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

In re A.P., a Person Coming Under the  
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

ANTHONY P.,

Defendant and Appellant.

F063362

(Super. Ct. Nos. 11CEJ300110-1)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Fresno County. Jane A. Cardoza,  
Judge.

Shaylah Padgett-Weibel, 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 Cornell, Acting P.J., Gomes, J., and Dawson, J.

## INTRODUCTION

Anthony P. (father) appeals from the juvenile court's dispositional order pursuant to Welfare and Institutions Code section 361.2, subdivision (a),<sup>1</sup> finding that placement of his then nine-year-old daughter, A.P., with him would be detrimental to her safety, protection, or physical or emotional well-being. Father challenges the sufficiency of the evidence for the juvenile court's ruling. We reject this contention and affirm the juvenile court's order.

## FACTS AND PROCEEDINGS

A juvenile dependency petition was filed in Orange County Superior Court on April 25, 2011, on behalf of A.P. On April 26, 2011, the court detained A.P. At the May 12, 2011 jurisdiction hearing, the court made true findings as to several allegations in the petition, which were amended on the original petition by interlineation.<sup>2</sup>

The juvenile court found true allegations that A.P. was brought to Anaheim by her grandmother to visit A.P.'s mother (mother) over spring break.<sup>3</sup> Mother was arrested in a hotel room by Anaheim police officers for possession of narcotics, possession of narcotics paraphernalia, and possession of a hypodermic syringe. Mother had nine syringes loaded with methamphetamine, 43 empty syringes, a broken methamphetamine pipe, and a baggie containing .89 grams of methamphetamine. Other drug paraphernalia were found in the hotel room. Mother has a history of substance abuse dating back to at least 2002 and at least two unsuccessful attempts to treat her problem through court-ordered substance abuse treatment programs.

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

<sup>2</sup> The parents admitted the allegations as amended by interlineation.

<sup>3</sup> The grandmother was aware of mother's substance abuse before leaving A.P. with mother.

Mother has an extensive criminal history dating back to 2002. She continues to engage in criminal activity and associates with drug users, placing A.P. at ongoing risk of physical and emotional harm. A.P.'s father reasonably should have known that mother was continuing to abuse methamphetamine. Father has a lengthy history of substance abuse dating back to at least 1995, including use of methamphetamine and documented completion of a substance abuse program. Father also has a criminal history, including arrests for narcotics related offenses and for receiving stolen property. Father has not visited A.P. regularly.

On April 26, 2011, the court ordered visitation and reunification services for both parents. On May 12, 2011, the court found that mother's residence was in Fresno County and ordered the case transferred there. An addendum report prepared by the Fresno County Department of Social Services (department) for the disposition hearing noted that at the time of the removal, A.P. had not had contact with her father for a couple of months. A.P. told a social worker in August 2011 that if she cannot be in the care of her grandfather, she wanted to be in father's care.

Mother met father and became pregnant with A.P. while she was separated from but not divorced from another man. At the time of separation, mother was not yet pregnant. Father and mother separated about a year after A.P. was born. Father reported that a year after A.P.'s birth, he was arrested, convicted, and sentenced to prison. Since father's release from prison, he has had contact with A.P. on a monthly basis. There were times, however, when father would not see A.P. for months at a time.

Father reported past methamphetamine use, which he said he addressed in 2008. Father continues to use marijuana for medical conditions that he said he was unable to afford the medications for. Father did not anticipate reducing his daily use of marijuana, which he does right after work and prior to going to sleep every night. To reduce the cost of marijuana, father grows his own supply in his apartment. Father has tested positive for

marijuana use since the case was transferred to Fresno County. Although father participated in the social worker's assessment, father was resistant to the assessment and to having to participate in reunification services stating that he did not cause A.P.'s removal.

The social worker noted that father saw himself as a victim and complained about unfair treatment. Father has not taken full responsibility for the neglect A.P. suffered. Father did not wish to participate in mental health services, parenting classes, or in continuing drug tests. Father explained that involvement in services was a hardship for him because he has to pay child support and miss days of employment to participate in services, visit his daughter, and attend court hearings.

Although father was aware of mother's substance abuse, he failed to make reasonable efforts to protect A.P. from mother by filing for custody of A.P. Father complained about filing for A.P.'s custody because he was unable to complete the paperwork and it was a financial hardship for him. Father was unaware that he could obtain a waiver for the court filing fees.

A mental health assessment of father included a recommendation that he participate in individual treatment. The assessor reported that father presents himself with generalized anger, has globalized difficulty accepting the negative consequences of his behavior, blames others for his circumstances, and has difficulty assessing and considering the risk of acting out his thoughts. Father intensely dislikes people, showed gross lack of empathy for his offspring, and takes a narcissistic stance in his parenting beliefs. Although there may be moments where father has adequate interaction with A.P., it is likely these moments are not pleasurable to him. Father's lack of patience, coping skills, and alternating value systems place A.P. at serious risk. Even with therapy, father's prognosis for achieving therapy goals necessary for adequate parenting is poor.

Viewing the possibility of placing A.P. with father, the social worker found such placement presently inappropriate because father has not had A.P. in his care for extended periods of time. It is unknown whether father would be able to parent A.P. and meet her emotional needs. A.P. presented herself to the mental health assessor as sad, worried, irritable, distracted, tended to talk back, was physically aggressive toward younger children, had issues with excessive eating and difficulty doing her school work. The assessor believed A.P. would also need to participate in individual therapy.

The social worker recommended further reunification services for both parents, including parenting classes, mental health assessment and treatment, substance abuse evaluation and treatment, and random drug testing. The social worker found that placement of A.P. with father was inappropriate and did not recommend A.P. be placed with him.

At the contested disposition hearing on September 22, 2011, the department submitted the matter on the social workers' reports. Father testified that he did not believe the psychological assessment of him was accurate. Father was upset because he had to miss work. Father acknowledged past drug abuse, but stated he had not been on drugs for years. Father explained that he was out of trouble, worked full-time the previous three years, and had an apartment. Father was convicted of drug offenses and second degree burglary. He was discharged from parole four years ago after spending about two years in prison.

Father attended an inpatient treatment program and took prior classes in drug and alcohol prevention. Father worked on the 12-step Narcotics Anonymous program. Father's goal was to obtain custody of A.P. There have been months between father's visits of A.P. Father acknowledged his visits were sporadic because A.P. lives outside of town, father lives in town, and father does not have a car. Father's wife has to give him

rides whenever he needs to go somewhere. Even though father does not see the need for reunification services, he is willing to have them.

On cross-examination, father was asked why he did not already have custody of his daughter if he had his act together for the past four years. Father replied that he tried to file custody papers with the court but was told he had to pay filing fees of \$400. Father does not have that amount of extra money. Father was asked about the allegation found true by the juvenile court in Orange County that he failed to protect A.P. from her mother. Father replied that he had not seen A.P.'s mother in over a year and as far as he knew, A.P. was living with her grandparents. Father saw A.P. at Christmas prior to the dependency action.

Father had just started individual therapy prior to the hearing. When asked about the observations that he fails to take responsibility, father reiterated that he thought A.P. was with her grandparents and did not know she had been taken to Southern California to visit her mother. Father did not believe the incident was his fault. Father acknowledged that he still used marijuana, but explained he does not drive.

Although father had taken psychiatric medications in the past for a bipolar condition, they made him feel like a zombie. Father medicates himself with marijuana.<sup>4</sup> Father grows his own supply of marijuana in his apartment. If A.P. stayed with father, she would stay in his room. The marijuana plants are in his bedroom closet, but father keeps it locked.

The court found that the parents' progress toward alleviating the causes necessitating placement had been minimal. The court found the minor's placement necessary and appropriate. The court found by clear and convincing evidence that

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<sup>4</sup> Father stated that the doctor who prescribed him psychiatric medications later gave him a prescription for medical marijuana.

placement of A.P. with her father would be a detriment. The court noted there was a lack of current contact between father and A.P. The court ordered supervised visits between A.P. and father, in part, to get a better sense of the nature and quality of the parent-child relationship. The court ordered further reunification for the parents and a risk assessment of father.

### **PLACEMENT WITH FATHER**

Father contends the court wrongly determined that placing A.P. with him would be detrimental to her safety, protection, physical or emotional well-being. We disagree.

We review the record in the light most favorable to the juvenile 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 child would suffer detriment. Clear and convincing evidence requires a high probability the evidence is so clear that it leaves no substantial doubt. (*In re John M.* (2006) 141 Cal.App.4th 1564, 1569-1570.)

We may not, however, reweigh or express an independent judgment on the evidence. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.) In determining the sufficiency of the evidence, we give full effect to the respondent's evidence, even if it is slight, and disregard the appellant's evidence, regardless of its strength. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 881.) Issues of fact and credibility are for the trial court alone. (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860.)

When a nonoffending, noncustodial parent requests custody of a minor who has been removed from the home, "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).) If no detriment exists, the court orders placement of the child with that parent. (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1132 (*Austin P.*))

A detriment evaluation requires that the court weigh all relevant factors to determine if the child will suffer harm. A detriment finding is properly supported by emotional harm even in the absence of the noncustodial parent's contribution to the detriment. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1425 (*Luke M.*) [emotional harm caused by loss of sibling relationships].) Where the nonoffending, noncustodial parent is aware that the custodial parent has abused a child and fails to take steps to prevent the abuse, detriment is shown. Detriment can also be shown where the child does not know the noncustodial parent. (*Austin P.*, *supra*, 118 Cal.App.4th at p. 1134.)

Father ignores several key facts in his argument. Father had little contact with A.P., even after the dependency was initiated. Father failed to take full responsibility for A.P.'s neglect while in her mother's care, even though he was aware of mother's substance abuse. Father's excuse for his lack of knowledge amounted to the fact that he was not involved with A.P. The court could reasonably infer from father's lack of frequent visitation of A.P. that he had little interest in her welfare. Father rarely visited A.P. prior to the initiation of dependency proceedings. After proceedings began, father did not regularly visit A.P. Father complained about having to pay child support, taking time off of work to attend dependency hearings, and participating in reunification services. Father also ignores the mental health assessment showing that he has a lack of patience, coping skills, and empathy for his offspring.

Father had generalized anger, was hostile to having individual therapy, and stopped taking his prescribed psychiatric medications. Father's testimony at the hearing is at odds with what he told the social worker and others before the hearing. The juvenile court was entitled to give father's testimony at the hearing whatever weight the court believed it deserved. There was substantial evidence before the juvenile court that giving father custody of A.P. would be detrimental to her. Father's arguments to the contrary

are an attempt to get this court to reweigh the evidence, which is not the function of an appellate court. (*Luke M.*, *supra*, 107 Cal.App.4th at p. 1427.)

Father admitted he has a psychiatric condition and stopped taking prescription medications to treat the condition because he said he could not afford the medications and they made him feel poorly. According to father, he has a prescription from a doctor to use marijuana as a substitute for prescribed psychiatric medications. Father uses marijuana twice a day when he comes home and when he goes to bed. Father grows the marijuana in his bedroom closet. A.P. would be exposed to father's daily use of marijuana. Although father may have a valid medical reason and prescription to use marijuana, the juvenile court was still entitled to view father's daily dependency on marijuana as a detriment to A.P. Even legal use of marijuana or alcohol can be abuse if the use of the substance presents a risk of harm to the minor. (§ 300.2; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 452 (*Alexis E.*) [marijuana]; *In re Samkirtana S.* (1990) 222 Cal.App.3d 1475, 1487-1488 [alcohol].)

The court in *Alexis E.* went on to note that marijuana use, without more, would not support a jurisdiction finding bringing minors into the jurisdiction of the court. (*Alexis E.*, *supra*, 171 Cal.App.4th at p. 453.) As in the *Alexis E.* case, here there is much more in father's situation that made him an unsuitable custodial parent at the time of the hearing. The court's assessment of father may change as the proceedings progress and he has received and participated in services. At this juncture, however, we find father has failed to show that the juvenile court abused its discretion. On this record, we conclude there is sufficient evidence to support the court's finding of detriment.

### **DISPOSITION**

The juvenile court's order finding that it would be detrimental to place the minor with her father is affirmed.