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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

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

THE PEOPLE,

Plaintiff and Respondent,

v.

S.H.,

Defendant and Appellant.

F064014

(Super. Ct. No. JL004137)

OPINION

APPEAL from a judgment of the Superior Court of Merced County. David W. Moranda, Commissioner.¹

J. Wilder Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Leanne LeMon, Deputy Attorneys General, for Plaintiff and Respondent.

¹David W. Moranda is now a Judge on the Merced County Superior Court. The deferred entry of judgment ruling was made by Judge David Hoffer of the Orange County Superior Court.

A juvenile court found that S.H., a minor, committed a lewd or lascivious act on a child, and he was adjudged a ward of the court. On appeal, S.H. contends that the juvenile court used an improper factor in finding him unsuitable for deferred entry of judgment (DEJ). S.H. also contends that the court erred by admitting a videotape and transcript of the victim's interview with a child abuse services team (CAST) social worker.

We agree that the juvenile court abused its discretion by considering an improper factor in determining that S.H. was not suitable for DEJ, but we reject his remaining contentions. We set aside the jurisdictional and disposition orders and remand to the juvenile court to determine whether S.H. is suitable for DEJ using proper factors.

FACTUAL AND PROCEDURAL HISTORIES

S.H. lives in Merced County with his legal guardians S.C. and D.C. S.C. and D.C. were foster parents to S.H.'s father, and S.C. and D.C. are referred to as S.H.'s grandparents. S.C. also has a biological son, G.B., and G.B.'s daughter, Z.B., is the alleged victim in this case.

G.B. and his family live in Orange County. This case arises from incidents that occurred during two trips that S.C., D.C., and S.H. made to Orange County in 2010. At the time of the incidents, S.H. was 13 years old and Z.B. was five years old.

In January 2010, S.C., D.C., and S.H. visited G.B. and his family and went to Universal Studios with G.B. and Z.B. One afternoon during the trip, S.C., D.C., S.H., and Z.B. went to the grocery store. In an interview with a CAST social worker, Z.B. stated that, while they were at the grocery store, S.H. asked if he could put his hands in her pants.² Z.B. said that S.H. put his hand in the front of her pants inside her underwear and kept his hand there for five minutes. Z.B. said she also had her hand in his pants,

²CAST social worker Adrianna Ball interviewed Z.B. on April 22, 2010. The CAST interview was videotaped and later transcribed.

touching his underwear. They were in the checkout aisle of the grocery store at the time, and S.H. told Z.B. not to tell.

In March 2010, S.C., D.C., and S.H. went to Orange County for a family member's funeral. After the funeral, they stopped by G.B.'s house before heading home. G.B. had many relatives visiting, and they were playing a videogame in the front room. G.B. noticed that S.H. and Z.B. were missing, and he found them in a back bedroom playing a board game. S.H. appeared jumpy and nervous to G.B. G.B. asked Z.B. about it later, and, according to a sheriff's report, Z.B. told him that S.H. touched her vagina. (This apparently referred to the grocery store incident; Z.B. did not allege that S.H. touched her vagina during the March visit.) G.B. reported to the authorities what Z.B. had told him.

In the CAST interview, Z.B. said that S.H. asked her for a kiss and then kissed her; it was too long and she did not like it. His mouth was closed and it was wet. She said that, while they were in her bedroom, she saw S.H.'s penis. Z.B. said, "[H]e pulled up and down the cover up on it ... [t]he cover on it" She was asked if his penis was pointing down or sticking out, and she said it was down. The interviewer asked if S.H. wanted Z.B. to touch it or do anything to it, and Z.B. said that he asked her if she wanted to touch it, but she said no because "it looked yucky."

On August 27, 2010, the Orange County District Attorney filed a single-count juvenile wardship petition (Welf. & Inst. Code, § 602³) against S.H., alleging he committed a lewd or lascivious act with a child under the age of 14 years in violation of Penal Code section 288.

On September 10, 2010, the district attorney filed notice that S.H. was eligible for DEJ. (§ 790.) The Orange County Probation Department prepared a DEJ suitability report, filed with the court on November 8, 2010. The probation department

³Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

recommended that S.H. was more suitable for a declaration of wardship instead of DEJ. The report recommended that the case be transferred to Merced County for disposition because S.H. and his family reside in Merced County.

On November 15, 2010, the juvenile court in Orange County held a hearing on DEJ. The court found S.H. not suitable for DEJ, observing that S.H. resided out of county and the case would be transferred to his county of residence for disposition.

On September 21, 2011, a contested jurisdictional hearing began in the Orange County juvenile court. Z.B., G.B., S.C., and D.C. testified. The parties stipulated to the admission into evidence of a videotape and transcript of an interview of S.H. conducted by a detective from the Merced County Sheriff's Department. The court also admitted into evidence a videotape and transcript of the CAST interview of Z.B., over the objection of S.H.'s attorney.

On September 27, 2011, the court found the allegations of the petition true beyond a reasonable doubt. The court stated that it reviewed the tapes again early that morning and "[a]fter reviewing all the evidence, and the tapes again, I am convinced beyond a reasonable doubt that the charge has been proven." The court transferred the proceedings to Merced County for disposition.

On November 17, 2011, the juvenile court court in Merced County held a disposition hearing. S.H. was adjudged a ward of the court and committed to the Bear Creek Academy short-term home commitment program. He was also ordered to enroll in sexual perpetrator counseling.

S.H. filed a notice of appeal on December 8, 2011, appealing the findings and orders of the court from the jurisdictional hearing and the disposition hearing.

DISCUSSION

I. Juvenile court's finding regarding suitability for DEJ

A. Background

The juvenile court in Orange County held a hearing on September 10, 2010. S.H. appeared with his attorney. His attorney acknowledged receipt of the petition, denied the

charges, waived formal reading and advisement, and requested that the probation department prepare a DEJ report.

The court explained the DEJ program to S.H. “Basically, what we are talking about is deferred entry of judgment, [S.H.]. It’s a program where you can complete certain terms and conditions and then you can be eligible to have the matter dismissed and the record sealed. [¶] Now, to determine suitability for the program you do need to be interviewed with the probation office, and after that interview a report is prepared and there is another court appearance to determine if you’re suitable to be in the program.”

The Orange County Probation Department prepared a DEJ suitability report, filed with the court on November 8, 2010. The probation department recommended that S.H. was more suitable for a declaration of wardship. The report recommended that the case be transferred to Merced County for disposition because S.H. and his family resided there.

On November 15, 2010, the juvenile court held a hearing on DEJ. The court decided that S.H. was not suitable for DEJ. According to the reporter’s transcript, the court stated:

“[S.H.], the court has read and considered and received into evidence the probation report.

“I do not find [S.H.] suitable for [DEJ] since [S.H.] resides out of county. It will be up to the County of Merced where he lives to come up with disposition in this matter.

“I know it has been a real hard situation for [S.H.]’s family, grandparents, others that care for him. I’d love to resolve it today, but it’s not within my power to do that admission as I’m sending the matter up to Merced for determination by the judge up there.”

B. Discussion

The DEJ provisions of sections 790 et seq. “provide that in lieu of jurisdictional and dispositional hearings, a minor may admit the allegations contained in a section 602 petition and waive time for the pronouncement of judgment. Entry of judgment is deferred. After the successful completion of a term of probation, on the motion of the

prosecution and with a positive recommendation from the probation department, the court is required to dismiss the charges. The arrest upon which judgment was deferred is deemed never to have occurred, and any records of the juvenile court proceeding are sealed. (§§ 791, subd. (a)(3), 793, subd. (c).)” (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558.)

There are “two distinct essential elements of the deferred entry of judgment program: the first, *eligibility*, which is found if all of [the] ‘circumstances’ listed in section 790, subdivision (a) are present; and the second, *suitability*, which requires a finding by the court that the minor will benefit from ‘education, treatment, and rehabilitation’” (*In re Sergio R.* (2003) 106 Cal.App.4th 597, 607, fn. 10.)

It is the duty of the prosecutor to assess the minor’s eligibility for DEJ. (§ 790, subd. (b).) “If the minor is found eligible for deferred entry of judgment, the prosecuting attorney shall file a declaration in writing with the court or state for the record the grounds upon which the determination is based, and shall make this information available to the minor and his or her attorney.” (*Ibid.*) The juvenile court then must determine whether the minor is suitable for DEJ, taking into account the minor’s age, maturity, educational background, family relationships, demonstrable motivation, treatment history, and other mitigating and aggravating factors. (§ 791, subd. (b).) We review a court’s denial of DEJ for abuse of discretion. (*In re Sergio R., supra*, 106 Cal.App.4th at p. 607.)

Here, the parties do not dispute that S.H. was eligible for DEJ. The parties also agree that a minor’s county of residence is not an appropriate factor for the juvenile court to consider in determining suitability for DEJ. (The People concede in their response brief that “appellant living out of county does not appear to be a valid reason for denying DEJ.”) The only issue is whether the juvenile court actually considered the fact that S.H. lived in Merced County in denying DEJ in this case.

A reasonable reading of the record shows that the juvenile court did consider S.H.’s county of residence in making its DEJ determination. The court stated, “I do not

find [S.H.] suitable for [DEJ] since [S.H.] resides out of county.” The People acknowledge that the court made this statement but argue that we should consider the court’s preceding statement, where the court indicated it had read and considered the probation report. That the court *also* read and considered the report, however, does not change the fact that the court used the improper factor of S.H.’s residence in making its determination.

The People also argue that the court reporter may have provided incorrect punctuation and we should read the court’s statement punctuated as follows: “I do not find S.H. suitable for DEJ. Since S.H. resides out of county, it will be up to the County of Merced where he lives to come up with disposition in this matter.”

We are not persuaded. Nothing in the record supports the People’s theory of incorrect punctuation.⁴ To the contrary, the record indicates the court may have believed that S.H.’s county of residence was dispositive. The court went on to say, “I’d love to resolve it today, but it’s not within my power to do that admission as I’m sending the matter up to Merced for determination by the judge up there.” This suggests that the court incorrectly believed that transferring the case to Merced precluded the possibility of granting DEJ in Orange County.

Having rejected the People’s interpretation of the record, we conclude that the juvenile court abused its discretion by improperly using S.H.’s county of residence as a factor to determine that he was not suitable for DEJ. The parties agree that the appropriate remedy is to remand the case to the juvenile court to decide suitability for

⁴This case is not similar to *People v. Huggins* (2006) 38 Cal.4th 175, cited by the People. In that case, the trial court read the words of a standard jury instruction nearly verbatim. The punctuation of the reporter’s transcript suggested that the court misread the instruction by ignoring a period and reading a final clause to a sentence as an introductory clause to the next sentence. The Court of Appeal concluded that it was more likely that the court reporter supplied the incorrect punctuation “[b]ecause the court clearly was reading a standard instruction” (*Id.* at p. 191.) Here, however, the juvenile court was not reading a standard instruction.

DEJ using the appropriate considerations. Consequently, we set aside the jurisdictional and disposition orders and remand the case to the juvenile court to determine whether S.H. is suitable for DEJ. (*In re D.L.* (2012) 206 Cal.App.4th 1240, 1245-1246 [where juvenile court failed to hold hearing on suitability for DEJ, subsequent jurisdictional and disposition orders were vacated and case remanded for compliance with sections 790 et seq.])

S.H. also argues that the probation department report used inappropriate factors in making its recommendation to the court regarding DEJ. Since we are remanding the case, we do not need to address this argument. We further observe it is the juvenile court, not the probation department, that has the ultimate discretion to rule on the suitability of a minor for DEJ. (*In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123.) We presume the juvenile court will apply the law correctly on remand.

II. Admission of videotape and transcript of CAST interview under Evidence Code section 1360

A. Background

Z.B. testified at the jurisdictional hearing on September 22, 2011, but she did not remember anything about the alleged incidents. She did not recall going to the grocery store with S.H., and, when asked if she remembered “anything about when [S.H.] touched your private parts,” she responded, “No.” Asked if she had ever seen S.H.’s private parts, Z.B. responded, “No.” Z.B. remembered going to an interview room where there were some teddy bears, but she did not recall what was said. Z.B. testified that the interview was about two years ago and that she told the truth. The deputy district attorney then showed Z.B. her videotaped CAST interview to refresh her memory. After viewing the tape, Z.B. remembered that S.H. put his hand in her pants, but, when asked if he touched her private parts, she replied, “No.” She thought this incident happened in the store, but she did not recall where in the store or how long it lasted. She did not remember that S.H. said anything to her.

The day after Z.B. testified, the parties filed competing briefs on the admissibility of the videotaped CAST interview and interview transcript. S.H.’s attorney argued that the CAST interview was not admissible as a past recollection recorded under Evidence Code section 1237.⁵ The attorney argued: (1) Z.B. did not have insufficient memory of the alleged incidents—when asked whether S.H. had touched her “private parts,” Z.B. did not say that she could not remember whether he had, she said, “No”; (2) there was no showing that the videotaped interview was made at a time when it was fresh in Z.B.’s memory; (3) there was no showing that Z.B. currently recalled telling the truth at the interview; and (4) these deficiencies could not be cured by refreshing Z.B.’s recollection.

The deputy district attorney argued that Z.B.’s CAST interview was admissible under Evidence Code section 1237. Among other things, he argued that Z.B.’s testimony that she remembered a room with teddy bears, that the interview was about two years ago, and that she told the truth during the interview, was sufficient to demonstrate that the videotaped interview was made when the events were fresh in her memory.

The same day the briefs were filed, the juvenile court held a hearing on whether the CAST interview would be admitted into evidence. On the record, the court stated, “[W]e had a chambers conference briefly a few minutes ago. And I also looked, I did some research and brought to both counsel’s attention Evidence Code 1360.”⁶ In

⁵Evidence Code section 1237, subdivision (a), permits admission of evidence of a statement previously made by a witness “if the statement would have been admissible if made by [the witness] while testifying, the statement concerns a matter as to which the witness has insufficient present recollection to enable him to testify fully and accurately, and the statement is contained in a writing which: [¶] (1) Was made at a time when the fact recorded in the writing actually occurred or was fresh in the witness’ memory; [¶] (2) Was made (i) by the witness himself or under his direction or (ii) by some other person for the purpose of recording the witness’ statement at the time it was made; [¶] (3) Is offered after the witness testifies that the statement he made was a true statement of such fact; and [¶] (4) Is offered after the writing is authenticated as an accurate record of the statement.”

⁶Evidence Code section 1360 provides, in pertinent part: “(a) In a criminal prosecution where the victim is a minor, a statement made by the victim when under the age of 12 describing any act of child abuse or neglect performed with or on the child by

response, the deputy district attorney told the court that he could meet the foundational requirements of Evidence Code section 1360, making the Evidence Code section 1237 issue moot. S.H.'s attorney argued that the videotape and transcript of the CAST interview were not admissible under Evidence Code section 1360:

“[U]nder 1360, the seminal factor is trustworthiness. The indicia of trustworthiness of the contents of the statements made by ... [Z.B.], and the statements the court seeks to admit or is attempting to admit are contained in her CAST interview, the statements that are particular to the offense that's charged. The reason that her statements fail under the indicia of reliability test is because her statements are preposterous. They are ridiculous. What she says happened to her defies logic and common sense.”

S.H.'s attorney asserted that there was no corroboration for Z.B.'s claims, and her claim that she and S.H. stood with their hands in each other's pants for five minutes in the middle of a busy grocery store was not credible. The attorney also pointed out that the CAST interview occurred nearly five months after the trip to the grocery store and argued that was “a long time for a five year old to remember”

The deputy district attorney countered that reliability under Evidence Code section 1360 may be shown by the circumstances under which the statement was made, the language used, and whether the child has a motive to fabricate. He stated, “The court would be able to review the video for those indicia of reliability, the language, the

another, or describing any attempted act of child abuse or neglect with or on the child by another, is not made inadmissible by the hearsay rule if all of the following apply: [¶] (1) The statement is not otherwise admissible by statute or court rule. [¶] (2) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability. [¶] (3) The child either: [¶] (A) Testifies at the proceedings. [¶] (B) Is unavailable as a witness, in which case the statement may be admitted only if there is evidence of the child abuse or neglect that corroborates the statement made by the child. [¶] (b) A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party the intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings in order to provide the adverse party with a fair opportunity to prepare to meet the statement.”

circumstances, the environment. And we believe that we can make the requirements for 1360”

After hearing the attorneys’ arguments, the court stated:

“I think at this point what we need to do is, as stated in 1360, is to have the hearing regarding the tape or the video, the CAST interview, and then for the court to review that and hear foundation as to that tape. And once I see the videotape, ... [confirms with deputy district attorney that a transcript of the interview exists] ... at that point I believe I need to make the determination whether or not it will be admitted based on the circumstances surrounding the statement[,] time[,] et cetera.”

The court then asked the parties if they were ready to proceed on that issue. The parties stipulated to the authenticity of the videotape and the correctness of the transcript. The court took a recess and reviewed the videotape in chambers. After the recess, the court gave the attorneys another opportunity to argue, and S.H.’s attorney submitted the matter. The court then stated, “The CAST videotape will be admitted into evidence” The court gave no reason for its decision. S.H.’s attorney again noted her objection to admitting the videotape into evidence, but she did not state any particular ground for her objection, nor did she ask the court to state its reasoning. The court asked whether the CAST interview videotape had been provided during normal discovery, and both attorneys responded that it had.

B. Discussion

Evidence Code “[s]ection 1360 creates a limited exception to the hearsay rule in criminal prosecutions for a child’s statements describing acts of child abuse or neglect, including statements describing sexual abuse. [Citations.] Section 1360 safeguards the reliability of a child’s hearsay statements by requiring that: (1) the court find, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances surrounding the statement(s) provide sufficient indicia of reliability; (2) the child either testifies at the proceedings, or, if the child is unavailable to testify, other evidence corroborates the out-of-court statements; and (3) the proponent of the statement gives notice to the adverse party sufficiently in advance of the proceeding to

provide him or her with a fair opportunity to defend against the statement.” (*People v. Roberto V.* (2001) 93 Cal.App.4th 1350, 1367.) We review a trial court’s admission of evidence under Evidence Code section 1360 for abuse of discretion. (*Roberto V., supra*, at p. 1367.)

Evidence Code section 1360, subdivision (b), specifically requires the proponent of a hearsay statement to make “known to the adverse party the intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings in order to provide the adverse party with a fair opportunity to prepare to meet the statement.” Notice “in advance of the proceeding” has been held to mean prior to the beginning of trial. (*People v. Roberto V., supra*, 93 Cal.App.4th at p. 1371.)

On appeal, S.H. argues that the deputy district attorney failed to comply with the notice requirement of Evidence Code section 1360, subdivision (b). S.H. points out that, prior to September 23, 2011, which was the third day of the jurisdictional hearing (i.e., the trial), the deputy district attorney had never referred to Evidence Code section 1360. Although the videotape was produced during discovery, apparently there was no indication that the deputy district attorney intended to introduce it into evidence until he filed a brief—on the third day of trial—arguing that it was admissible under Evidence Code section 1237.

The People respond that S.H. has forfeited this issue. We agree. “[F]ailure to make a timely and specific objection’ on the ground asserted on appeal makes that ground not cognizable.” (*People v. Seijas* (2005) 36 Cal.4th 291, 302.) Although S.H.’s attorney objected to admitting into evidence the videotape and transcript of the CAST interview, she did so only on the ground that it lacked sufficient indicia of reliability as required by Evidence Code section 1360, subdivision (a)(2). She did not object on the ground of inadequate notice under section 1360, subdivision (b). Had she done so, the juvenile court could have addressed the issue by allowing her additional time to prepare a response against admitting the evidence under section 1360.

S.H. asserts that the issue of inadequate notice has not been forfeited because his attorney objected at the time the videotape was admitted into evidence under Evidence Code section 1360 generally. He argues that, if the wording of an objection fairly advised the trial court of the substance of the objection, it is sufficient. (*People v. Scott* (1978) 21 Cal.3d 284, 290.) An objection is preserved if “the record shows that the court understood the issue presented.” (*Ibid.*) We are not persuaded.

The purpose of the notice requirement of Evidence Code section 1360, subdivision (b), is “to give a criminal defendant a fair opportunity to prepare his or her defense.” (*People v. Roberto V., supra*, 93 Cal.App.4th at p. 1372.) Here, after discussing the procedure for determining whether to admit the videotaped interview under Evidence Code section 1360, the juvenile court asked the attorneys if they were ready to proceed. S.H.’s attorney did not indicate that she needed additional time to prepare a response to the section 1360 issue. Instead, she stipulated to the authenticity of the videotape and the correctness of the transcript. When the juvenile court later admitted the evidence, S.H. renewed her objection, but there was no reason for the court to understand the objection to include an objection based on noncompliance with the notice requirement of Evidence Code section 1360, subdivision (b). Under these circumstances, we cannot say S.H.’s objection fairly advised the court of the issue of inadequate notice.

In light of our conclusion that S.H. has forfeited the issue of inadequate notice under Evidence Code section 1360, subdivision (b), we need not address his argument that the lack of notice caused him prejudice.

S.H. also contends that the juvenile court erred by finding sufficient indicia of reliability to admit the videotape and transcript of the CAST interview under Evidence Code section 1360. To admit a hearsay statement under Evidence Code section 1360, the court must find “that the time, content, and circumstances of the statement provide sufficient indicia of reliability.” (Evid. Code, § 1360, subd. (a)(2).) In determining whether a statement is reliable, the court may consider, among other things:

“(1) spontaneity and consistent repetition; (2) mental state of the declarant; (3) use of terminology unexpected of a child of similar age; and (4) lack of motive to fabricate.” (*People v. Brodit* (1998) 61 Cal.App.4th 1312, 1330, citing *In re Cindy L.* (1997) 17 Cal.4th 15, 30.)

In this case, the deputy district attorney argued that the court could review the videotape for indicia of reliability such as the circumstances under which the statement was made, the language used, and whether the child has a motive to fabricate. The court reviewed the videotape of the CAST interview and then admitted the videotape and transcript into evidence under Evidence Code section 1360.⁷ We cannot say the juvenile court abused its discretion in doing so.

At the beginning of the CAST interview, Z.B. demonstrated that she understood the difference between the truth and lies and she promised to tell the truth. (See *People v. Eccleston* (2001) 89 Cal.App.4th 436, 447 [videotape of CAST interview had indicia of reliability where, among other things, interview “established that the victim knew the difference between truth and falsehood”].) There was nothing apparent about Z.B.’s mental state to indicate that her statements were unreliable. (See *People v. Brodit, supra*, 61 Cal.App.4th at p. 1330.) Z.B. repeated her allegations, with some variations, to her father, a social worker, and the CAST interviewer. (See *ibid.* [victim’s hearsay statements reliable where, among other things, victim repeated statements, with minor variations, to at least five adults].) In addition, Z.B.’s description of S.H. pulling up and down on his penis could be interpreted to demonstrate unexpected knowledge of sexual

⁷S.H. argues that the deputy district attorney failed to meet his burden of proving that Z.B.’s hearsay statements were admissible under an exception to the hearsay rule. We disagree. The court could determine whether the videotape and a transcript were admissible under Evidence Code section 1360 by viewing the videotape and making a finding that “the time, content, and circumstances of the statement provide sufficient indicia of reliability.” (*Id.*, subd. (a)(2).) Since the videotape itself could demonstrate sufficient “indicia of reliability,” the deputy district attorney met his burden by citing Evidence Code section 1360 and requesting that the court view the videotape.

acts for a five year old. (See *ibid.* [victim’s “description of the sexual acts showed a knowledge of such matters far beyond the ordinary familiarity of a child of her age”].) Under these circumstances, the juvenile court did not abuse its discretion in finding the CAST interview to be reliable and admissible under Evidence Code section 1360.

DISPOSITION

The jurisdictional and disposition orders are set aside and the case is remanded to the juvenile court to determine whether S.H. is suitable for DEJ. If, as a result of those proceedings, the juvenile court grants DEJ to S.H., it shall issue an order vacating the findings and orders. If the juvenile court denies DEJ to S.H., it shall make its order continuing in effect the judgment, subject to S.H.’s right to have the denial of DEJ and the findings and orders reviewed on appeal. (*In re Luis B.*, *supra*, 142 Cal.App.4th at pp. 1123-1124.)

Wiseman, Acting P.J.

WE CONCUR:

Cornell, J.

Kane, J.