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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

G.R.,

Defendant and Appellant.

E054998

(Super.Ct.No. RIJ1101112)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed with directions.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Pamela J. Walls, County Counsel, and Anna M. Deckert, Deputy County Counsel,  
for Plaintiff and Respondent.

# I

## INTRODUCTION

Father appeals from juvenile court jurisdiction and disposition orders, sustaining jurisdiction over his daughter, S.R. (born in 2004), and placing her with maternal grandparents. (Welf. & Inst. Code, § 300, subd. (b).)<sup>1</sup> Father contends there was insufficient evidence supporting the juvenile court's jurisdictional findings, and the court erred in not placing S.R. with him, since he was a nonoffending, noncustodial parent. In addition, father asserts the visitation orders were deficient and S.R.'s attorney had a conflict of interest in representing S.R. and her older siblings.<sup>2</sup>

We conclude there was substantial evidence supporting the juvenile court's jurisdiction and disposition orders. We agree the visitation orders are improper because they do not specify the frequency or duration of S.R.'s visitation with father. Therefore, on remand, the juvenile court is directed to modify the visitation order on September 29, 2011, by specifying the frequency and duration of father's visitation with S.R. We reject father's other contentions and affirm the jurisdiction and disposition orders.

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

<sup>2</sup> Father has also filed a petition for writ of habeas corpus (case No. E055717), to be considered with the instant appeal. Father's writ petition challenges the September 29, 2011, jurisdiction and disposition orders on the ground his attorney provided ineffective assistance of counsel. We will resolve father's writ petition by separate order.

## II

### FACTS AND PROCEDURAL BACKGROUND

On August 4, 2011, the DPSS received a referral regarding S.R. (seven years old) and her two half-sisters, K.R. (15 years old) and S.Ra. (12 years old), and half-brother, V.H. (10 years old) (the children). It was reported that the children had not eaten that day because there was no food in their home, two of the children (V.H. and S.Ra.) were sick and required medical care, and mother had moved out of the children's home and could not be located.

On August 16, 2011, a social worker visited the children where they had been living since July 2011. The children said they were hungry and did not know where mother was or how to contact her. They had been left alone overnight, without food in the home. K.R. said mother was evicted from their apartment in January 2011, and the children had moved from home to home, staying with friends and relatives. None of the children were attending school. S.Ra., who was 12 years old, had a boyfriend who was 17 years old. K.R. said mother abused drugs. K.R. assumed the role of parent for her siblings for many years but had started going out to visit friends and left S.Ra. to care for the two youngest children. The children were detained in foster care.

The following day the social worker located mother at a friend's home and spoke to her. Mother denied she had neglected the children and abused drugs, but failed to test for drugs upon request. Mother claimed her family had concealed her children from her and she left her children at night to collect cans. Mother had a history of child neglect, with two child neglect allegations in 2005 and at least five in 2010 and 2011. Mother

told the social worker father lived with his wife in Pomona and provided his address but no telephone number. The address mother provided was incorrect.

On August 18, 2011, the Riverside County Department of Public Social Services (DPSS) filed a juvenile dependency petition pursuant to section 300, subdivisions (b) and (g), on behalf of mother's son, V.H (10 years old), and mother's three daughters, K.R. (15 years old), S.Ra. (12 years old), and S.R. (seven years old). The four children were in mother's custody at the time of the juvenile dependency petition. Each child has a different father. S.R. is father's only child with mother. Father has four other children by other mothers. This appeal only concerns S.R.

The DPSS alleged in the juvenile dependency petition that mother had neglected her children, leaving them for extended periods of time, either alone or with various relatives, without provisions. Mother was living a transient lifestyle and abusing drugs. She failed to provide a safe home for her children and enroll them in school. None of the children's fathers lived with mother and her children, nor provided for the children. Eventually S.R.'s father was located but the fathers of the other children were unknown.

### ***Detention Hearing***

At the detention hearing on August 19, 2011, the juvenile court ordered the children removed from mother's care. Father was not present at the hearing. Notice was sent to the address for father provided by mother, which the DPSS discovered was incorrect. The DPSS was unable to locate mother after the detention hearing.

*September 15, 2011, Jurisdiction/Disposition Hearing*

On September 8, 2011, the DPSS filed a first amended petition, which added the allegation that S.R. came within the jurisdiction of the juvenile court under section 300, subdivision (g), because father's whereabouts were unknown and he failed to provide care and support for S.R. The DPSS also filed a jurisdiction/disposition report on September 12, 2011, stating that father had a general neglect allegation in 2005 and an allegation of physical abuse, arising from S.R. falling off a bar stool and fracturing her right tibia while father was feeding her. The children all denied there had been any abuse. S.R. told the social worker she had not seen father since she was three years old, but knew who he was. S.R. said she had not had any recent contact or visits with father.

Father appeared at the jurisdiction hearing on September 15, 2011. The DPSS social worker had not yet spoken to father. Counsel for the DPSS suggested further investigation before proceeding with the hearing. Counsel appointed for father told the court that he had attempted to speak to father but, due to a shortage of interpreters, counsel initially was unable to do so. Counsel eventually was able to speak to father. K.R. told the court she and her siblings did not want to remain in foster care. They wanted to live with their maternal grandparents. The court authorized placement with the maternal grandparents, conditioned upon there being separate beds for each child.

S.R. told the court she wanted visits with father. Her attorney recommended supervised visits. Because of the lack of information about father, the court continued the jurisdiction hearing to September 29, 2011. The court mentioned that it had observed that S.R. did not initially recognize father when she first saw him in court but later ran

over to him and wanted to sit next to him. The children's attorney added that S.R. was scared initially but started to talk to father during lunch. The court authorized supervised visitation between father and S.R.

On September 26, 2011, the DPSS filed a second amended petition deleting allegations that father had failed to make himself available to provide for S.R. and that his whereabouts were unknown. The DPSS had found father's correct address, and sent him notice of the jurisdiction hearing.

***September 29, 2011, Jurisdiction/Disposition Hearing***

The DPSS reported in its addendum report filed on September 29, 2011, that during the hearing on September 15, 2011, father had a one-hour supervised visit with S.R. at the courthouse. He also visited her again on September 23, 2011, at maternal grandparents' home. The social worker reported that on September 22, 2011, she interviewed father at his home in Pomona. Also present was father's oldest daughter, D.R., who was 20 years old. Father wanted her to assist with the transition of placing S.R. with father. Father was living with his ex-wife, with whom he had reunited, and father's other four children. He was working as a fork lift driver.

Father told the social worker he met mother five years ago and had an affair with her while he was married to his ex-wife. As a result of the affair, mother became pregnant with S.R. and father lived with mother, S.R., and mother's other children for about three years. They separated when he got a job in Los Angeles and had to relocate. Mother did not want to move to Los Angeles. She became transient. As a consequence, father was unable to find mother and S.R. He tried to contact them on a number of

occasions but it was difficult, and he lost contact with S.R. Father had not seen S.R. for two years. The only time he had had contact with mother during the past two years was when she appeared at his house and left letters and called, demanding money and threatening to take him to court. Father hoped she would pursue the matter in court because he wanted to make sure the support money went to S.R., not mother.

Father told the social worker he wanted to reestablish a relationship with S.R., and his adult daughter, D.R., and his ex-wife could help him raise her. Father intended to allow S.R. to continue her relationship with her siblings (mother's children) and her maternal grandparents. Father told the social worker he had raised his other children, and believed he did not need reunification services but was willing to do whatever was necessary to reunify with S.R.

The social worker further reported that on September 26, 2011, K.R. called and said she was concerned about placing S.R. with father because S.R. did not have a relationship with father, whereas S.R. and her siblings had always been together, with K.R. filling the role of mother for S.R. K.R. also was concerned that father's ex-wife might be hostile towards S.R. S.R. told the social worker she was not afraid of father and wanted to see him but did not know if she wanted to live with him.

The DPSS recommended in the addendum report that the court sustain the petition allegations and not place S.R. with father at the present time for the following reasons: "[Father] has not been a part of the child's life in over two years, and therefore, he has not had a consistent relationship with her. Therefore, although the Department wants to allow [father] an opportunity to parent his daughter and establish a relationship with her,

there is concern that placing her directly in [his] care could negatively impact the child. It would be in [S.R.'s] best interest to provide services, such as conjoint counseling with her father, before moving her from her siblings whom she has known throughout her life, to a home that she is unfamiliar with.”

At the combined jurisdiction/disposition hearing on September 29, 2011, the juvenile court sustained the allegations in the second amended petition. The only remaining allegation against father as to S.R. was a section 300, subdivision (b), allegation that father was not a member of the household. The court ordered the children removed from their parents and ordered reunification services for mother and father. The court also ordered unsupervised overnight and week-end visitation between father and S.R. Family maintenance services were authorized for father, conditioned upon father complying with his case plan. The juvenile court also found that mother and father’s legal residences were in Los Angeles County (Pomona) and therefore ordered the juvenile dependency case transferred to the Los Angeles County Superior Court. Father was present at the hearing. His attorney had arranged for mother’s attorney to appear specially on his behalf.

Father filed a notice of appeal challenging the findings and orders entered on September 29, 2011.

### III

#### JURISDICTION ORDER

Father contends the DPSS did not meet its burden of proving the jurisdiction allegations against him. The juvenile court sustained the DPSS’s petition allegations that

mother neglected S.R. and her siblings, and the children suffered or were at substantial risk of suffering serious physical harm or illness. Specifically, mother left her children “for extended periods of time during her absence, either alone or with various relatives,” failed to disclose her whereabouts, and failed to ensure appropriate provisions for the children during mother’s absences. In addition, mother abused controlled substances, supervised the children while under the influence, failed to test for drugs, led a transient lifestyle, failed to provide a safe, suitable home for her children, and failed to enroll the children in school. The only allegation found true against S.R.’s father was that he was not a member of the household. The court declared S.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].”

Father maintains that the trial court erred in finding at the jurisdiction hearing on September 29, 2011, that he was an offending parent under section 300, subdivision (b), based on the allegation that he did not make himself available to provide for S.R., whereas he was present at the jurisdiction hearing and requested S.R. placed with him. There was no such error because the DPSS filed a second amended juvenile dependency petition on September 26, 2011, deleting from paragraph b-7 the allegation that father “fails to make himself available to provide adequate food, clothing, shelter, medical treatment, and/or protection for his child, [S.R.]” The only allegation remaining against father was that he “is not a member of the household.”

Father further contends there was insufficient evidence of the juvenile court’s jurisdictional finding because, at the time of the jurisdiction hearing, S.R. would not have

been at substantial risk of future harm if placed with father. 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.” (§ 300, subd. (b).)

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.) 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 apply the substantial evidence standard of review. (*Ibid.*; *In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Citing *In re David M.*, *supra*, 134 Cal.App.4th 822, father argues 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.]” (*Id.* at pp. 831-832.)

The DPSS argues that under *In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261, and section 300, subdivision (b), evidence of a future risk of harm is not always required to sustain jurisdiction. We agree. Section 300, subdivision (b), provides for jurisdiction when the DPSS has established “The child *has suffered, or* there is a substantial risk that the child *will suffer*, serious physical harm or illness, . . .” (Italics added.) This can be established by providing evidence of either past conduct or evidence indicating a risk of future harm. The DPSS’s burden of proof establishing jurisdiction is low.

Here, there was substantial evidence supporting jurisdiction based on mother’s neglect and failure to provide for her children, along with father’s neglect of S.R. by not maintaining contact with her. *In re David M.*, *supra*, 134 Cal.App.4th 822, is distinguishable in that, although the parents had a history of substance abuse and mental problems, there was no evidence the parents were unable to care for or protect their children or that their problems were tied to any actual harm to their children. (*Id.* at pp.

827, 829.) The court in *David M.* therefore concluded there was insufficient evidence supporting jurisdiction because there was no evidence that the parents' problems caused, or created a substantial risk of causing, serious harm to their children. (*Id.* at p. 830.) In the instant case, on the other hand, the evidence showed that mother and father (through his absence) had neglected S.R., and this had exposed her and her siblings to substantial risk of serious physical harm or illness.

Although jurisdiction, as to father, was based solely on the allegation that he was not a member of the household, the jurisdiction findings against mother alone were sufficient to support jurisdiction. A 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 DPSS "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.) This is because "[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 DPSS established jurisdiction based on mother's substance abuse and neglect of S.R., the juvenile court properly found that S.R. came within the jurisdiction of section 300, subdivision (b).

Furthermore, father submitted on DPSS's recommendations that the court sustain the petition allegations supporting jurisdiction, and that the children be removed from their parents' custody, and that the children remain placed with their maternal grandparents.

#### IV

#### DISPOSITION ORDER

Father contends the trial court erred in ordering S.R. placed with her maternal grandparents, rather than with father. Father argues that because he was a noncustodial, nonoffending parent who requested custody of S.R. and was present at the jurisdiction/disposition hearing on September 29, 2011, the court should have made findings under section 361.2, subdivision (a), and placed S.R. with him. After ordering jurisdiction over S.R., the juvenile court made disposition orders, which included removal of S.R. and her siblings from their parents' custody and continued placement together with their maternal grandparents. The court found that section 361, subdivision (c)(1), applied to father, and he had not made any progress toward alleviating or mitigating the causes necessitating placement outside his home. The court authorized unsupervised visitation between S.R. and father, including overnight and weekend visits, conditional upon father's compliance with his case plan.

Section 361, subdivision (c)(1), states in relevant part that a child may not be taken from the physical custody of his or her parents with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of certain specified circumstances, which include: “(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. . . . The court shall also consider, as a reasonable means to protect the minor, allowing a *nonoffending parent* or guardian *to retain physical custody* as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.” (Emphasis added.) A nonoffending parent has a constitutionally protected interest in assuming physical custody, as well as a statutory right to do so, in the absence of clear and convincing evidence that placing the child with the nonoffending parent will be detrimental to the safety, protection, or physical or emotional well-being of the child. (*In re A.A.* (2012) 203 Cal.App.4th 597, 605.)

Father was a noncustodial parent who was the subject of a jurisdictional finding under section 300, subdivision (b). This meant he was not a nonoffending parent within the meaning of section 361, subdivision (c). (*In re A.A.*, *supra*, 203 Cal.App.4th at p. 606.) Even assuming father was a “nonoffending parent,” the juvenile court was required under section 361.2, subdivision (a), to “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. The section goes on to provide that 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 re A.A.*, at pp. 604-605; emphasis added.) “[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.)

#### A. Forfeiture

When a noncustodial parent fails to request custody or placement, section 361.2, subdivision (a), is not applicable. (*In re A.A.*, *supra*, 203 Cal.App.4th at p. 605.) Furthermore, “[f]ailure to object to noncompliance with section 361.2 in the lower court results in forfeiture.” (*Ibid.*) In *In re A.A.*, as in the instant case, the mother did not challenge the jurisdictional allegations against her and did not request custody of her child, A.A., at the time of the disposition. The court in *In re A.A.* held that the juvenile court “did not commit any technical violation of section 361.2. By failing to request custody, mother forfeited the right to be considered for placement as a noncustodial parent.” (*Id.* at p. 606.) Likewise, here, father did not request at the disposition hearing placement of S.R. with him. Rather, father submitted on the DPSS’s recommendations, in which the DPSS recommended placement of the children, including S.R., with the maternal grandparents. Father therefore forfeited the right to be considered for placement

as a noncustodial parent and forfeited on appeal any objection to not being placed with father at the time of the disposition hearing. (*Ibid.*)

*B. Placement with Father under Section 361, Subdivision (a)*

Even if father had not forfeited his right to be considered for placement as a noncustodial parent, the juvenile court did not err in ordering that S.R. remain with her current caretakers, because there was substantial evidence that placing S.R. with father would be detrimental to S.R.'s safety, protection, or physical or emotional well-being. (§ 361.2, subd. (a).) (*In re A.A.*, *supra*, 203 Cal.App.4th at pp. 604-605.) “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 [] the children would suffer such detriment [under section 361.2, subdivision (a)]. [Citations.]” (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426; see also *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1827.)

Here, substantial evidence of detriment to S.R. in placing her with father included evidence that father had not maintained a relationship with S.R. for two years and S.R. told the social worker she was not sure she wanted to be placed with father at that time. S.R. was not familiar with father’s home or current family and had not had any contact with father for two years, other than briefly right before the jurisdiction/disposition hearing. K.R. expressed concern about placing S.R. with father under such circumstances. K.R. also noted that father’s current wife had a great deal of animosity toward S.R.’s mother, which K.R. feared might be directed toward S.R.

Furthermore, K.R. and her siblings had always been together, and K.R. had been like a mother to S.R., helping to raise her. K.R. also said that, although father had briefly lived with S.R., after he left the family, he had not provided for S.R. or had any relationship with her. Evidence of these circumstances was sufficient to support a finding of detriment.

Father cites *In re Z.K.* (2011) 201 Cal.App.4th 51, for the proposition that the DPSS did not meet its burden of proving by clear and convincing evidence that S.R. would be harmed if father was given custody of S.R. In *In re Z.K.*, the father of Z.K., an infant, disappeared with Z.K. (*Id.* at p. 55.) After five years of persistently searching for Z.K., the mother found Z.K. She discovered over the internet that his father had been arrested and Z.K. had been placed in foster care. By the time the mother contacted the department of social services to request custody of Z.K., the juvenile dependency proceedings had progressed to the stage of the section 366.26 hearing (.26 hearing). The juvenile court terminated the mother's parental rights and ordered a permanent plan of adoption. (*Ibid.*) The court in *Z.K.* reversed the order terminating parental rights, holding that, "by terminating her parental rights without finding it would be detrimental to the minor to be placed in her custody, the juvenile court violated mother's constitutional right to due process of law, which is rooted in her fundamental interest in the care, companionship, and custody of her child." (*Id.* at pp. 55-56.)

*In re Z.K.*, *supra*, 201 Cal.App.4th 51, is factually and procedurally inapposite. *Z.K.* involved a .26 hearing, during which the juvenile court terminated the mother's parental rights and ordered her child placed for adoption. In addition, in the instant case,

there was substantial evidence that placing S.R. with father at the time of the disposition hearing, without any transitional services, counseling or opportunity for S.R. to reestablish a relationship with father, would have been detrimental to S.R. The juvenile court appropriately ordered S.R. to remain in her current home with her maternal grandparents and siblings, but also ordered that father receive unsupervised visitation and reunification services to assist in reestablishing his relationship with S.R. Unlike in *In re Z.K.*, *supra*, 201 Cal.App.4th 51, the juvenile court in the instant case was not precluded from ordering S.R. placed with father in the future, after father reestablished a relationship with S.R. and S.R. was comfortable moving into father's home.

We conclude there was substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that S.R. would suffer detriment at the disposition stage, if she was removed from her maternal grandparents and siblings, and placed with S.R., without having had any opportunity to reestablish a relationship with father. (*In re Luke M.*, *supra*, 107 Cal.App.4th at p. 1426.)

## V

### VISITATION ORDERS

Father contends the visitation orders on September 15 and 29, 2011, were an abuse of discretion because the orders lacked sufficient specificity as to the frequency and duration of father's visitation with S.R., and therefore constituted an improper delegation of authority to the caregivers. The DPSS argues father forfeited his objection by not raising it in the lower court.

At the initial jurisdiction/disposition hearing on September 15, 2011, the juvenile court ordered the children placed together with their maternal grandparents. During the hearing, the children's attorney told the court S.R. wanted to see father, and supervised visitation would be fine. The DPSS did not object. The juvenile court made the following order: "The court will modify its previous order and authorize visitation between [S.R.] and her father, supervised by the Department or by a responsible adult chosen by the Department. Or if the Department deems appropriate, the grandparents may supervise."

At the jurisdiction/disposition hearing on September 29, 2011, the juvenile court ordered unsupervised visitation between S.R. and father, as follows: "[T]he court will . . . authorize unsupervised visitation between father . . . and [S.R.] to include overnight and weekend visitation based upon compliance with the case plan." Father appeared at the hearing and was represented by mother's attorney, whom father's attorney had arranged to appear specially on his behalf.

Despite father's failure to object to the visitation order in the juvenile court, we will address the issue here, since father's objection to the visitation order presents an important issue, which may arise in this case in future proceedings, unless addressed in this appeal. (See *In re S.B.* (2004) 32 Cal.4th 1287, 1293 and *In re M.R.* (2005) 132 Cal.App.4th 269, 272 [Fourth Dist., Div. Two] [an appellate court has discretion to excuse forfeiture when the case presents an important issue].)

The visitation order on September 29, 2011, as well as the September 15, 2011, order, is deficient in that it does not specify the minimum or maximum frequency or

duration of visitation. In effect, the order allows visitation whenever the maternal grandparents consent to S.R. visiting with father. Such an order is an improper delegation of authority to S.R.'s caretakers to determine the frequency and duration of visitation. As this court explained in *In re M.R.*, *supra*, 132 Cal.App.4th at page 274, "Because the trial court was required to make a visitation order unless it found that visitation was not in the children's best interest, it could not delegate authority to the legal guardian to decide whether visitation would occur. [Citation.] The court may delegate authority to the legal guardian to decide the time, place, and manner in which visitation will take place. [Citation.] The visitation order in this case . . . left every aspect of visitation, other than supervision, to the discretion of the legal guardian. As such, the order was an improper delegation of the judicial function and therefore an abuse of discretion. [Citation.] Accordingly, on remand the **trial court** must specify not only that mother has a right to visit [the children], but must also specify the frequency and duration of those visits."

As in *In re M.R.*, in the instant case, the September 29, 2011, visitation order failed to specify the frequency and duration of S.R.'s visits with father. Accordingly, on remand the trial court must specify the frequency and duration of court-ordered visitation. (*In re M.R.*, *supra*, 132 Cal.App.4th at p. 274.)

## VI

### REPRESENTATION OF ALL FOUR CHILDREN

Father contends S.R. was not properly represented because she should have had separate counsel rather than being represented by the same attorney who represented her

siblings. Father asserts that separate representation was required because there was a conflict between S.R.'s interest in being placed with father and the interests of her siblings in placing S.R. with them. S.R. had expressed a desire to visit father, whereas K.R. had indicated to the social worker that S.R. should not be placed with father because S.R. and her siblings had always been together and father's ex-wife might mistreat S.R.

#### A. *Standing*

We first address the DPSS's contention father does not have standing to object to S.R.'s representation. "Generally, parents can appeal judgments or orders in juvenile dependency matters. [Citation.] However, a parent must also establish she is a 'party aggrieved' to obtain a review of a ruling on the merits. [Citation.] Therefore, a parent cannot raise issues on appeal from a dependency matter that do not affect her own rights. [Citation.] Standing to appeal is jurisdictional. [Citation.]" (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703.)

In *In re Frank L.*, cited by the DPSS for the proposition father has no standing to object to S.R.'s representation, the court held that the parents did not have standing to object to issues relating to their child's rights to visit siblings or grandparents. The court explained: "The interest of siblings or other relatives in their relationship with the minor is separate from that of the parent. [Citation.] Therefore, a parent has no standing to raise an issue related to the minor's right to visit his siblings. [Citation.]" (*In re Frank L., supra*, 81 Cal.App.4th at p. 703.)

*In re Frank L., supra*, 81 Cal.App.4th 700, is distinguishable from the instant case because, here, S.R.'s representation potentially affected father's rights to have S.R.

placed with him, as opposed to S.R. remaining with her siblings and maternal grandparents. As noted in *In re Candida S.* (1992) 7 Cal.App.4th 1240, 1252, “a parent has standing to assert his or her child’s right to independent counsel because independent representation of the children’s interests impacts upon the parent’s interest in the parent-child relationship. [Citations.]” (*Ibid.*) Here, father has standing to raise the conflict of interest objection because he had a stake in the parent/child relationship and the failure of the children’s counsel to request placement of S.R. with father potentially affected his relationship with S.R.

### *B. Conflict*

Father argues the conflict in representing S.R. and her siblings consisted of K.R. wanting S.R. and her siblings to remain together, and S.R. wanting to be with father. ““In any case in which it appears to the court that the minor would benefit from the appointment of counsel the court shall appoint counsel for the minor . . . .”” (*In re Candida S., supra*, 7 Cal.App.4th at p. 1252, quoting former section 317, subd. (c).) “[T]he right to independent counsel in dependency cases is purely statutory, not of constitutional dimension, and subject to harmless error analysis upon review.” (*Ibid.*) “The appointed counsel may ‘not represent another party or county agency whose interests conflict with the minor.’ (§ 317, subd. (c).)” (*Ibid.*)

While there may be a potential conflict in representing both S.R. and her siblings, the record on appeal does not show an actual conflict existed or that it is reasonably likely a conflict would arise in the future. (Cal. Rules of Court, rule 5.660(c)(1)(A)-(B).) As noted in *In re Candida S., supra*, 7 Cal.App.4th at p. 1252, “The test is not whether there

is a ‘potential conflict of interest’ before a juvenile court is required to appoint separate counsel for a minor. The test is whether there is an ‘actual conflict of interest.’” In *In re Candida S.*, the court concluded that, although there may have been a potential conflict among siblings regarding visitation, the facts did not demonstrate an actual conflict requiring independent counsel for the siblings. The *Candida S.* court noted that the only evidence presented was “that some of the children wanted visitation and others did not. However, the obligation of counsel for a dependent minor is to pursue whatever is in the minor’s best interest. This may or may not be what the minor wishes. Nothing would preclude counsel from informing the court that one child wants visitation and another does not. It would then be up to the court to determine whether there should be any visitation and, if so, with whom, the frequency and length of visitation. [Citation.] In the absence of any further facts, nothing in this record rises to the level of an actual conflict of interest requiring appointment of independent counsel.[]” (*Id.* at p. 1253.)

In the instant case, K.R. expressed concern that it was not in S.R.’s best interest to be placed with father at the time of the jurisdiction/disposition hearing, whereas S.R. had said she wanted to visit father. The evidence does not demonstrate an actual conflict in interest between S.R. and her siblings. K.R. wanted what was best for S.R. and there is no evidence that K.R. was opposed to S.R. reuniting with father and ultimately being placed with him. K.R. merely expressed her concerns about removing S.R. from her current home without S.R. first establishing a relationship with father. In addition, there was evidence that K.R. did not want to continue to parent S.R. or her other siblings. She

stated she was tired of caring for her siblings and left the two youngest siblings with S.Ra., so that K.R. could visit her friends.

### *C. Harmless Error*

Even if the failure to appoint independent counsel was error – a position we do not take – the failure would be harmless with respect to S.R.’s placement at the time of the jurisdiction/disposition hearing. “[F]ailure to appoint counsel for a minor in a freedom from parental custody and control proceeding does not require reversal of the judgment in the absence of miscarriage of justice. [Citation.]” (*In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 567, quoting *In re Richard E.* (1985) 21 Cal.3d 349, 355.) The juvenile court found “nothing which independent counsel for the minor might have done to better protect [minor’s] interests. The court made its judgment with full knowledge of family relationships affecting [the father and minor], noting particularly the very favorable manner in which [the father’s] other children had developed notwithstanding his long absence from the family. It thus appears the court had before it all factual matters which may have persuaded it that [the minor’s] interests would be best served by not depriving [the father] of custody.” (*In re Elizabeth M.*, at p. 567, quoting *In re Richard E.*, at pp. 355-356.)

The juvenile court’s failure to appoint independent counsel for S.R. did not adversely affect her rights and interests in being placed with father at the time of the jurisdiction/disposition hearing. There was overwhelming evidence that it would have been detrimental to S.R. to order S.R. placed with father at that time. Father has failed to demonstrate prejudice in S.R. not being represented by independent counsel.

VII

DISPOSITION

The most recent visitation order, entered on September 29, 2011, is reversed and the case is remanded to the juvenile court with instructions to make a new visitation order that specifies the frequency and duration of father's visits with S.R. The jurisdiction and disposition orders entered on September 29, 2011, are affirmed in all other regards.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON  
J.

We concur:

RAMIREZ  
P. J.

RICHLI  
J.