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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.P. et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.P.,

Defendant and Appellant.

E064670

(Super.Ct.No. SWJ1400881)

OPINION

APPEAL from the Superior Court of Riverside County. Timothy F. Freer, Judge.

Affirmed.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and Kristine Bell-Valdez, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother's son, D.P. (two and a half years old), and daughter, N.P. (four months old), were removed from mother's sole custody after D.P. climbed out a bedroom window and was found wandering around an apartment complex while mother was napping. Mother's home was filthy and D.P. and N.P. were malnourished and suffered from general neglect. The children had different fathers who had never seen the children. In a previous appeal in this case (first appeal),¹ mother challenged the jurisdiction and disposition orders as to D.P., and this court affirmed.

At the contested six-month review hearing (six-month hearing), the juvenile court terminated jurisdiction over D.P. and issued family law custody orders granting D.P.'s father (James) sole physical custody, joint legal custody, and supervised visits for mother. The court ordered N.P. placed with her father (Michael) and transferred N.P.'s case to Santa Clara County, where Michael lived.

Mother appeals the six-month hearing order placing N.P. with Michael instead of returning N.P. to mother's custody. Mother argues the court was compelled to return N.P. to mother under Welfare and Institutions Code section 366.21, subdivision (e)(1),² because she complied with her case plan and there was insufficient evidence that

¹ *In re D.P.* (Jan. 14, 2016, E063040) (nonpub. opn.).

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated. Subdivision (e)(1) of section 366.21 is cited hereinafter as section "366.21(e)(1)."

returning N.P. to mother posed a substantial risk of detriment to N.P. Mother also challenges the order transferring N.P.'s case to Santa Clara County, because it will make it difficult for her to visit N.P. Mother appeals the order imposing monitored visitation as well. Mother argues she has made excellent progress and therefore there was no factual evidence justifying requiring supervised visitation. We reject Mother's contentions and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND³

A. Detention and Petition

Mother's two children, D.P. and N.P., came to the attention of the Riverside County Department of Public Social Services (DPSS) when the police notified the DPSS that one of mother's neighbors had found D.P. wandering barefoot in an apartment complex parking lot next to the complex where mother lived. The neighbor called the police around 1:30 p.m. on November 9, 2014. About an hour later, mother realized D.P. was missing and contacted the police.

Mother told the officer she suffered from depression that is "debilitating if she does not take medication" and from insomnia such that she "cannot go to sleep without a sleeping pill." Mother said she forgot to take her medication the previous evening because she had stayed up the entire night working on a research paper. She took her

³ This summary of facts, up through the jurisdiction/disposition hearings, is taken from the factual statement included in the first appeal. The remainder of the facts are taken from the record in the instant appeal (second appeal).

medication around 8:00 a.m. that morning. Soon afterward she “inadvertently” fell asleep in her bedroom with D.P. Her bedroom door was closed, but she left her window open. When she woke up at around 2:30 p.m., D.P. was not in the room and the window screen had been torn open. The officer inspected mother’s apartment. It was in disarray. The officer contacted DPSS and requested that a social worker visit the apartment.

The social worker reported in the detention report that mother’s apartment was dirty and lacking in adequate food supplies. There was very little food in the kitchen, opened alcoholic beverages on the shelves, and not enough formula remaining to make a single bottle. Mother retrieved from her car an “emergency” supply of formula, which contained enough formula to make one and a half bottles. Mother told the social worker she had been diagnosed with depression, Attention Deficit Hyperactivity Disorder (ADHD), generalized anxiety disorder, and Posttraumatic Stress Disorder (PTSD). She said she used to take Klonopin and Trazodone but was currently “only allowed to take Abilify and Zoloft” because of her recent pregnancy with N.P. Mother also reported she suffered from insomnia and would take her medication at night along with Tylenol PM. She stated she had forgotten to take her medication the previous night because she was working on a research paper. She had stayed up all night working on the paper, then took her medication in the morning, and settled down for a nap with her children around 9:00 a.m.

Mother said this was the first time D.P. had ever gotten out of her apartment. Mother admitted D.P. had previously climbed onto the nightstand underneath her bedroom window but had never tried to climb out the window. Mother reported that D.P.

was extremely energetic and she had a very difficult time controlling him. When the social worker observed that D.P. appeared to be developmentally delayed, mother replied that she had thought about having him assessed but had not had a chance to do so.

The social worker spoke with a neighbor who said he was familiar with mother's family. He had often heard D.P. playing during "all hours of the night." DPSS also contacted D.P.'s biological father, James, who told the social worker that D.P. was the result of a brief encounter with mother. Father did not learn of D.P.'s birth until father was asked to take a paternity DNA test two years earlier. Ever since, he had been paying child support and fighting mother for custody, but had had difficulty contacting her. He had hired a private investigator but every time he located mother, she would "disappear."

The social worker removed both children from mother on November 9, 2014, and performed full body checks on them. N.P.'s legs were covered in a rash. N.P. felt "extremely light" and her head "bobble[d] dangerously" when held because she could not support its weight. D.P. also appeared to be underweight and developmentally delayed. D.P.'s front teeth were decayed and he expressed discomfort when eating. The social worker believed that both children had been neglected. The following day, Riverside County Regional Medical Center's Child Abuse and Neglect (CAN) Team performed emergency forensic examinations on both children and determined that the children were underweight. N.P. had a severe diaper rash, and D.P. suffered from mild speech delay and his front two teeth were decayed. He appeared to suffer pain when chewing. The CAN Team had "grave concerns" regarding the children's development and care. The team believed both children had been "nutritionally neglected."

On November 12, 2014, DPSS filed a juvenile dependency petition on behalf of both children under section 300, subdivision (b). The petition alleged mother had neglected the health, safety, and well-being of the children, in that D.P. was found wandering the neighborhood for several hours without adult supervision; mother's home was in disarray, with an inadequate supply of food for the children; D.P. had severe tooth decay; N.P. had severe diaper rash; and both children appeared malnourished. In addition, the petition alleged mother had unresolved mental health issues and was limited in her ability to provide the children with a safe and stable home. The children's fathers allegedly failed to provide for their children. N.P.'s father's whereabouts was unknown. These allegations were later stricken from the petition, after DPSS located the children's fathers. The second amended petition alleged N.P.'s father, Michael, abused controlled substances, thereby limiting his ability to care and provide for N.P.

At the detention hearing, the court found DPSS had demonstrated a prima facie showing that the children were at substantial risk of serious physical harm under section 300, subdivision (b), and ordered them detained and placed in foster care.

B. Postdetention

The DPSS interviewed Michael by phone on December 2, 2014. Michael informed the social worker that mother became pregnant with N.P. after Michael and mother had "a brief encounter." When mother became pregnant with N.P., she told Michael and asked for child support. Michael told the social worker he had never met N.P. Mother had moved away from where he lived, making it difficult for him to see N.P. Michael paid mother \$238 a month for child care for N.P. Michael was very upset

to hear N.P. had been found in a very poor condition. He had been led to believe she was very healthy. Michael admitted he had abused drugs (speed), including as recently as a month ago. He stopped abusing drugs when he became involved in the instant juvenile dependency case. Michael said he had completed a drug treatment diversion program in the past and attended Alcoholics Anonymous/Narcotics Anonymous (AA/NA) meetings. He was currently living with his mother and had full-time employment with his employer of 28 years as a heavy equipment operator. Michael wanted N.P. placed with him but if that was not possible he requested her placed with his nearby sister.

While in foster care, the children gained significant weight, N.P.'s severe diaper rash healed, and N.P.'s muscle weakness resolved. During supervised visits, mother reportedly would pay attention only to D.P. and ignored N.P. The foster parents had to remind mother to change N.P.'s diapers and mother never thought to feed her. Mother often spent time talking or playing games on her phone instead of interacting with the children and attending to their needs. On the other hand, visits with D.P.'s biological father, James, were going very well.

Mother's case plan required her to complete a parenting program, individual counseling, a psychological evaluation, and a medication evaluation, and submit letters to the court on various parenting issues. Instead of participating in a psychological evaluation with Dr. Suiter, the court-appointed evaluator, mother hired her own, independent psychiatrist, Dr. Meyer. Dr. Meyer reported that mother's mental health was "within normal limits" and there was no indication her mental health issues would impair her ability to parent.

C. The Jurisdiction and Disposition Hearings

During the jurisdiction hearing on February 6, 2015, mother denied she suffered from depression, anxiety, ADHD, and PTSD. She also did not remember telling the police officer that her depression was “debilitating.” When the court asked mother why she was taking medication for depression and anxiety if she did not suffer from those conditions, she replied that she does not have the conditions because her medication is “extremely effective” and allows her to “handle everyday change and stress very well.”

After hearing testimony, the court sustained the petition allegations and found that the children came within section 300, subdivision (b). The court concluded there was overwhelming evidence that mother had failed to adequately supervise D.P., observing that mother’s behavior “demonstrates to the Court that there’s at least criminal negligence involved.” The court further found that mother’s testimony reflected that she did not accept that she had a mental disability requiring her to take medication. The court noted mother’s mental health issues affected her ability to protect D.P., because her medication caused her to “become unconscious to the point that a two-year-old was able to leave her residence.”

At the disposition hearing, the court ordered D.P. and N.P. removed from mother’s custody and directed DPSS to provide mother with reunification services. The court ordered D.P. released to his biological father’s care, with family maintenance services. Mother was ordered to complete a parenting program, participate in individual counseling, schedule an appointment for a medication evaluation, take all of her prescribed medication, and participate in “medical monitoring to ensure proper dosage

and effectiveness.”

D. Section 388 Petitions

In June 2015, Michael filed a section 388 petition requesting unsupervised visits with N.P. and placement of N.P. with his sister (paternal aunt) in Santa Nella, California. Michael alleged he had completed an online parenting course and a three-month substance abuse program. He also had visited N.P. as much as possible, given his residence was in San Jose. Attached to the section 388 petition was a favorable report from Michael’s substance abuse treatment provider stating that Michael had had no positive drug tests and he intended to continue attending AA/NA meetings.

In June 2015, mother filed a section 388 petition as to both children, requesting unsupervised visits, increased visitation, and an order returning N.P. to mother’s custody. Mother alleged she had complied with all of the social worker’s directives and supervised visits had gone well. Attached to mother’s petition was a psychological assessment report by Dr. Suiter, dated February 27, 2015, stating that psychological testing of mother revealed she had “great difficulty being open and honest in completing the testing.” As a consequence, the test results were deemed invalid because of her heightened attempt to present herself favorably. Dr. Suiter further reported that “[t]he available personality data did not indicate she likely has any affective dysfunction or significant characterological traits. However, she is likely to experience heightened depression and anxiety. Her responses on a subjective parenting measure were fairly adequate in describing how to manage a wide range of situations with children and adolescents.” Dr. Suiter stated that mother’s difficulty being open and honest with the testing raised concern and did “not

allow for a full measure of reassurance regarding her emotional and psychological functioning.” Dr. Suiter concluded mother was able to adequately care for her children but it was important she continue to take her prescribed medication, particularly her antidepressant medications.

In response to the section 388 petitions, DPSS filed a report stating that none of the parents had successfully completed their case plans, although mother and Michael had attempted to address the issues that had led to the juvenile dependency petition. Mother had regularly visited the children. The social worker acknowledged mother’s “increased stability” and that she had “gained insight and is learning to ask for help and accept help. There is no doubt [mother] loves her children and wants to do what is best for them. [Mother] made progress towards addressing the issues that brought her to the attention of the Court.” The social worker, however, concluded mother “has not yet fully addressed her mental health concerns and her parenting issues.”

DPSS reported that, although Michael had completed a 12-hour online parenting course, it was geared towards divorcing parents and did not include subject matter testing. Michael was told he needed to take a parenting course that focused on parenting children and to take it in person. Michael completed a 12-session substance abuse program and had supervised visits with N.P. two or three times a month. The visits went well.

In July 2015, Michael and mother withdrew their section 388 petitions.

E. Six-Month Hearing

DPSS reported in its six-month status review report filed in July 2015, that D.P.’s

father, James, was working fulltime in his family's tow truck business and living with his girlfriend whom he intended to marry. He was divorcing his first wife, with whom he shared custody of their daughter. D.P. was doing well in James's home and had bonded with James.

Mother reportedly had maintained her residence, was working towards her master's degree, and was employed by an escrow company. Her therapist reported that mother was making good progress towards her treatment goals. Mother reported she was medication compliant. Mother stated she believed she had accepted responsibility for removal of her children and wanted both children returned to her. Mother's visits with D.P. were no longer monitored. However, DPSS received a report that mother permitted D.P. to "drink some of her Red Bull energy drink . . . as a reward for going to the bathroom" (the Red Bull incident). In addition, when visiting D.P., mother gave D.P. sugary snacks, even though D.P.'s dentist had requested D.P. not be given any sugary snacks because of his previous tooth decay (sugary snack incident). Mother argued with the visitation monitor that she could give D.P. the snacks because the dentist's note did not expressly prohibit them.

Michael was working as a heavy equipment operator. He lived with his mother, near the paternal aunt's home. Michael had a 20-year-old conviction for drug possession but said he had stopped using cocaine and crank when he became involved with the DPSS. His hair follicle test in July 2015 was negative. Michael had unmonitored visits with N.P. Visits had gone well. N.P. was healthy, happy and adjusting well to her foster home. The social worker concluded that mother and Michael had "made some strides to

stabilize their lives” but “they have not fully complied with the case plan.” DPSS believed N.P. could be returned to one of her parents within six months but DPSS had “not received any information . . . that the issues that brought the family before the Court have been alleviated or that it is safe to return the child at this time.” The DPSS report acknowledged that the “parents have mostly complied with their case plan requirements” but wanted to confirm Michael’s substance abuse issues and mother’s mental health issues had been adequately addressed. DPSS believed it was premature to reunify N.P. with mother.

In August 2015, DPSS filed an addendum report recommending the court authorize placement of N.P. in Santa Clara County with N.P.’s paternal aunt, as reunification with Michael was more likely than with the mother. DPSS’s recommendation as to D.P. remained the same, with the exception DPSS recommended monitored visits for mother upon termination of jurisdiction over D.P. The social worker reported that, when discussing the Red Bull incident with mother, mother said she was “not aware of the warning dangers” of such energy drinks.

DPSS further reported that mother was no longer seeing a psychiatrist. Instead, her primary care physician was prescribing her medication. It had been two months since she had seen him. She was scheduled to visit him in four months. Mother told DPSS she continued to take her prescribed medication for anxiety and depression but, because mother was no longer seeing the psychiatrist, DPSS was unable to confirm her compliance. DPSS changed mother’s visits back to supervised visits until her mental health compliance could be verified. DPSS stated that, because of its concern about

mother's ability to care for the children, particularly in light of the Red Bull incident and mother's unawareness of the danger of giving such drinks to a child, DPSS was placing N.P. in paternal aunt's home, with the ultimate goal of placing N.P. with Michael. The social worker suggested a "parent partner" for mother, a "refresher parenting course," and an updated psychological evaluation.

Mother filed a six-month review hearing trial brief. She requested custody of both children, opposed placing N.P. so far away with paternal aunt, and opposed termination of jurisdiction over D.P. Mother maintained she had fully complied with her case plan and visitation should not be supervised merely because of the Red Bull incident. At the six-month review hearing in August 2015, the juvenile court approved two overnight, unmonitored weekend visits for Michael with N.P., and set a contested six-month review hearing.

In September 2015, DPSS filed an addendum report stating that DPSS had changed some of its recommendations. DPSS continued to recommend that the court award physical custody of D.P. to James in Bakersfield, and joint legal custody to mother and James. DPSS reported as to N.P. that Michael planned to move out of his mother's home and in with his girlfriend in September 2015. Mother reported she was taking another parenting course, participating in weekly therapy, taking her psychotropic medications, and seeing a psychiatrist for medication management. Mother's visits were still supervised. DPSS changed its recommendation as to N.P. after Michael had several unmonitored visits with N.P., including two overnight visits, and Michael had received a positive home evaluation. The DPSS recommended placing N.P. with Michael, along

with family maintenance services for Michael, continuing reunification services and visitation for mother, and transferring N.P.'s case to Santa Clara County.

DPSS stated in its September addendum report that, although mother had made progress in addressing her mental health and parenting issues, "she has not fully complied with the Case Plan, and the Department has not received any information to indicate the issues that brought [mother] before the Court have been eliminated." DPSS added that the Red Bull incident reflected that mother's mental health issues and parenting skills "continue to limit her ability to adequately care for and supervise her children." DPSS therefore concluded it was not safe to return N.P. to mother's care. DPSS noted that mother's "timeliness of reunification" had "expired and there is not a substantial probability" of N.P. returning to mother's care.⁴

DPSS concluded that N.P.'s father, Michael, on the other hand had "made significant stride[s] towards stabilizing his life." He had refrained from using drugs, successfully completed an outpatient substance abuse treatment program, had agreed to continue to address his substance abuse issues, had consistently visited N.P., had obtained suitable housing, and had demonstrated an ability to care for N.P. Therefore DPSS recommended N.P. be immediately placed with Michael, with family maintenance

⁴ Section 361.5, subdivision (a)(1)(B), provides: "For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months from the date the child entered foster care as provided in Section 361.49 unless the child is returned to the home of the parent or guardian."

services for Michael.

As recommended by DPSS, during the six-month hearing on September 21, 2015, the juvenile court awarded James sole physical custody of D.P., shared legal custody to James and mother, supervised visitation of D.P. for mother, and termination of D.P.'s juvenile dependency case. As to N.P., the court ordered N.P. placed with Michael, with family maintenance supervision. The court ordered reunification services for mother and supervised visitation with N.P. in Santa Clara County, on the second and fourth Sunday of the month. The court transferred N.P.'s case to Santa Clara County.

The juvenile court stated during the hearing that mother "had a lapse in judgment with respect to an energy drink" but other than that, mother was "doing well." The court acknowledged mother had been working hard at reforming and progressing. "She is on her way, and she's doing what she needs to be doing but . . . also, the fathers have been working hard. So there is no loser here. . . . The fathers are doing well." The court concluded "Everybody is doing what they should be doing. And so the Court has to make a decision as to where [to place] the children – and what's in the best interests . . . of the children." The court indicated the fathers were ahead of mother in the reunification process.

The court explained that it was placing the children with their fathers rather than mother: "So the Court has to make a decision based on what I see before me at this time, what's in the best interests of the children, and . . . follow the [DPSS] recommendation – not notwithstanding the efforts that mother has made and that the fathers are at this point right now where they are doing well, but the Court believes it should in its discretion

follow the recommendation.” The court reiterated that the “[e]xtent of progress made by the mother toward alleviating or mitigating cause necessitating placement has been adequate but incomplete in that mother has failed to make substantial progress or to complete the case plan.”

In the instant appeal, mother’s second appeal in this case, mother challenges the six-month hearing orders on September 21, 2015, as to both children.

III

DENYING RETURN OF N.P. TO MOTHER

Mother challenges the six-month hearing orders as to N.P. on the ground there was insufficient evidence supporting the juvenile court’s placement of N.P. with N.P.’s father, instead of returning N.P. to mother.

A. Law Applicable to Six-Month Review Proceedings

As explained by our high court in *In re Marilyn H.* (1993) 5 Cal.4th 295, 306 (*Marilyn H.*), “The federal and state Constitutions guarantee that no state shall deprive any person of life, liberty or property without due process of law. [Citation.] A parent’s interest in the companionship, care, custody and management of his children is a compelling one, ranked among the most basic of civil rights. [Citation.] Likewise, natural children have a fundamental independent interest in belonging to a family unit [citation], and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that which allows the caretaker to make a full emotional commitment to the child. [Citation.] The interests of the parent and the child, therefore, must be balanced.”

California’s juvenile dependency scheme balances the interests of the parents and children by building into the dependency scheme significant safeguards, including requiring review hearings at which services and progress are reviewed. (§§ 366.21, 366.22; *Marilyn H.*, *supra*, 5 Cal.4th at pp. 307-308.) “The juvenile court must review the case at least once every six months. (§ 366.) At the dispositional hearing, and at each review hearing prior to permanency planning, there is a statutory presumption that the child will be returned to parental custody. . . . At 6-, 12-, and 18-month review hearings the juvenile court must return the child to the custody of the parent unless it determines, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child’s physical or emotional well-being. (§§ 361, subd. (b), 366.21, subds. (e) & (f), 366.22, subd. (a).)” (*Id.* at p. 308.)

“The social worker shall have the burden of establishing that detriment.” (§ 366.21(e)(1).) “Regardless of whether the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental.” (§ 366.21(e)(2).) We apply the substantial evidence standard of review on appeal. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.)

B. Substantial Risk of Detriment to N.P.

Mother contends there was insufficient evidence to support a detriment finding that N.P. could not be safely returned to mother’s care. Mother also argues the court failed to consider whether it was required to return N.P. to mother under section 366.21(e)(1), before considering placement with N.P.’s noncustodial parent, Michael.

Section 366.21(e)(1) provides that, in making its determination during a six-month review hearing, the juvenile court shall review and consider the social worker's report and recommendations, and "shall consider the efforts or progress, or both, demonstrated by the parent . . . and the extent to which he or she availed himself or herself of services provided." (§ 366.21(e)(1).) The record shows that the juvenile court complied with this requirement. The court stated, when making its findings, it reviewed the record as a whole, including DPSS's June, July, August and September 2015 review reports, addendums, attached documents, parents' trial briefs and attachments, and exhibits submitted by mother. The court indicated that, based on its review of these documents, it found by a preponderance of the evidence, that the return of N.P. to mother's physical custody would create a substantial risk of detriment, and that DPSS had made reasonable efforts to return N.P. to mother by providing reasonable services designed to aid her in overcoming the problems that led to removal. Those problems included general and nutritional neglect of the children and mother's mental health issues.

The court acknowledged that during the six-month hearing mother was "working hard" on her case plan and "doing well" but the Red Bull incident showed a "lack of judgment." The court noted that the children's fathers had also done very well in unifying with the children and had made greater progress than mother in doing so. The court stated it intended to exercise its discretion in following DPSS's recommendations and concluded it was in the children's best interests that they reside with their fathers.

The court did not abuse its discretion in ordering N.P. placed with Michael, since there was substantial evidence supporting a reasonable finding that return of N.P. to

mother would create a substantial risk of detriment to N.P.'s physical or emotional well-being. (§ 366.21(e)(1); *Marilyn H.*, *supra*, 5 Cal.4th at pp. 307-308.) Such evidence included, not only evidence of the Red Bull incident two months before the hearing but also evidence mother had disregarded D.P.'s dentist's instructions not to give D.P. sugary snacks because of D.P.'s history of severe tooth decay. Mother's history of seriously neglecting her children's nutritional needs and making poor nutritional choices, even after taking a 10-week parent course, demonstrated that she still lacked adequate parental judgment. In addition, mother suffered from depression and anxiety, requiring her to take medication, and DPSS reported that it had not received confirmation of mother's current mental health condition and compliance with her medication requirements. The social worker concluded that mother "has not yet fully addressed her mental health concerns and her parenting issues."

In addition, Dr. Suiter stated in his psychological evaluation of mother that, although "[t]he available personality data did not indicate [mother] likely has any affective dysfunction or significant characterological traits," psychological testing of mother revealed she had "great difficulty being open and honest in completing the testing." As a consequence, the test results were deemed invalid due to her heightened attempt to present herself favorably. Dr. Suiter further reported that mother "is likely to experience heightened depression and anxiety." Dr. Suiter noted that mother's difficulty being open and honest with the testing raised concern and did "not allow for a full measure of reassurance regarding her emotional and psychological functioning."

Furthermore, at the time of the six-month hearing, mother's visitation was still

supervised, which indicated there remained risk of detriment in leaving mother unsupervised with her children. In July 2015, shortly after the court and DPSS permitted mother to have unsupervised visits, DPSS concluded she demonstrated a basic lack of parental judgment, which led in part to the court requiring visits to be supervised once again. Although the court and DPSS acknowledged mother had made progress in improving her condition and ability to care for N.P., there remained a substantial risk mother would not adequately care for N.P. if N.P. were returned to mother's care, particularly in light of mother's history of severely neglecting the children.

We conclude there was sufficient evidence to support the juvenile court's determination that returning N.P. to mother would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of N.P., based on the record as a whole, including the social worker's recommendations not to place N.P. with mother and evidence of mother's lapse of judgment and continuing mental health issues.

IV

PLACING N.P. WITH HER FATHER

Mother argues there was insufficient evidence to support placing N.P. with Michael, and the juvenile court erred in basing such placement on the determination it was in N.P.'s best interests because Michael had progressed further than mother in the reunification process.

A. Standing

DPSS argues mother does not have standing to object to the juvenile court's order placing N.P. with Michael. DPSS argues mother has no standing because she was not an

aggrieved party. A parent must establish he or she is a “party aggrieved” to challenge a ruling on the merits. (Code Civ. Proc., § 902; *In re Gary P.* (1995) 40 Cal.App.4th 875, 877.) “An appellant must show prejudicial error affecting his or her interest in order to prevail on appeal. [Citation.] An appellant cannot urge errors which affect only another party who does not appeal. [Citations.]” (*In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261.)

Here, mother’s interest in this dependency proceeding is to reunify with her dependent children. Placement of N.P. with Michael affected her interest in reunifying by depriving her of placement and hindering her ability to reunify with N.P. by requiring her to travel a greater distance to visit N.P. and decreased the likelihood of ultimately achieving physical custody of N.P. Mother therefore has standing to challenge the order placing N.P. with Michael.

B. Placement of N.P. with Michael Under Section 361.2

At the inception of the juvenile dependency proceedings, N.P., who was four months old, was not placed with Michael under section 361.2. Michael’s whereabouts were unknown. After N.P.’s detention and placement with a foster family, DPSS located Michael in December 2014 and informed Michael of the juvenile dependency proceedings. N.P. was not placed with Michael at the disposition hearing but was provided reunification services because Michael had not had a relationship with N.P. Mother reportedly had prevented him from seeing N.P. In addition, he had a history of abusing drugs.

Mother contends the juvenile court’s order under section 361.2, subdivision (b)(3),

placing N.P. with Michael, was not supported by substantial evidence that such placement was not detrimental to N.P. Mother argues there was evidence that Michael's compliance with his case plan was "dismal," there was an absence of information regarding Michael's home and his girlfriend, and Michael failed to present evidence he had participated in posttreatment drug testing, an aftercare program, or 12-step meetings to establish he had remained drug free. Mother acknowledges the court did not state it was placing N.P. with Michael under section 361.2, subdivision (b)(3). Nevertheless, mother argues section 361.2 applies because Michael was a noncustodial parent requesting N.P.'s custody.

As stated in *In re Jaden E.* (2014) 229 Cal.App.4th 1277, juvenile dependency law "provides an alternate track for minors who are removed from a parent when a previously noncustodial parent is available and requests custody of the child. Specifically, subdivision (a) of section 361.2 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.)" (*Id.* at p. 1281.) Section 361.2 thus "governs placement when the child has a parent '*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.*' (§ 361.2, subd. (a), italics

added.) It directs that before the child may be placed in out-of-home care, the court must *first* consider placing the child with the noncustodial parent, if that parent requests custody.” (*In re Adrianna P.* (2008) 166 Cal.App.4th 44, 55 (*Adrianna P.*.)

Here, N.P. was not initially placed with Michael upon N.P.’s removal from mother or at the time of the disposition hearing, because the court found that placement with him would be detrimental to N.P.’s safety. Michael had not had a relationship with N.P. and Michael had a history of drug abuse. But as noted in *In re Adrianna P.*, “Whether the court has removed the child from a custodial parent or has denied a noncustodial parent’s request for placement, the focus of the proceedings is to reunify the child with *a parent*, when safe to do so for the child. (§§ 300.2, 361.5, subd. (a), 16507.)” (*Adrianna P.*, *supra*, 166 Cal.App.4th at p. 59.)

Although section 361.2 normally does not apply after initial removal of a child at the disposition hearing (*In re Zacharia D.* (1993) 6 Cal.4th 435, 453), several courts have made exception to this general rule and have applied the statute when considering a noncustodial parent’s request for custody after the disposition hearing. (*In re Liam L.* (2015) 240 Cal.App.4th 1068, 1083 (*Liam L.*.) Such exceptions include when the DPSS ignores a noncustodial parent’s requests for custody before the disposition hearing or when a noncustodial parent is not notified of the juvenile dependency proceedings until after the disposition hearing because the social services agency has failed to locate and notify the noncustodial parent earlier of the proceedings. (*Ibid.*) These exceptions do not apply in the instant case because DPSS located and interviewed Michael before the jurisdiction and disposition hearing and determined it was not safe to place N.P. with

Michael at that time.

Regardless of whether section 361.2 or section 366.21(e)(1) applies, N.P.'s placement with Michael was proper under *Liam L.*, *supra*, 240 Cal.App.4th 1068. Both sections 361.2, subdivision (a), and 366.21(e)(1) require the court to find that the child's placement would not be detrimental to the safety, protection, or physical and emotional well-being of the child. In *Liam L.*, the custodial parent appealed the juvenile court's postdisposition order made at the 12-month review hearing, placing the children with the noncustodial parent. The mother appealed, arguing the evidence did not support the juvenile court's finding that the children's placement with their father would not be detrimental under section 361.2, subdivision (a). (*Liam L.*, at p. 1073.)

In rejecting the mother's contentions, the *Liam L.* court explained that section 361.2, subdivision (a) "applies only when the minor is first removed from the custodial parent, generally at the time of the disposition hearing. Under the current statutory scheme, a noncustodial parent who requests placement or custody for the first time *after* disposition must file a modification petition under section 388 to make such a request. As we will explain, given the underlying presumption in California's dependency scheme that a minor should be placed with a noncustodial parent, absent a finding of detriment, such a placement is inherently in the minors' best interests.[] A noncustodial parent under these circumstances who files a section 388 petition is therefore entitled to custody unless the party opposing placement establishes that placement with the noncustodial parent would be detrimental to the minor's safety, protection or physical or emotional well-being." (*Liam L.*, *supra*, 240 Cal.App.4th at pp. 1073-1074.)

In the instant case, Michael filed a section 388 petition but for some unknown reason withdrew it two months before the six-month hearing. As in *Liam L.*, the juvenile court ordered postdisposition placement of the child with the noncustodial parent during a review hearing, instead of during a section 388 petition hearing. The *Liam L.* court concluded that the noncustodial parent should have brought a section 388 petition but the failure to do so was harmless error because the juvenile court held a contested trial on the issue of placement, as was done in the instant case. Both parents had an opportunity to offer evidence regarding placement, and no party objected to the absence of a pending section 388 petition. The parties impliedly forfeited any procedural defect in the court's consideration of the issue without a section 388 petition. (*Liam L., supra*, 240 Cal.App.4th at p. 1086.)

Likewise, here, the issue of placement was before the court with the consent of all parties. As the court concluded in *Liam L.*, "On the merits, the juvenile court assessed the issue of placement and found no detriment. Formally filing a petition under section 388 would have had no effect on the juvenile court's decision." (*Liam L., supra*, 240 Cal.App.4th at p. 1086.) We therefore turn to the substance of mother's contention that the court erred by finding no detriment to placing N.P. with Michael.

We review the juvenile court's finding that the minors would not suffer detriment for substantial evidence and that it was in N.P.'s best interest to be placed with Michael. (*Liam L., supra*, 240 Cal.App.4th at p. 1086.) As the *Liam L.* court noted, the best interests and detriment standards "are basically two sides of the same coin." (*Id.* at p. 1085.) "A court considering the noncustodial parent's petition must place the child with

the noncustodial parent unless the opposing party establishes that the placement would be detrimental to the child's safety, protection, or physical or emotional well-being. (See § 361.2, subd. (a); see also [*In re Z.K.* (2011) 201 Cal.App.4th 51,] 72.) In this context, a finding of detriment is equivalent to a finding that placing the dependent child with the noncustodial parent is not in the child's best interests. 'A detriment evaluation requires that the court weigh all relevant factors to determine if the child will suffer net harm.' [Citation.]" (*Liam L.*, at pp. 1085-1086.)

Here, the evidence supports the juvenile court's finding that N.P.'s placement with Michael would not be detrimental to N.P. The juvenile court could reasonably find that Michael was an able and loving father with a stable job and home life. He cooperated with DPSS and developed a positive relationship with N.P. during the dependency proceedings. The DPSS reported he completed his case plan or made satisfactory progress alleviating or mitigating the causes necessitating placement of N.P. in foster care. Although Michael had a history of drug abuse and had a 20-year-old drug possession conviction, he had participated in treatment, had rehabilitated, and was drug-free. Michael was working full-time and had suitable housing with his mother, although he planned to move into an apartment with his girlfriend. DPSS stated it would evaluate Michael's new home after he moved. From the time Michael was first notified of the juvenile dependency proceedings, he had expressed a desire to take custody of N.P. According to Michael, mother had prevented him from having a relationship with N.P. before the juvenile dependency proceedings were filed. He nevertheless had provided mother with monthly child support for N.P. Michael had successful weekly visits with

N.P., including two overnight, unsupervised visits that had gone well.

Although mother was also working hard to reunify with N.P., she had not made as much progress as Michael, and DPSS and the court found there remained risk of harm to N.P. if she were returned to mother's care. Such concerns were well founded based on mother's previous severe neglect of the children, her relatively recent lapse in judgment when caring for D.P. during an unsupervised visit (Red Bull incident), her lack of good judgment in giving D.P. sugary snacks after his dentist told her not to, and a lack of confirmation that mother was taking her mental health medication. Unlike Michael, mother's visitation with N.P. remained supervised. The court indicated Michael was ahead of mother in reunifying with N.P. and therefore he had a better chance of ultimately receiving physical custody of N.P. Based on these findings, the court reasonably concluded it was in N.P.'s best interests to be placed with Michael and the placement would not be detrimental to her.

V

TRANSFER OF N.P.'S CASE TO SANTA CLARA COUNTY

After the court ordered N.P. placed with Michael at the six-month hearing, the juvenile court ordered N.P.'s juvenile dependency case transferred to Santa Clara County, where Michael resides. The order was consistent with the DPSS's recommendation in its six-month review report. DPSS stated in its September 2015 addendum report that there was not a substantial probability of N.P. returning to mother's care because "her timelines of reunification" (six months) had expired. DPSS further concluded that Michael, on the other hand, had made significant strides toward stabilizing his life and

reunifying with N.P. He also demonstrated an ability to care for N.P.

Mother contends the juvenile court abused its discretion in ordering the transfer because the court failed to conduct a proper analysis under section 375, subdivision (a), and California Rules of Court, rule 5.610(c)(1)(B),⁵ which allows the court to transfer a juvenile dependency case if in the child's best interests.

Rule 5.610 "permits, but does not require, a court to transfer a juvenile case to the county where the *child* resides. Conversely, section 375 permits, but does not require, a court to transfer a juvenile case to the county where the *parent* resides. The two provisions provide alternative bases for transferring a dependency case to another county. These provisions do not necessarily conflict, as when a single juvenile court decides whether a case should be serviced in the county where the child resides or where the parent resides. [Citation.] In such a case, the juvenile court must consider the best interests of the minor when it chooses between the two alternatives. [Citation.]" (*In re J.C.* (2002) 104 Cal.App.4th 984, 992 (*J.C.*).⁶) Thus, the best interests of N.P. are paramount here. (*Id.* at p. 993.)

Mother argues the court should have left the case in Riverside County, with courtesy supervision in Santa Clara County. The transfer to Santa Clara County, mother asserts, was not in N.P.'s best interests because Michael's ability to care for N.P. was

⁵ Undesignated rule references are to the California Rules of Court.

⁶ *J.C.*, *supra*, 104 Cal.App.4th at page 992, cites rule 1425, rather than rule 5.610. Rule 1425 was renumbered as rule 5.610 and amended in 2007, but remains in relevant part the same.

uncertain, he had not completed his case plan, and there was uncertainty regarding Michael's girlfriend and his residence. Mother maintains, on the other hand, she is the one most likely to provide N.P. with a safe, secure home on a long-term basis. She was doing well, following her case plan, progressing, and working hard at reunifying with N.P. Mother notes that at the six-month hearing the juvenile court ordered reunification services for her on the ground it was likely N.P. would be returned to mother within six months.

Mother urges this court to reweigh the facts and reverse the transfer order, but it would be improper for this court to do so because there was substantial evidence supporting the juvenile court's finding that the transfer was in N.P.'s best interests. There was evidence that Michael was capable of providing N.P. with a stable, loving home and that placing N.P. would likely lead to the court awarding Michael permanent custody. Because the juvenile court ordered N.P. placed with Michael in Santa Clara County and N.P. would likely remain there, there was sufficient evidence to support the finding that the case transfer was in N.P.'s best interest and was not an abuse of discretion. Although placing N.P. with Michael may have made it more difficult for mother to visit N.P., transfer of the case did not prevent mother from receiving reunification services or having supervised visits with N.P. The focus is on N.P.'s best interests, not mother's. The transfer furthered N.P.'s interests by facilitating supervision of N.P.'s juvenile dependency case by social worker's in the area where N.P. and Michael lived.

The juvenile court's order transferring N.P.'s case is presumed to be correct, and it

is mother's burden to affirmatively show error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Under the applicable substantial evidence standard, we must uphold the case transfer. "When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; in accord, *J.C.*, *supra*, 104 Cal.App.4th at p. 993.) Because there was substantial evidence supporting the juvenile court's factual determination that the case transfer was in N.P.'s best interests, we affirm the transfer order.

VI

SUPERVISED VISITATION

At the six-month hearing, the juvenile court awarded James physical custody of D.P. and dismissed his case, with the filing of family law orders providing for family reunification services and supervised visitation for mother. As to N.P., the court ordered N.P. placed with Michael, with mother to receive continued reunification services for an additional six months and supervised visitation.

Mother contends the juvenile court abused its discretion by ordering visitation of N.P. and D.P. monitored. Mother argues ordering mandatory monitoring of her visitation with the children was inappropriate because, as the juvenile court acknowledged, she was doing "very well" reunifying with the children. Regarding the Red Bull incident, the court stated that mother "hasn't done anything bad or wrong." She had made significant progress and visitation with the children had been positive. Mother maintains that there was no basis for finding that she posed a danger or risk to the children, and therefore

restricting her to supervised visits constituted an abuse of discretion.

As to D.P., section 366.21(e)(1) authorized the court to terminate his case upon transferring permanent physical custody of D.P. to James under section 361.2, subdivision (b)(1). Section 361.2, subdivision (b)(1), authorized the court to “provide reasonable visitation by the noncustodial parent” if the court terminated jurisdiction. (See rule 5.700(a).) When jurisdiction is terminated, section 362.4 authorizes the court to issue custody and visitation orders (commonly referred to as “exit orders”). The best interests of the child control when ordering visitation, including requiring visitation to be supervised. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1705; *In re John W.* (1996) 41 Cal.App.4th 961, 973.) As to N.P., the juvenile court had discretion to order monitored visitation.

This court reviews a juvenile court’s order setting visitation terms for abuse of discretion. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.) “We will not disturb the order unless the trial court made an arbitrary, capricious, or patently absurd determination. (*Ibid.*) [¶] During reunification efforts, visitation generally must be as frequent as possible, consistent with the well-being of the child. (§ 362.1, subd. (a)(1)(A).) At the same time, visitation orders must provide for ‘flexibility in response to the changing needs of the child and to dynamic family circumstances.’ [Citation.] ‘In addition, the parents’ interest in the care, custody and companionship of their children is not to be maintained at the child’s expense.’” (*Ibid.*)

Here, there was substantial evidence that mother had demonstrated a lack of judgment in caring for her children, such that leaving the children unsupervised in her

care posed a substantive risk of harm to the children. The juvenile court previously permitted unsupervised visitation but reverted to supervised visitation in part because mother demonstrated poor judgment regarding the children’s nutritional best interests and in part because DPSS wanted to make sure mother was taking appropriate medication for her mental health problems. Therefore at the six-month hearing, DPSS recommended mother’s visitation continue to be supervised. During the hearing, James’s attorney requested that mother’s visits with D.P. remain supervised, with James agreeing to pay half the cost of supervision. James’s attorney stated that, although visits had been “going well,” they were “not well enough for them not to be supervised.”

Mother has not established that the juvenile court abused its discretion in ordering monitored visitation as a precautionary measure, where mother had a history of seriously neglecting the children’s medical, dental, nutritional, and supervision needs, and had demonstrated poor judgment in caring for the children, as recently as within two months before the six-month hearing.

VII

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON

J.

We concur:

McKINSTER

Acting P. J.

MILLER

J.