011. He interviewed maternal grandmother, who said that at the time of the alleged abuse, father was living in Palmdale. Grandmother did not believe C.R. was abused because C.R. always wanted to visit father. Grandmother told mother about the allegations. Mother told father, who denied them and the incident was not reported at that time. C.R.'s guardian and day-care provider told Johnson that C.R. had never mentioned any inappropriate activity nor had she demonstrated any signs of being abused.

Johnson interviewed C.R. in January 2011. C.R. said that she had not seen father since the summer of 2009, and her mother since October 2010. She said she had not seen

her mother because mother had a drug problem. She did not know why she had not seen father. C.R. said she told her grandmother when she was six years old (2005) that father “touched” her and it made her uncomfortable. C.R. told Johnson that father had rubbed lotion on her body after she took a bath, but it was not in a “sexual” way. She felt uncomfortable because she did not want father touching her body “because he was a boy.” He never touched under her panties and he was dressed. C.R. said that as she got older she wanted to put the lotion on herself.

Another time she cut her buttocks when she fell in the bathroom and father came in to see what happened, and put Neosporin on the cut. C.R. said she did not want him putting Neosporin on the cut on her buttocks because she felt she was too old for him to be touching her body. She did not feel father had touched her in a sexual way. C.R. told her grandmother that father had touched her and she did not like it, but did not explain what had happened. Grandmother told mother, who told father to stop touching C.R. C.R. thought father did not realize he was making her feel uncomfortable. When C.R. spent the summer with father in 2009, there were no problems. She loves father and wants to see him. She said she is not afraid of him. Johnson attempted to contact mother and the aunt but they did not return his calls.

On February 23, 2011, Johnson interviewed father. He said that he was aware of the investigation through CPS. Father wanted custody of C.R. Father denied the allegations. He said he never touched C.R. inappropriately. Mother confronted him about touching C.R. inappropriately when C.R. was six years old and father denied the allegations then, and denied them during his interview. The allegations concerned father

rubbing lotion on C.R., which he said he did not do in a sexual way and did not touch her private areas. C.R. did not tell him he was making her feel uncomfortable when he did it. He had no other problems after the incident and he thought the matter had been resolved. He believed he has a good relationship with C.R. She was always happy to see him. He denied ever touching C.R. inappropriately or in a sexual manner. Father also said he was unaware C.R.'s aunt had accused him of sexually abusing her as a child and denied such allegations. Johnson did not succeed in contacting C.R.'s aunt. She did not respond to his calls or letter. On February 28, 2011, the sexual abuse case was presented to the Los Angeles District Attorney's office, which declined to prosecute the case based on insufficient evidence.

On April 19, 2011, C.R. and T.C. moved to a new foster home because of allegations the foster parent was neglecting the girls. Father again said he wanted C.R. placed with him, especially now that the sexual abuse allegations had been dropped. Nevertheless, the CPS recommended in its April 25, 2011, addendum report that C.R. not be placed with father because of the sexual abuse allegations and his unknown parenting skills. He also had three active bench warrants for failing to appear for a traffic violation in 1999, and he had a restricted California driver's license because of the warrants for failing to appear on the citation. CPS also noted that father's live-in girlfriend had not been investigated and father had a drug history. Father admitted during his CPS interview on March 9, 2011, that he had tried marijuana in the past but denied any recent drug use. He said he last smoked marijuana shortly after C.R.'s birth in 1999.

In CPS's May 31, 2011, addendum report, CPS recommended the juvenile court

declare C.R. a dependent of the juvenile court under section 300, subdivisions (b) and (g), that father receive reunification services, that C.R. remain in foster care, and that an ICPC be commenced with Nevada for father. CPS noted it was concerned about the allegations of sexual abuse against father and that he had had limited involvement with C.R. There was also a lack of information about father's live-in girlfriend.

On June 6, 2011, CPS filed an amended juvenile dependency petition under section 300, subdivisions (b) and (g), alleging that father knew or reasonably should have known that mother abused controlled substances and left C.R. in the care of inappropriate caregivers. Father also failed to intervene on behalf of C.R. The court struck the remaining allegations that father had a history with the Los Angeles County Department of Children and Family Services and failed to benefit from reunification services, resulting in termination of parental rights as to the twins. Father is not the father of the twins or T.C.

At the contested jurisdiction/disposition hearing on June 6, 2011, father denied the amended petition allegations and submitted documentation showing he had housing, was employed, and had tested negative for drugs. Father's attorney argued that there was no evidence that father knew mother was abusing drugs. Father's attorney further argued that, even if there was evidence supporting the allegation, there was no nexus between the finding and any risk of harm to C.R. from placing her with father. Therefore, under section 361.2, C.R. should be placed with father. Father's attorney noted that the sexual abuse investigation had been closed and the district attorney declined to prosecute the case based on a lack of evidence.

The juvenile court adopted CPS's recommended orders and findings, including finding the allegations in the amended petition true and sustaining the petition. The court found that father knew or reasonably should have known that mother abused drugs and left C.R. with inappropriate caregivers. The court stated it believed that, had father been actively involved in taking care of C.R., he would have known these circumstances. The court ordered reunification services and supervised visitation provided to father. The court further ordered that C.R. remain in foster care and that an ICPC be initiated with Nevada. The court denied long-term visitation.

III

JURISDICTION ORDER

Father contends CPS did not meet its burden of proving the jurisdiction allegations against father. The juvenile court sustained the failure-to-protect allegations in paragraph b-5 of the amended petition, which allege that father should have known about mother's drug abuse and father permitted C.R. to live with inappropriate caretakers without intervening.

We recognize that the juvenile dependency petition need only contain allegations against one parent to support the exercise of the court's jurisdiction, and the jurisdiction allegations against mother are undisputed. (*In re John S.* (2001) 88 Cal.App.4th 1140, 1143, citing *In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554.) The Department of Public Social Services "is not required to prove two petitions, one against the mother and one against the father, in order for the court to properly sustain a petition [pursuant to § 300] or adjudicate a dependency." (*In re La Shonda B.* (1979) 95 Cal.App.3d 593,

599.) “A petition is brought on behalf of the child, not to punish the parents. [Citation.] The interests of both parent and child are protected by the two-step process of a dependency proceeding, with its separate adjudication and disposition hearings. Thus, when [the department] makes a prima facie case under section 300 by proving the jurisdictional facts at the adjudication hearing, it is not improper for the court to sustain the petition; not until the disposition hearing does the court determine whether the minor should be adjudged a dependent.” (*Ibid.*; see also *In re X.S.* (2010) 190 Cal.App.4th 1154, 1161.) As CPS established jurisdiction based on mother’s substance abuse and neglect of C.R., the juvenile court properly found that C.R. came within the jurisdiction of section 300.

Father’s objection to the jurisdictional findings as to father, however, is not moot because the jurisdiction findings may adversely affect father’s interests regarding the disposition and visitation orders, as well as future juvenile dependency and family law proceedings. (*In re John S., supra*, 88 Cal.App.4th at p. 1143; *In re Joel H.* (1993) 19 Cal.App.4th 1185, 1193.) We therefore address father’s challenge to the jurisdiction findings relating to father.

The only jurisdiction findings sustained against father were allegations in count b-5 of the amended petition, which alleged: “[Father] knew or reasonably should have known that the mother abuses controlled substances and left the child in the care of inappropriate caregivers. Furthermore, the father failed to intervene on behalf of the child.” The court declared C.R. a dependent child of the court under subdivision (b) of section 300 and found “[t]here is clear and convincing evidence of the circumstances

stated in W&IC 361 regarding [father].” The court ordered family reunification services and an ICPC assessment for father. The court also ordered supervised visitation for father. Father maintains that the trial court erred in finding that there was a *current* risk of harm to C.R. in placing her with father.

In the trial court, “[s]ection 300 jurisdiction hearings require a preponderance of the evidence as the standard of proof.” (*In re A.M.* (2010) 187 Cal.App.4th 1380, 1387.) When reviewing the sufficiency of the evidence, we examine the entire record for substantial evidence to support the juvenile court’s finding. (*Ibid.*) “We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Instead, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court’s order and affirm the order even if there is other evidence supporting a contrary finding.” (*Id.* at pp. 1387-1388.)

A jurisdiction finding under section 300, subdivision (b) requires evidence establishing that “[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 . . . to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . mental illness, developmental disability, or substance abuse. . . . The

child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.”

There are three prerequisites for a jurisdictional finding under subdivision (b) of section 300: (1) neglect by the parent in one or more of the enumerated forms, (2) causation, and (3) serious physical harm or substantial risk of serious physical harm to the child. (*In re J.O.* (2009) 178 Cal.App.4th 139, 152; *In re James R.* (2009) 176 Cal.App.4th 129, 135.) The third prerequisite ““requires a showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]”” (*J.O.*, at p. 152; see also *In re David M.* (2005) 134 Cal.App.4th 822, 829.)

Father argues the juvenile court erred in sustaining jurisdiction findings against him since there was no showing that, at the time of the jurisdiction hearing, C.R. would be at risk if placed with him. Father no longer had any relationship or contact with mother and he lived in Nevada. We conclude there was sufficient evidence supporting the jurisdiction findings as to father. There was evidence he knew or reasonably should have known mother abused controlled substances, father left C.R. in the care of inappropriate caregivers, and father failed to intervene on behalf of C.R. There was also evidence father knew mother had a history of abusing drugs. He had been involved with mother in a previous juvenile dependency case, in which C.R. was temporarily removed from mother and mother’s parental rights were terminated as to her twins because she had been abusing drugs. During the pendency of the prior juvenile dependency case, father

left mother and moved to Nevada, and C.R. was returned to mother's custody. There was evidence that father neglected C.R. by not staying in close contact with her, as well as mother, for purposes of remaining informed as to where and with whom C.R. was living. Father said C.R. had told him she was living with Ms. H., and he had not been in agreement with this arrangement. Nevertheless, he did not intervene. Because of father's failure to stay informed, father was unaware that C.R. was no longer living with Ms. H. because she had been incarcerated, and that C.R. was living with Mrs. P., whose husband was being investigated for soliciting oral copulation with a minor in the family home. Father also claimed to be unaware that mother had relapsed on drugs, although father conceded he suspected mother was using drugs again. There was a sufficient nexus between father's neglect and substantial risk of physical harm to C.R. in the future, in the event C.R. was not placed with father.

We recognize that, "While past abuse or neglect can certainly be an indicator of future risk of harm, the record of past neglect . . . is not enough to declare a child a dependent of the juvenile court without something more current.[] '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. [Citations.]' [Citation.] '[P]revious acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur. [Citations.]' [Citation.]" (*In re David M., supra*, 134 Cal.App.4th at pp. 831-832.)

Here, there may be little risk of physical harm to C.R. in the future if C.R. is

placed with father, but this had not yet occurred at the time of the jurisdiction hearing. Because C.R. was not living with father, there remained a defined risk of harm that, if C.R. reunited with mother or was placed with someone else other than father, father would neglect C.R., as he had before, by not remaining in close contact with her and intervening if C.R. was neglected by her caretakers. Because CPS's burden of proof establishing jurisdiction is low and there was evidence that father neglected C.R. in the past, we conclude there was sufficient evidence to support the juvenile court's jurisdiction findings of neglect and failure to protect as to father. We recognize that the evidence in support of these allegations is minimal but it is enough for purposes of jurisdiction. It was father's responsibility to do all that he could to make sure that C.R. was properly cared for, even though father lived out of state and mother may have impeded his efforts to maintain contact with C.R.

IV

DISPOSITION ORDER

Father contends the juvenile court's disposition order must be reversed because the court improperly proceeded under section 361, subdivision (c)(1) in ordering C.R. placed in foster care rather than with father. Father argues that because he was a noncustodial parent at the time of C.R.'s detention, the court should have made findings under section 361.2.

Section 361, subdivision (c) provides that "[a] dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and

convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive, . . . [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody. . . .” This provision applies to custodial parents, such as mother. In the instant case, C.R. was removed from mother and father’s custody under section 361.

Section 361.2, subdivision (a) 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.*” (Italics added.) A juvenile court’s determination under section 361.2, subdivision (a) not to place a child with a noncustodial parent requires a finding of detriment by clear and convincing evidence. (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1827; *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.)

Additionally, section 361.2, subdivision (c) requires the juvenile court to “make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).” (§ 361.2, subd. (c).) “[T]he noncustodial parent is presumptively entitled to custody,” when a request is made under section 361.2,

subdivision (a).” (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1133, quoting *In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1292.) “Unlike section 361.5, section 361.2 does not distinguish between an offending and nonoffending parent, and the court applies section 361.2 without regard to the characterization of the parent as offending or nonoffending.” (*In re V.F.* (2007) 157 Cal.App.4th 962, 966.)

Under section 361.2, if the juvenile court places the child with the noncustodial parent, “it may either: (1) order that the parent become legal and physical custodian of the child and terminate jurisdiction; or (2) order that the parent assume custody subject to the supervision of the juvenile court with services provided to either one or both of the parents. (§ 361.2, subd. (b).) The court is specifically required to make either written or oral findings setting forth its basis for its determinations under subdivisions (a) and (b). (§ 361.2, subd. (c).)” (*In re Marquis D., supra*, 38 Cal.App.4th at p. 1821.)

“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 that the children would suffer such detriment [under section 361.2, subdivision (a)]. [Citations.] Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt. [Citation.]” (*In re Luke M., supra*, 107 Cal.App.4th at p. 1426.)

As in the instant case, in *In re V.F., supra*, 157 Cal.App.4th at pages 965-966 and *In re Marquis D., supra*, 38 Cal.App.4th at page 1816, the juvenile court ordered the child removed from the parents without making factual findings under section 361.2 regarding the noncustodial father’s request for placement. The reviewing court in both

cases held that such findings under section 361.2 were required and an implied findings on review were inappropriate. (See *In re Marquis D.*, *supra*, 38 Cal.App.4th at pp. 1825-1827; *In re V.F.*, *supra*, 157 Cal.App.4th at pp. 969, 973 [“Although this record arguably would support a finding that placement with [the noncustodial, incarcerated father] would be detrimental to the children, we believe the better practice is to remand the matter to the trial court where that court has not considered the facts within the appropriate statutory provision”].) In *In re Marquis D.*, the reviewing court also declined to imply findings of detriment. The court stated that it could not determine from the record whether the juvenile court considered that placing the children with the father would be detrimental to them within the meaning of section 361.2, subdivision (a), and questioned whether the evidence supported a finding of detriment since the children were doing well in the care of their noncustodial father. (*Marquis D.*, at pp. 1824-1827.) The court concluded “this is certainly not the clear-cut case in which an appellate court may imply such a finding.” (*Id.* at p. 1827.)

Likewise, in the instant case, the juvenile court was required to proceed as to father’s placement request under section 361.2, subdivision (a), rather than section 361, subdivision (c), because C.R. was not residing with father when the section 300 petition was filed. However, the court failed to make any express findings of detriment under section 361.2 or articulate the basis for not placing C.R. with father when ruling on the disposition. During the disposition hearing, father’s attorney requested the court to terminate the dependency proceedings and order C.R. placed with father under section 361.2 or, alternatively, sustain jurisdiction, place C.R. with father, and order family

maintenance services for father. It is not clear from the reporter's transcript whether the trial court took into consideration section 361.2, when rejecting father's placement request. The minute order for the disposition hearing on June 16, 2011, states that disposition findings were made as to father under section 361, subdivision (c)(1). The record indicates that the court considered C.R.'s placement with father but was reluctant to order placement and allow unsupervised visitation until completion of an ICPC assessment. The reporter's transcript of the disposition hearing is unclear as to whether the court rejected placement with father based on section 361.2 or disregarded section 361.2, concluding it was inapplicable because the court concluded father was an offending parent. We are therefore not satisfied on this record that the trial court adequately explored whether placing C.R. with father would be detrimental to C.R. within the meaning of section 361.2, subdivision (a). Under such circumstances, implied findings are not warranted. (*In re Marquis D.*, *supra*, 38 Cal.App.4th at p. 1825.)

Even assuming the court considered placement of C.R. with father under section 361.2, subdivision (a), "we would be reluctant to imply the court made a finding of detriment based on the evidence presented. Where insufficiency of the evidence is an issue, an appellate court reviews the entire record in the light most favorable to the order and determines whether any substantial evidence supports the conclusion of the trier of fact. [Citations.] However, where the trial court has failed to make express findings the appellate court generally implies such findings only where the evidence is clear. (See, e.g., *In re Andrea G.* [(1990) 221 Cal.App.3d 547,] 554-555 ['ample' evidence supported implied finding and result 'obvious' from the record]; *In re Corienna G.* [(1989) 213

Cal.App.3d 73,] 83-84 [substantial evidence ‘amply’ supported implied finding.]” (*In re Marquis D., supra*, 38 Cal.App.4th at p. 1825.)

Here, there was not ample evidence of detriment and the result is not obvious from the record. The juvenile court was required to apply a clear and convincing evidence standard of proof in determining whether placement with a noncustodial parent would be detrimental. (*In re Marquis D., supra*, 38 Cal.App.4th at p. 1827.) We question whether, viewing the record as a whole, a trial court could reasonably find that there was clear and convincing evidence demonstrating that placement with father would be detrimental to C.R. (*Ibid.*) “In any event, this is certainly not the clear-cut case in which an appellate court may imply such a finding.” (*Ibid.*)

We understand the juvenile court’s reluctance to place C.R. with a noncustodial parent such as father, who had been accused of sexually abusing his own child and a relative, and had not stayed in close contact with his daughter. Nevertheless, we conclude the juvenile court erred in failing to make express findings under section 361.2, subdivision (a), regarding placing C.R. with father at his request. The court was required to place C.R. with father, as a noncustodial parent, unless the court found that placement with father would be detrimental to C.R.’s safety, protection, or physical or emotional well-being. (§ 361.2, subd. (a).) At the time of the disposition hearing, there was insufficient evidence to support such a finding.

Although there was sufficient evidence to support the jurisdictional allegations against father, those findings were based on the lower preponderance of evidence burden of proof, as opposed to the clear and convincing evidence burden applicable to the

disposition findings. Furthermore, the jurisdiction findings concern father's neglect while C.R. was in mother's custody and do not establish that father would neglect C.R. if she were placed with father. The record shows that ever since father received notice of the instant juvenile dependency proceedings, he has made a consistent, concerted effort to have C.R. placed in his home. There does not appear to be any reason not to place C.R. with father, assuming there is a favorable home-evaluation. The record shows that father maintained telephone contact with C.R.; she visited him during the summer of 2009, with visitation in 2010 cancelled because of the investigation of the sexual abuse allegations; he participated in supervised visits, which went well; C.R. enjoyed being with father; father regularly paid child support, including back pay, which amounted to half his salary; and when the instant juvenile dependency proceedings were filed, he immediately requested C.R. be placed with him. In addition, father provided proof he was employed, and had been for a considerable period of time, and was living in a two-bedroom apartment. It appears that father did everything the court requested of him, including drug testing, with negative results, and he attended most of the juvenile dependency proceedings, which required him to travel from Nevada.

As to the sexual abuse accusations against father, by the time of the contested jurisdiction and disposition hearings, the allegations had been fully investigated by law enforcement and the district attorney declined to prosecute the case based on a lack of evidence. A review of the investigative reports indicates the allegations were unfounded. The record also establishes that, if C.R. were placed with father, it was not likely C.R. would be exposed to mother's drug abuse problem since father lived out of state and had

not maintained a relationship or contact with mother. As to concerns that father had abused drugs, there is no evidence that at the time of the disposition hearing, there was any risk of father abusing drugs. Father admitted during a CPS interview on March 9, 2011, that he had tried marijuana in the past but denied any recent drug use. He said he last smoked marijuana shortly after C.R. was born in 1999. CPS reported that father had a positive saliva test for marijuana, which CPS reported occurred during the “initial investigation.” This appears to refer to the investigation during the dependency proceedings in 2000. There is no evidence that father tested positive for drugs or was abusing drugs during the instant juvenile dependency proceedings.

Finally, CPS’s most recent addendum report, stating that father had three active bench warrants and a restricted driver’s license, does not support a finding that C.R.’s placement with father would be detrimental to C.R.’s safety, protection, or physical or emotional well-being. (§ 361.2, subd. (a).) The three warrants were for father’s failure to appear for a traffic violation in 1999, and he had a restricted California driver’s license because of the warrants for failing to appear on the citation.

Based on our review of the record, we conclude substantial evidence simply does not support a finding that C.R.’s placement with father would be detrimental to C.R.’s safety, protection, or physical or emotional well-being. (§ 361.2, subd. (a).) Furthermore, the juvenile court’s disposition order, denying placement of C.R. with father, is not harmless error. Even though, “[h]ere, we do not deal with the termination of parental rights but rather with the initial denial of placement with a noncustodial parent. [T]he trial court’s decision at the dispositional stage is critical to all further proceedings.

Should the court fail to place the child with the noncustodial parent, the stage is set for the court to ultimately terminate parental rights. At all later review hearings, the court may deny return of the child to the parent's physical custody based on a finding supported only by a preponderance of the evidence that return would create a substantial risk of detriment to the child's physical or emotional well-being. (§ 366.21, subds. (e) & (f), [§] 366.22, subd. (a))." (*In re Marquis D.*, *supra*, 38 Cal.App.4th at p. 1829.)

V

ICPC ORDER

The parties are in agreement that the juvenile court erred in ordering ICPC completed as a prerequisite to the court considering placing C.R. with father. CPS nevertheless argues the error does not constitute reversible error because it was invited error and harmless.

During the disposition hearing, the court ordered an ICPC be initiated in Nevada as to father's home. The court indicated that if the ICPC evaluation was favorable, C.R. might be placed with father. While it was reasonable for the court not to order C.R. placed with father until his home was evaluated, ordering an ICPC was inappropriate since it involved a parent. The court more appropriately should have made findings under section 361.2, finding a lack of evidence of detriment in placing C.R. with father, and then ordering placement of C.R. with father, conditioned upon a favorable home evaluation, not an ICPC.

The juvenile court need not comply with the ICPC when placing a child with a noncustodial parent who lives in another state. (*In re John M.* (2006) 141 Cal.App.4th

1564, 1575 [“compliance with the ICPC is not required for placement with an out-of-state parent”]; see also *In re Johnny S.* (1995) 40 Cal.App.4th 969, 977 [“we are persuaded that the ICPC is intended to apply only to interstate placements for foster care and preliminary to a possible adoption, and not to placements with a parent”].) Counsel for father and the CPS, however, suggested during the disposition hearing that it was permissible for the juvenile court to order an ICPC. Father’s attorney requested the court to terminate the juvenile dependency proceedings and order C.R. placed with father, but alternatively suggested that, if the court found jurisdiction, that the court provide family maintenance services to father and order C.R. placed with father after an ICPC was conducted.

The doctrine of invited error “prevents a party from asserting an alleged error as grounds for reversal when the party through its own conduct induced the commission of the error[.]” (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1267.) Having suggested an ICPC assessment, father cannot now complain that the juvenile court ordered one, rather than ordering placement with father, conditioned upon a favorable home evaluation. Nevertheless, even if there was invited error as to ordering an ICPC, there was no invited error as to the juvenile court not ordering C.R. placed with father. Father requested the court to order C.R. placed with him as the noncustodial parent and argued there was no evidence of detriment.

Because the record is unclear as to whether the juvenile court considered placement of C.R. with father under section 361.2, and there is insufficient evidence to support a finding that placing C.R. with father would be detrimental to C.R.’s safety,

protection, or physical or emotional well-being (§ 361.2, subd. (a)), we reverse the disposition order, and remand the matter for a new disposition hearing.

VI

DISPOSITION

The jurisdiction findings and order declaring C.R. a dependent of the juvenile court are affirmed, but the disposition order is reversed with regard to C.R. and father. The disposition order is affirmed in all other regards, as to the other children and parents.

Upon remand, the juvenile court is directed to conduct a new disposition hearing to consider and make findings as to father's request for placement of C.R. in his home under section 361.2.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P.J.

KING
J.