

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

In re D.M., a Person Coming Under the  
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

RONNIE M.,

Defendant and Appellant.

F063648

(Super. Ct. No. 83677)

**OPINION**

**THE COURT**\*

APPEAL from orders of the Superior Court of Fresno County. Jane Cardoza,  
Judge.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and  
Appellant.

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

-ooOoo-

---

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

Ronnie M. (father) appeals from a juvenile court order directing him to participate in an anger management course in connection with his daughter D.'s dependency. (Welf. & Inst. Code, § 388.)<sup>1</sup> Father challenges the propriety of such an order on a variety of grounds.

Respondent Fresno County Department of Social Services asks us to take judicial notice (Evid. Code, § 459) of subsequent events that have transpired in the juvenile court proceedings and to conclude those events have rendered this appeal moot.<sup>2</sup> The juvenile court recently found D. was at substantial risk of being abused because father had caused the death of another child of his (§§ 342 & 300, subd. (j)). As a consequence, the juvenile court also denied father reunification services (§ 361.5, subd. (b)(4)) and set a section 366.26 hearing to select and implement a permanent plan for D.

On review, we grant the department's request for judicial notice. We further agree this appeal is moot. Therefore, we will dismiss it.

### **PROCEDURAL AND FACTUAL HISTORY**

In November 2010, the juvenile court adjudged 12-year-old D. a dependent child of the court and removed her from her mother's custody. The mother had neglected D. in a number of ways. The mother was eventually unsuccessful in reunifying with D.

Around the time of the November 2010 dispositional hearing, father came forward and requested visits with D. He had not seen D. since she was a baby. In early 2011, the juvenile court found father to be D.'s presumed father and ordered reasonable supervised

---

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

<sup>2</sup> Alternatively, the department has asked this court to augment the record to document these subsequent events.

visits between the two of them. It also ordered father to participate in reunification services.

Over the summer of 2011, the department recommended that father participate in family counseling with D. and an anger management class. Father agreed to the counseling but not the anger management class. In his view, it was unwarranted. As a result, the department petitioned (§ 388) the court to compel father to participate in the anger management class.

Following a November 1, 2011, contested evidentiary hearing, the juvenile court granted the department's section 388 petition. The court acknowledged the reasons for D.'s dependency were unrelated to father or any anger management problem he had. Nevertheless, there was clear and convincing evidence to support an order requiring father to participate in an anger management program. The juvenile court specifically found father had past incidents of domestic violence, which resulted in time in custody, and there had been a recent incident involving father and D.'s careprovider, for which the police were called. The court ordered father to participate in a 26-week anger management class, known as the Phoenix program.

Father appealed from the court's order on November 7, 2011.

### ***Post Appeal Events***

In December 2011, the department learned father had a child protective services history that he allegedly attempted to hide. In 2002, father caused the death of one of D.'s half-siblings through abuse or neglect. This led to the 2003 juvenile dependency of another child of father's and an order denying father reunification services with that child.

The department in turn filed a subsequent petition (§ 342) to allege an additional ground for the court's exercise of dependency jurisdiction over D., namely, section 300,

subdivision (j) [sibling abuse or neglect] based on the foregoing facts.<sup>3</sup> The department also recommended that the court terminate further family reunification services for father because of his prior child welfare history involving the death of a child.

At a February 28, 2012, hearing, the juvenile court found the allegations of the subsequent petition true. Having removed D. from the custody of father, as well as the child's mother, the juvenile court also denied father reunification services pursuant to section 361.5, subdivision (b)(4) [having caused the death of another child through abuse or neglect].

### **DISCUSSION**

In his opening brief, father urged this court to reverse the juvenile court's order that he participate in the Phoenix program. According to father, the department did not follow the appropriate procedure to expand his court-ordered reunification services. He argued the department should have filed a section 342 petition and been required to prove he had an anger management issue, which posed a risk of harm to D., as an additional ground for the juvenile court's exercise of dependency jurisdiction under section 300. In addition, father claimed the juvenile court abused its discretion in granting the department's petition.

---

<sup>3</sup> Section 342 provides:

“In any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition. This section does not apply if the jurisdiction of the juvenile court has been terminated prior to the new allegations.

“All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section.”

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 at 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, 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.*) That is the case here, although father argues otherwise.

### ***Judicial Notice***

Father contends we should not take judicial notice of the post appeal juvenile court records because the department presents these records for the sole purpose of preventing reversal and a negative opinion. Although he cites *In re Zeth S.* (2003) 31 Cal.4th 396, 412-413 (*Zeth S.*), it does not support his argument.

In *Zeth S.*, an appellate court received and considered postjudgment evidence, in the form of unsworn statements of the minor's appointed appellate counsel in a letter brief, and relied on such evidence to reverse the judgment. (*Id.* at p. 400.) The California Supreme Court reversed, reasoning an appellate court may not receive and consider postjudgment evidence that was never before the juvenile court, and rely on such evidence outside the record on appeal to *reverse* the judgment. (*Ibid.*)

The judicial notice request here is not brought for the purpose of reversing the judgment. Rather, it is to establish the appeal is moot, i.e., events occurred during the pendency of the appeal that render it impossible for this court, even should we decide the case in father's favor, to grant any effectual relief. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind, supra*, 67 Cal.2d at p. 541.)

Otherwise, father argues against judicial notice because he claims the department agreed with his appellate arguments and filed the section 342 petition to correct those alleged errors in order to prevent reversal and an unfavorable opinion. This argument fails for numerous reasons, three of which we briefly mention here. First, it is speculative. Second, it ignores the history of this appeal. Appellate counsel filed father's opening brief raising the section 342 argument in February 2012, more than a month *after* the department filed its section 342 petition. Third, it overlooks the substance of the department's section 342 petition and the juvenile court's subsequent findings and orders. The December 2011 section 342 petition alleged D. was at risk of harm because father previously caused the death of one of D.'s half-siblings through abuse or neglect. The section 342 petition did not seek to address the claims appellate counsel would later raise in this appeal.

We conclude father's arguments against judicial notice are meritless. Because the juvenile court's orders and records are the proper subject for judicial notice (Evid. Code, § 452, subds. (c) & (d)), this court takes judicial notice of the juvenile court's February 28, 2012, jurisdictional finding on the department's section 342 petition and its dispositional orders, including the order denying father reunification services (§ 361.5, subd. (b)(4)). (Evid. Code, § 459.)

### ***Mootness***

Father essentially concedes his appeal is moot because it is impossible for this court to grant him effectual relief in light of the juvenile court's subsequent order denying him reunification services. Nevertheless, he claims his appeal raises a due process issue that is of continuing public concern to warrant our reaching the merits rather than dismiss his appeal. (*Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187, 192.)

We disagree. Father's claim of due process error overstates the issue in this case. Due process entails the basic requirements of proper notice, the right to present evidence, and the right to cross-examine adversarial witnesses. (*In re James Q.* (2000) 81 Cal.App.4th 255, 265.) Here, each of those requirements was met. Not only did father receive notice of the department's section 388 petition, he exercised the right to present evidence and cross-examine the department's witnesses in support of the petition.

### **DISPOSITION**

Judicial notice of the juvenile court's February 28, 2012, jurisdictional finding on the department's Welfare and Institutions Code section 342 petition and its dispositional orders, including the order denying father reunification services (Welf. & Inst. Code, § 361.5, subd. (b)(4)), is granted. (Evid. Code, § 459.) Respondent's motion to augment filed on March 8, 2012, is denied. The appeal is dismissed as moot.