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

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

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

ROBERTO C.,

Defendant and Appellant.

F064535

(Super. Ct. Nos. 11CECJ300219-1,
11CECJ300219-2)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Fresno County. Mary Dolas,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Hana B. Balfour, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Kane, J., and Detjen, J.

Roberto C. (father) appealed from March 2012 juvenile court dispositional orders (Welf. & Inst. Code, §§ 358, 361, 361.2 & 361.5) pertaining to his children, three-year-old Madison and 19-month-old Robert.¹ The juvenile court denied father custody of the children as well as reunification services.

After reviewing the entire record, father's court-appointed appellate counsel informed this court she had found no arguable issues to raise in this appeal. Counsel requested and this court granted leave for father to personally file a letter setting forth a good cause showing that an arguable issue of reversible error does exist. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844.) Father has since submitted a letter in which he claims the following: the juvenile court should have given him a chance to make a plan for the children; and it was detrimental to the children for the court to deny him services.

On review, we conclude neither of father's claims amounts to a good cause showing that an arguable issue of reversible error does exist.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2011 respondent Fresno County Department of Social Services (department) detained the children from their mother's physical custody, due to her neglect brought on by her substance abuse, and initiated the underlying dependency proceedings (§ 300, subd. (b)). Father, who was considered the children's alleged father, was incarcerated in state prison for narcotics convictions. From the outset, numerous paternal and maternal relatives asked to be considered for placement of the children.

Father made his first appearance in November 2011 when the court exercised its dependency jurisdiction over the children based on their mother's neglect. Father asked for visits with the children and pictures of them. The court granted father quarterly visits assuming the department confirmed his paternity. In mid-December 2011, the parents

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

provided documentation to the department to establish father's paternity. The court eventually determined father was the children's presumed father. Meanwhile, in late December 2011, the department placed the children with maternal relatives.

The department recommended that the court remove the children from parental custody and order reunification services for the mother but not father. With regard to father, the department explained he could not assume physical custody of the children because he was serving a six-year prison term. The department based its recommendation against reunification services for father on the grounds he was incarcerated and there was clear and convincing evidence that services would be detrimental to the children (§ 361.5, subd. (e)(1)).

According to the department's evidence, father had been incarcerated since before Robert's birth and never had any contact or relationship with him. Similarly, father had had no contact with Madison for the past two years and did not have a consistent relationship with her. In addition, both children were very young. Father was also serving a six-year prison term and his scheduled release date was not until 2015. He would be unable to make significant progress in terms of the types of services he would need within the limited statutory timeframe for reunification. The nature of his crime was narcotic sales. He also had a history of substance abuse.

At a dispositional hearing, father asked that the children be placed in his custody and further claimed his sister and mother were ready, willing and able to care for the children until he was released, which would be in January 2015.

Father testified he was taken into custody in January 2010. Before then, he was with Madison a majority of the time. Once he was taken into custody, he did not have any visits with Madison. He tried to maintain contact with Madison by writing to her. Since November 2011, he had had two visits with her.

Father acknowledged he had not done anything about the children's care or custody since his incarceration. Asked if he was aware of mother's substance abuse issues, father replied, "I was told but I wasn't completely aware a hundred percent." He did know that his relatives suspected the mother had a substance abuse problem.

Father admitted he was incarcerated for narcotics offenses and had issues with abusing controlled substances. Although there were sobriety-related services available in the prison, he was not, and had not been, involved in them. He did not have any "urges" while in prison or a need to attend any sobriety classes. Nevertheless, he offered to attend classes to maintain his sobriety.

In closing argument, father's counsel urged that since father was the children's noncustodial parent when the children were detained and he wished to assume custody, the court should allow father to make a plan for the children's care while he was incarcerated. She cited section 361.2 and *In re Isayah C.* (2004) 118 Cal.App.4th 684.² Alternatively, counsel urged there was no evidence that reunification services for father would be detrimental to the children.

The court rejected both of counsel's arguments.

DISCUSSION

An appealed-from judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is appellant's burden to raise claims of reversible error or other defect and present argument and authority on each point made. If an appellant does not do so, the appeal should be dismissed. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Father contends the court's orders denying him the opportunity to make a plan for the children and denying him reunification services are arguable issues. We disagree.

² The reporter's transcript contains a misspelling of the opinion title.

I.

If a parent is incarcerated, that fact alone does not warrant the juvenile court exercising its dependency jurisdiction if the parent can arrange for his or her child's care during the parent's incarceration. (§ 300, subd. (g).) However, that rule has no application here. The juvenile court intervened in this case because of the mother's serious neglect brought on by her substance abuse, not because father was incarcerated. At the time in 2011 when the children were detained and the dependency proceedings commenced, father was already incarcerated and had been since January 2010. In January 2010, he did not make a plan for Madison's care other than to leave her with the mother whom he knew, or should have known, had a substance abuse problem. Also, he did not make a plan for both children after Robert was born.

The fact that father was the noncustodial parent when the children were detained in 2011 did not entitle him to custody and the ability to place the children with his relatives while he was incarcerated. The authorities father's counsel relied upon provide no such relief.

Section 361.2 assumes the juvenile court has properly exercised its jurisdiction and decided to remove the children from the care of the custodial parent. It addresses how the court should proceed if the children's other parent did not have custody of the children at the time of their detention but currently requests custody. It specifically states "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" (§ 361.2, subd. (a), italics added.) It does not permit a parent who requests custody to place the children with someone else.

In addition, the case father's counsel cited, *In re Isayah C.*, *supra*, 118 Cal.App.4th 684, is factually distinguishable. The court had ordered a child placed in his father's custody after which the father was arrested for a parole violation. (*Id.* at p. 687.)

II.

If a parent is incarcerated or institutionalized and the court determines by clear and convincing evidence that providing services would be detrimental to the child, reunification services shall not be provided. (§ 361.5, subd. (e)(1).) In determining detriment, the court shall consider:

“the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child’s attitude toward the implementation of family reunification services, the likelihood of the parent’s discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors.” (§ 361.5, subd. (e)(1).)

Father does not dispute that the court considered these factors in denying him services. Instead, father argues that not ordering services was detrimental to the children. While the degree of detriment to a child if services are not offered is one factor for the court to consider under section 361.5 subdivision (e)(1), father overlooks the lack of any such evidence in the record.

Father also disregards the other evidence before the court to support the denial of services. Both children were age three and younger and had little or no relationship with father. Father would remain incarcerated for almost another three years and to date had not taken advantage of available services to deal with his substance abuse issues. Furthermore, because Robert was under the age of three at the outset of these proceedings, time for reunification could be as short as six months (§ 361.5, subd. (a)).

DISPOSITION

This appeal is dismissed. (*In re Sade C.*, *supra*, 13 Cal.4th 952, 994.)