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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re C.G. et al., Persons Coming Under the  
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

JOSE A.,

Defendant and Appellant.

F063211

(Super. Ct. Nos. 10CEJ300101-1,  
10CEJ300101-2)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Fresno County. Mary Dolas,  
Commissioner.

Matthew Ivan Thue, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel,  
for Plaintiff and Respondent.

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\* Before Gomes, Acting P.J., Kane, J. and Franson, J.

Jose A. is the father of two school-aged children who were removed from parental custody in January 2011. He has appealed from a July 2011 juvenile court order continuing the children's out-of-home placement (Welf. & Inst. Code, § 366.21, subds. (e) & (f)<sup>1</sup>), as well as reunification services for father. During the pendency of this appeal, the juvenile court ordered the children returned to father's custody with family maintenance services. In turn, respondent Fresno County Department of Social Services (department) asks this court to take judicial notice of the juvenile court's order and dismiss this appeal as moot. Father opposes the department's dismissal motion. On review, we dismiss this appeal as moot.

### **PROCEDURAL AND FACTUAL SUMMARY**

In the spring of 2010, the children's mother caused the death of their baby sibling. All the while, the parents' ongoing domestic violence placed the children at a substantial risk of serious physical harm. Consequently, the department detained the children and initiated the underlying dependency proceedings on numerous grounds under section 300.

At the juvenile court's direction, following an April 2010 detention hearing, the department began offering father services. Those services consisted of parenting, as well as substance abuse, domestic violence, and mental health evaluations and recommended treatment. Father was quick to participate in the evaluations, which led to recommendations that he participate in parenting classes, individual counseling, and batterer's treatment. However, he was slow to participate in any of those services.

The juvenile court exercised its dependency jurisdiction in August 2010 over the children based on both parents' conduct (§ 300, subds. (a), (b), (c), (f) & (g)). In particular, the juvenile court found father exposed the children to past and ongoing domestic violence, thereby placing them at substantial risk of suffering serious physical harm and serious emotional damage. (§ 300, subds. (b) & (c).)

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

By this point, father was living in Southern California. Although he regularly visited the children, he still was not actively participating in services. After a false start in batterer's treatment, he reenrolled in September 2010. Father, however, did not accept responsibility, minimized past violent behavior and continued to deny his role in violence.

As of late 2010, the department learned that there was a deportation order for father, who was a citizen of Mexico. He had been deported once in 2003 and in 2009, only to illegally return again. It appeared that as of 2010 he was permitted to stay in the United States temporarily due to the children's dependency proceedings. The children were United States citizens.

### **January 2011 Disposition**

In January 2011, the juvenile court formally ordered the children removed from parental custody. Although it denied the mother reunification services and visitation, the juvenile court ordered father to participate in the same services that it previously directed the department to offer him.

The court also ordered supervised visitation between father and the children and directed the department to continue monitoring their contact and visitation. Father had been receiving one-hour, weekly supervised visits with the children since the outset of the proceedings. Beginning in June 2010, those visits were therapeutically supervised.

### **Post-Disposition Events**

Commencing in February 2011, father received two-hour weekly supervised visits. At a March 2011 hearing, the juvenile court gave the department discretion for unsupervised visits between father and the children upon notice and updated discovery. The juvenile court also ordered the department to assess the possibility of conjoint therapy between father and the children.<sup>2</sup>

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<sup>2</sup> The children had been receiving individual counseling for some time.

The juvenile court conducted a status review hearing of the children's dependency in July 2011. Up until the hearing date, father's counselor in the batterer's treatment program regularly reported to the department that father was not benefiting from and was not in compliance with the program. However, at the July hearing, the counselor testified that her reports had been incorrect and father was in fact making progress.

Otherwise, it was undisputed father had made significant progress in that he completed his parenting classes and was currently participating in the batterer's treatment program and individual therapy. It was expected that father would complete the batterer's treatment program in mid-September 2011. He had completed 41 of 52 sessions as of the hearing date.

In addition, he continued to visit the children weekly. The visits appeared to go well and no concerns were noted or observed. The children appeared to have a close relationship with father.

According to the department, there was sufficient detriment to warrant the children's out-of-home placement because of: the domestic violence the children had witnessed when father lived with them, the fact that father had yet to complete the batterer's treatment program, his regular contact and visitation with mother who could not have contact with the children, and the high risk of father's deportation due to his previous deportations. Father's deportation had been on hold since August 2010. He had a pending U-Visa application and waiver.<sup>3</sup> Nonetheless, the department urged the court to continue reunification services for father.

The department was also opposed to unsupervised visitation as unsafe due to father's deportation status. In May 2011, a department social worker agreed to pursue father taking the children on outings with a third party, either the social worker, care provider or the children's Court-Appointed Special Advocate (CASA).

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<sup>3</sup> It appears from further testimony that a U-Visa was a temporary visa.

The children's therapists also recently reported to the social worker that they were not in agreement with unsupervised visits or even conjoint therapy. They felt it would be detrimental to the progress the children had made. The therapists had seen some regression on the children's part around the time of visits and one of the children acted out aggressively after some visits.

At most, father's therapist recommended increased visits. He did not specify whether the visits should be supervised or not. According to an offer of proof regarding the therapist's position, he would testify that father was currently taking responsibility for his actions.

The CASA supported the department's positions. The CASA had supervised several of the visits and had interviewed father. According to the CASA, father did not seem to have a plan for where they would live or how he would care for the children while he worked if he were to reunify with them in the future. He hoped not to be deported to Mexico but if he were, he would try to find a job in Mexico and a place to live.

Even though father had been diligent about visiting the children and obviously would like to have them in his care, the CASA was concerned about his past documented domestic violence and the children's fear of him before and after their sibling's death. His likely deportation at some time in the near future was also a concern. The CASA felt visits should continue to be supervised due to the possibility father might flee.

Father acknowledged he was visiting the children's mother every two weeks and wanted to be supportive of her. However, if he had custody of the children, he would not take them to visit her. He also testified he would not abscond with the children.

The juvenile court found the department provided reasonable reunification services to father and that he had made significant progress in dealing with the problems that led to the children's out-of-home placement. Nevertheless, the juvenile court also found there remained a substantial risk of detriment if the children were returned to

father's custody and so continued the children's removal from his custody. The court also continued reunification services for father. Father appealed.

### **Post-Appeal Events**

At a January 19, 2012, status review hearing, the juvenile court found father's progress toward alleviating and mitigating the causes of the removal had been significant and the department had provided father with reasonable services as well as complied with the case plan. The court ordered the children returned to father's custody with family maintenance services.<sup>4</sup>

### **DISCUSSION**

In his opening briefing, father argued there was insufficient evidence that returning the children to his care would pose a substantial risk of detriment to their well-being. He asked this court to reverse the order continuing the children's out-of-home placement and direct that the children be immediately returned to his care.

Alternatively, father claimed there was insufficient evidence that he received reasonable reunification services (§ 366.21, subds. (e) & (f)). Father specifically charged the department with not providing him and the children liberalized visitation. He asked this court to reverse the reasonable services finding so that, if necessary, he could receive additional services beyond 18 months.

Appellate courts decide actual controversies by a judgment, which can be carried into effect. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.) It is not an appellate court's duty to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. (*Ibid.*) Consequently, when, during the pendency of an appeal, an event occurs which renders it impossible for an appellate court,

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<sup>4</sup> We take judicial notice of the juvenile court's January 19, 2012, minute order and January 19, 2012 orders after hearing. (Evid. Code, § 459.)

should it decide the case in favor of the appellant, to grant any effectual relief, the court will not proceed to a formal judgment, but will dismiss the appeal. (*Ibid.*)

Father agrees he has obtained from the juvenile court the relief he sought in his appellant's opening brief, that is, the return of his children. He nevertheless argues his appeal is not moot.

## I.

First, father claims the juvenile court's purported error regarding its removal order could adversely affect him, should the juvenile court again remove the children from his care. Father cites a series of appellate decisions for the proposition that an appellate issue is not moot if the purported error infects the outcome of subsequent proceedings. (See e.g. *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.)

According to father, it was due to his immigration status and lack of a California driver's license that the juvenile court refused to return the children.<sup>5</sup> He speculates that a court in the future could incorrectly rely on his immigration status and lack of a valid driver's license to support a future removal order unless we consider his appeal on its merits. We disagree.

We fail to see how father's speculation may come to fruition given the juvenile court's recent decision to return the children to his care. Assuming for the sake of argument that father's uncertain immigration status and driver's license issue did influence the juvenile court's earlier decision, it stands to reason that father has since resolved those issues to the court's satisfaction or has persuaded the court that those issues did not warrant continued removal. Otherwise, we observe that there was evidence of other issues, as summarized above, to warrant the children's continued removal in July 2011. On this basis, we conclude the purported error regarding the court's July 2011

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<sup>5</sup> Father testified that he had a Washington state driver's license, but not a California driver's license.

decision to continue the children's removal does not infect the outcome of subsequent proceedings.

Alternatively, father asks this court to exercise its discretion and consider the merits of his argument because it involves an issue of continuing public importance. (See *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.) On this record, we decline father's invitation. Anything father would want this court to address would amount to little more than an advisory opinion given the evidence of other issues to warrant the children's continued out-of-home placement.

## II.

Father also contends the juvenile court's purported error in its reasonable services finding could infect the outcome of subsequent proceedings. Once again, we are not persuaded.

Father's argument in his opening brief was that the department should have provided liberalized visitation between him and the children and therefore the court was wrong to make its reasonable services finding. He now contends if this purported error is not reviewed and the children were again removed from his custody, the juvenile court could rely on its reasonable services finding to terminate parental rights.

Preliminarily, father's underlying argument is fatally flawed. First, his premise that the department should have provided liberalized visitation is overstated. In March 2011, the juvenile court authorized, but did not order, the department to provide father with unsupervised visits. This was hardly an order for liberalized visitation. Also, at that time and as of the July 2011 status review hearing, father did receive two-hour a week, supervised visits.

Second, father's argument overlooks the evidence that up until the July 2011 hearing, his batterer's treatment counselor regularly reported to the department that father was not making progress. Under those circumstances alone, the department's reluctance to move towards unsupervised visitation was reasonable.

In any event, parents of children ages three and older who are removed from parental custody, such as father, shall be provided family reunification services beginning with the dispositional hearing and ending 12 months after the date the children entered foster care. (§ 361.5, subd. (a)(1)(a).) In this case, the children were deemed to enter foster care in mid-June 2010, two months after they were originally detained. (§ 361.49.) Thus, as of the juvenile court's July 2011 reasonable services finding, father had received approximately 13 months of services. In its January 2012 order returning custody of the children to father, the juvenile court made an additional reasonable services finding, which father does not dispute, for the additional five months of services he received. Consequently, father has received 18 months of services. Even discounting the time father claims he should have received liberalized visitation from the July 2011 reasonable services finding, father still received 14 months of reasonable services, exceeding the amount of time to which he was statutorily entitled for reunification.

Therefore, if the return to father's custody is not successful and the children's dependency reaches the permanency planning phase, the juvenile court could proceed to terminate parental rights given father's 14 months of reasonable services. (§ 366.26, subd. (c)(2)(A).) On this basis, we conclude the purported error regarding the court's July 2011 reasonable services finding does not infect the outcome of subsequent proceedings.

### **DISPOSITION**

Respondent's request to take judicial notice filed on February 3, 2012, is granted. (Evid. Code, § 459, subd. (a).) This appeal is dismissed as moot.