

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 ISABELLE C. et al., Persons Coming  
Under the Juvenile Court Law.

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Plaintiff and Respondent,

v.

MIGUEL C.,

Defendant and Appellant.

F066168

(Super. Ct. Nos. JD128758-00,  
JD128765-00)

**OPINION**

**THE COURT\***

APPEAL from orders of the Superior Court of Kern County. Louie L. Vega,  
Judge.

Jack A. Love, under appointment by the Court of Appeal, Defendant and  
Appellant.

Theresa A. Goldner, County Counsel, and Paul E. Blackhurst, Deputy County  
Counsel, for Plaintiff and Respondent.

---

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

Miguel C. (father) appeals orders of the juvenile court removing his daughters Brittany, age 15, and Isabelle, age 7, (together the children) from father's care following true findings made on a supplemental petition under Welfare and Institutions Code section 387.<sup>1</sup> Father challenges the sufficiency of the evidence to support the juvenile court's finding that the previous placement with father was ineffective in protecting the children and removal from father's custody was necessary to prevent substantial danger to them. We affirm the orders.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### ***Dependency Petition December 24, 2008***

Father and Christine C. (mother)<sup>2</sup> had a prior history of substance abuse and neglect prior to the filing of a section 300 petition in Los Angeles on December 24, 2008. A temporary guardianship had been granted in June of that year as both father and mother were incarcerated. Brittany had difficulty in school, possibly due to father and mother running from law enforcement and running from state to state to avoid warrants. There was also concern that both Brittany and Isabelle had been sexually abused. At the time, father also had several referrals and open cases as the alleged father of Kaycee and Bryan R. who lived with their mother.<sup>3</sup>

The referral received in December of 2008 alleged that mother had overdosed on prescription medication while on a bus with Brittany and Isabelle, travelling from Chico,

---

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

<sup>2</sup> Mother is listed as Christine G. in earlier proceedings. She is not a party to this appeal.

<sup>3</sup> Kaycee and Bryan R. are not at issue here. Neither is mother's older child Andrew G. and father and mother's older child Ryan C.

California to New Mexico to visit father, who was on probation in that state. The initial petition followed. The children were found to be dependents and detained.

Father told the social worker that, while mother had a past addiction to pain medication, he did not believe she overdosed on medication on the bus. Instead, he believed she was kicked off the bus because she was sick. According to father, his recent drug charge was for a criminal conviction he suffered when he attempted to fill a forged prescription for mother. Father claimed not to know it was forged; mother insisted that father knew.

Father wanted the children returned to his custody. The department noted its concern of father's representation of mother's substance abuse as well as his own lengthy criminal history, which included warrants and failure to appear citations, indicating a lack of regard for rules and the law.

***Six-Month Status Review August 21, 2009***

In May of 2009, Brittany, age 12, was assessed for mental health treatment and found as suggestive of chronic Adjustment Disorder with Depression. She had been through multiple foster care placements; she was forced to move often with father and mother; she suffered irregular school attendance; and she was often left to care for Isabelle. According to her foster mother, Brittany's 15-year-old brother called her more often than her father or mother did.

In the report prepared in anticipation of the six-month review hearing pursuant to section 366.21, subdivision (e), father admitted a substance abuse problem that had caused him to exercise poor judgment affecting his children. Father indicated a desire to have his daughters come live with him in New Mexico and an Interstate Compact to the Placement of Children (ICPC) was ordered. But father later said he did not want the ICPC to start as he did not want the friends he was staying with to have to participate. Father hoped to have permanent housing by May of 2009.

An interim hearing was held October 28, 2009, to address the ICPC. The ICPC was denied by New Mexico because it would not approve the home with mother residing there. New Mexico's protective services also determined father was an unfit parent due to his history of child neglect and failure to make progress in his service plan, which included substance abuse treatment and complying with conditions of his probation. Father had been attending weekly NA meetings.

Further information received from New Mexico indicated that, even if mother moved out, father would allow her to move back in. Both father and mother had a history of prescription drug abuse. The children had missed a great deal of school while in their parents' care and neither father nor mother followed through with their voluntary services case plan. The social worker indicated that the family had moved to Oregon and had no further information on them.

***Twelve-Month Review February 19, 2010***

A report prepared in anticipation of the 12-month review hearing pursuant to section 366.21, subdivision (f), set for February 19, 2010, recommended termination of reunification services to both father and mother. Father and mother continued to live together in New Mexico, although father stated he was attempting to get his probation transferred to California and was willing to leave mother if the girls were placed with him.

The report stated that father had not been compliant with his probation terms. He failed to attend counseling regularly and would not admit any wrongdoing on mother's part. The social worker felt that both father and mother had little insight into the reasons the children were detained or the need to continue jurisdiction. Father and mother both insisted that mother had passed out on the bus due to illness and not due to an overdose. Both offered a litany of excuses for their minimal participation in counseling, and both

had recently terminated counseling because they were unable to get along with their respective therapists.

After Brittany's disruptive behavior escalated, an ex parte application for a psychological evaluation was granted in March of 2010. Brittany was verbally abusive toward her sister and defiant toward adults. She continued to suffer from involuntary bed wetting.

***Contested Review Hearing April 9, 2010***

A contested review hearing was held April 9, 2010. By this time, father and his adult son had moved in with his adult stepdaughter in Yuba City. The juvenile court terminated services to mother, continued services to father and transferred the matter to Sutter County, where father was living.

A June 3, 2010, addendum stated that father, Brittany and Isabelle were now attending the Strengthening Families Program together and father was participating in weekly Al-Anon meetings and a codependency group as part of his probation terms. Brittany and Isabelle were in individual therapy and had recently completed physical and dental exams.

***Eighteen-Month Review Hearing August 10, 2010***

At the 18-month review hearing, held August 10, 2010, the department now recommended that the children be placed with father under a family maintenance plan. Father and daughters appeared well bonded and all saw reunification as a goal. Father recognized mother's noncompliance as an obstacle to reunification and separated from her to get the girls back, but he still would not admit to any wrongdoing on her part.

***Section 364 Review Hearing February 8, 2011***

By the time of the section 364 review held February 8, 2011, father had obtained housing separate from his stepdaughter. But due to a reduction in his hours at work, he was now in need of bus passes, food, and clothing from the department. Father was

attempting to get extensive necessary dental care for Brittany. He was proactive in his daughter's education and requested therapy for both of them to address the bed wetting issue. Father cooperated with the department and "demonstrated responsibility, compliance and good parenting practices." The juvenile court agreed with the department's recommendation for further family maintenance services due to the "lengthy generational child welfare history and ... current impoverished situation ...."

***Section 364 Review Hearing September 20, 2011***

By the time of the second section 364 review hearing in August of 2011, father was moving again and the matter had to be continued. Father did not appear at the subsequent hearing and counsel had not heard from him. The matter was again continued.

The report in anticipation of the hearing stated that father and the girls had moved to a second apartment in Yuba and were now living in Robbins, California with father's older son Ryan. Poverty continued to be an issue, and the family was supplied with food and school clothing. Both Brittany and Isabelle had attended a number of schools due to the constant moves and transportation issues. Father was described as loving and dedicated, but beleaguered by poverty and unable to attain stability in employment, housing, finances or education.

Father again did not appear at the rescheduled review hearing September 20, 2011, and counsel had not heard from him. County counsel thought father was considering a move to Bakersfield where he had family. The juvenile court ordered family maintenance services continued for father and ordered that he was to sign the case plan within 30 days.

***Section 387 Petition March 28, 2012***

Brittany was detained on March 26, 2012, and a supplemental section 387 petition filed two days later. The petition alleged that Brittany was sexually abused by her

brother Ryan; that mother was again residing with the family; father, mother, and Ryan had all hit Brittany; father was complicit in mother's attempts to buy drugs off the street; and father and mother had allowed Brittany to live with a friend after she informed them of Ryan's sexual assault on her.

A referral received from a medical social worker March 26, 2012, stated that father had been waiting for mother outside the healthcare facility after mother was taken there after she purchased five methadone tablets on the street. Mother's address was the same as that for father. According to father, mother visited but did not live with him or the children.

Father denied all allegations, stating only that Brittany had been experiencing behavioral problems since the family entered a shelter in December of 2011. Father claimed that prior to making the allegations, Brittany had set fire to Ryan's mattress.

The juvenile court determined there was no sufficient basis for jurisdiction under section 387 and dismissed the petition on May 31, 2012, and continued the case under family maintenance. The matter was transferred to Kern County, father's county of residence.

### ***Transfer In Hearing July 2, 2012***

At the time of the transfer in hearing July 2, 2012, father was living with his mother and looking for a home in Kern County. The juvenile court specifically ordered that mother was not to be in father's home. When a Kern County social worker spoke with Brittany on September 13, 2012, she stated that she had run away to Yuba to be with a friend, she got "tired" of that situation, returned home and was ready to go back to school. Father stated that he intended to register Brittany for school the following day. Isabelle was already attending a local school.

On October 11, 2012, father was arrested after attempting to sell a stolen truck. Law enforcement was called the next day when no one came to pick up Isabelle at

school. It was discovered that Brittany and Isabelle had been cared for by Ryan since father had been arrested. Brittany and Isabelle were taken into protective custody and Brittany then ran away and her whereabouts were still unknown.

***Section 387 Petition October 16, 2012***

A section 387 petition was filed October 16, 2012, after Brittany ran away from the children's center where she was detained. Father admitted that mother "comes and goes" from the home, but he claimed not to know whether or not she was abusing drugs.

At the combined section 387 jurisdiction/disposition hearing November 2, 2012, counsel for father argued that, while father had been incarcerated for a substantial portion of time, he was willing to do whatever it took to have family maintenance reinstated or dependency jurisdiction terminated. Counsel for the children argued for continued family maintenance and that father "probably figured out that mom cannot be visiting without a social worker." Counsel for the department requested an amendment of the first allegation in the petition, which was granted and then submitted on the issue of jurisdiction. Father submitted on the issue of jurisdiction as well and submitted a waiver of rights. The juvenile court specifically questioned father on the waiver of rights and father stated he understood the "nature of the allegations" and "the consequences" if the allegations were found true.

On the issue of disposition, counsel for father indicated "the same argument" as initially stated. When the juvenile court stated that the recommendation was to terminate custody, counsel for the department stated there had been no change in the recommendation. When asked if he had anything further, father's counsel responded, "I don't, your Honor."

The juvenile court ordered Brittany and Isabelle removed from father's custody. The juvenile court found that father had made no progress toward alleviating or mitigating the causes for out of home placement. It noted that he had received 24 months

of family reunification services and ordered them terminated. The juvenile court found the children were not proper subjects for adoption and ordered a “planned permanent living arrangement” for them.

### **DISCUSSION**

Father submitted to jurisdiction on the section 387 petition, but argues there was insufficient evidence to support the findings to remove the children from his custody. We disagree.

Before the juvenile court can change or modify a previous order by removing a minor from the physical custody of a parent and directing foster care placement, there must be a hearing on a supplemental petition. (§ 387, subd. (a).) A petition under section 387 need not allege any new jurisdictional facts, or urge different or additional grounds for dependency because there already exists a basis for juvenile court jurisdiction. (*In re Joel H.* (1993) 19 Cal.App.4th 1185, 1200; *In re John V.* (1992) 5 Cal.App.4th 1201, 1211.) The only fact necessary to modify a previous placement is that the previous disposition has not been effective in protecting the child. (§ 387, subd. (b); *In re Joel H., supra*, at p. 1200.)

In the jurisdictional phase of a section 387 proceeding, the court determines whether the factual allegations of the supplemental petition are true and whether the previous disposition has been effective in protecting the child. (Cal. Rules of Court, rule 5.565(e)(1).) If the court finds the allegations are true, it conducts a dispositional phase to determine whether removal of custody is appropriate. (Cal. Rules of Court, rule 5.565(e)(2).)

When a section 387 petition seeks to remove a minor from parental custody, the juvenile court must apply the procedures and protections of section 361. (*In re Paul E.* (1995) 39 Cal.App.4th 996, 1001-1003.) Thus, before a minor can be removed from the parent’s custody, the court must find, by clear and convincing evidence, there is “a

substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor [or would be] if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's ...." (§ 361, subd. (c)(1); *In re Javier G.* (2006) 137 Cal.App.4th 453, 462.) A removal order is proper if it is based on proof of: (1) parental inability to provide proper care for the minor; and (2) potential detriment to the minor if he or she remains with the parent. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60.) The parent need not be dangerous and the minor need not have been harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.) The agency has the burden of proof at a section 387 disposition hearing to show reasonable efforts were made to prevent or eliminate the need for removal. (*In re Javier G., supra*, at p. 463.) We review the court's jurisdictional and dispositional findings for substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529; *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

Here, the section 387 petition alleged the previous order placing the children with father had been ineffective in protecting them because father was arrested for possession of a stolen vehicle, leaving the children alone in the home without an immediate caretaker. The petition further alleged that father had been allowing mother into the home, in direct conflict with a court order. Mother had a long history of controlled substance abuse, which led to the children's dependency in the first place.

The social study in support of the petition explained that law enforcement was called when no one came to pick up Isabelle at school. It was then learned that father had been arrested for attempting to sell a stolen truck. It was apparent that mother was often in the family home, in direct conflict with a court order. At the time of father's arrest, the children were left in their 18-year-old brother Ryan's care, even though Brittany earlier claimed Ryan had sexually assaulted her. The home in which Ryan cared for the children

was dirty, had only one bed, and very little food in the house. Substantial evidence supports the court's jurisdictional findings on the section 387 supplemental petition.

Substantial evidence also supports a finding there was or would be a substantial danger to the minor's physical health, safety, protection or physical or emotional well-being to warrant an out-of-home placement. (§ 361, subd. (c)(1).) The court's order placing the children with father was conditioned on mother not being allowed into the home because she had an untreated drug problem. By having direct contact with mother and allowing her to have access to the children, father disregarded the court's order and also placed the children in the same situation that led to their initial dependency and removal from parental custody. Father and mother's constant run-ins with the law led to a history of hopping from state to state and county to county, resulting in psychological and behavioral issues for Brittany. Under these circumstances, the juvenile court could reasonably find father had not accepted responsibility for their problems and thus, the children remained at risk if placement with father continued.

Further, reasonable efforts were made to prevent or eliminate the need for removal. (§ 361, subd. (c)(1).) Father received 24 months of family reunification services. Despite these services and despite father's professed understanding that he was not to have mother in the home, he still allowed her to stay there. And he failed to keep from participating in criminal behavior leading to his arrest and leaving the children in the care of their older brother Ryan. Under these circumstances, the court was entitled to disbelieve any further assurances from father that he would protect the children.

### **DISPOSITION**

The orders are affirmed.