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

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

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Plaintiff and Respondent,

v.

JORGE A.,

Defendant and Appellant.

F069269

(Super. Ct. Nos. JD131586-00,  
JD1311587-00)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. William D. Palmer, Judge.

Rebekah S. Sass, under appointment by the Court of Appeal, for Defendant and Appellant.

Theresa A. Goldner, County Counsel, and Kelley D. Scott, Deputy County Counsel, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Kane, J. and Detjen, J.

Jorge A. appeals from the juvenile court's dispositional order denying him visitation with his five-year-old son, J.C., and four-year-old daughter, C.C. At the time he filed his notice of appeal, Jorge was incarcerated pending first degree murder charges in the death of the children's mother, Maria. The juvenile court ordered reunification services for Jorge but denied visitation, finding it would be detrimental to the children. Jorge contends the juvenile court abused its discretion in denying him visitation. We affirm.

### **PROCEDURAL AND FACTUAL SUMMARY**

These dependency proceedings were initiated in October 2013. At that time, Jorge and his girlfriend, Maria, were living together with their children, then four-year-old J.C. and three-year-old C.C., as well as several of Maria's older children. Maria and Jorge had been in a relationship for approximately five years and had a history of domestic violence. In July 2013, Jorge was arrested for spousal abuse after he became intoxicated and pulled Maria's arm, causing her to fall on the sidewalk and hit her head. J.C. and C.C. were with Maria at the time of the incident.

Late one night in early October 2013, police officers responded to a report of domestic violence at the apartment Jorge and Maria shared. Maria's son, Enrique, was the one who contacted the police. He met the officers outside and told them his mother was unconscious. The officers observed Maria lying on the couch. Her son, Oscar, was cradling her head in his lap and Jorge was trying to administer cardiopulmonary resuscitation (CPR). Oscar told the officers Maria was not breathing. The officers placed Maria on the floor and continued CPR until emergency responders relieved them. While administering CPR, one of the officers noticed there were numerous children in the residence, including J.C. and C.C.

Enrique stated that Jorge and Maria were arguing in the living room. Jorge was drunk and grabbing Maria. The other children were in their rooms. Maria told Enrique to get his brothers and leave. Enrique went to the rear of the apartment to awaken his

brothers. When he returned, he saw his mother on the couch and Jorge squeezing her throat with his right hand. Enrique pushed Jorge to the floor and called the police. Enrique said he had seen Jorge slap his mother in the past.

Ruby, Maria's adult daughter, said she was called before her mother lost consciousness. When she arrived, her mother was not breathing and the ambulance was en route. She said the younger children saw Jorge putting their mother's "head down and [saw] her stop breathing." The family tried to give Maria water to revive her.

Maria sustained strangulation marks and blunt force trauma. The coroner ruled her death a homicide. Jorge was arrested and charged with first degree murder.

The Kern County Department of Human Services (department) took the children into protective custody and filed dependency petitions on their behalf. The department released the older children to their father and placed J.C. and C.C. with Ruby.

Jorge appeared in custody at the detention hearing and requested visitation while he was in custody, which the juvenile court denied. The court found that visits would be detrimental to the children.

In December 2013, at the jurisdictional hearing, the juvenile court adjudged the children its dependents. Through his attorney, Jorge requested reasonable telephone contact. He said he did not want the children to see him in jail. Ruby, who had retained an attorney, objected to Jorge contacting the children by telephone. The juvenile court instructed Jorge's attorney to investigate the possibility of telephone contact and provide that information to the court. There is no evidence such information was provided to the court.

In its report for the dispositional hearing, the department recommended the juvenile court provide Jorge reunification services to include twice weekly supervised visitation.

In March 2014, the juvenile court convened the dispositional hearing. Jorge's attorney requested monthly visits. The juvenile court denied the request, finding it would

be detrimental to the children's mental health, and continued the dispositional hearing until April.

In April 2014, at the dispositional hearing, Jorge's attorney argued that visitation should be part of Jorge's reunification plan. The juvenile court ordered reunification services for Jorge but denied his request for visitation. In denying visitation, the juvenile court stated:

“As to visitation I'll make it clear.... I ... believe it would be detrimental to the children. I don't believe I need a psychiatric examination. I think that common sense suggests that. Clearly in the event that there's a finding by a duly constituted jury. That the father is not guilty. [Then] we will revisit the issue. But at this point we have a gentleman who is incarcerated with capital murder charges pending. And I have no intention of subjecting the children to visitation with that individual because the charges are directed to the mother and the fact that they were, I believe, percipient witnesses.”

This appeal ensued.

## DISCUSSION

Jorge contends the juvenile court abused its discretion when it refused to provide him any form of visitation. He argues that visitation is critical for reunifying with his children and there was no evidence that it would be detrimental to them.

Visitation is a key component of any plan to reunify a parent and child. (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679.) This is equally true for an incarcerated parent receiving reunification services. (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769-770 (*Dylan T.*)) Thus, Welfare and Institutions Code section 362.1,<sup>1</sup> the general visitation statute, requires the juvenile court to order visitation whenever it places a child in foster care and orders reunification services for the parent. The statute provides, as relevant here:

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

“In order to maintain ties between the parent ... and the child, ... any order placing a child in foster care, and ordering reunification services, shall provide as follows: [¶] (1) [¶] (A) [V]isitation between the parent ... and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child. [¶] (B) No visitation order shall jeopardize the safety of the child.” (§ 362.1, subd. (a)(1)(A) & (B).)

The juvenile court may, however, deny an incarcerated parent reunification services if it finds by clear and convincing evidence that visitation would be detrimental to the child. (*Dylan T.*, *supra*, 65 Cal.App.4th at p. 774.) Section 361.5, subdivision (e)(1) specifies the factors to be considered when making a finding of detriment: “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 ... any other appropriate factors.” (§ 361.5, subd. (e)(1).)

We review the juvenile court’s visitation order for abuse of discretion and will not disturb the order unless an abuse of discretion is clearly shown. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Here, the juvenile court refused to order any form of visitation, finding that it would be detrimental to the children. Though the court did not specify the grounds on which it found visitation detrimental, we can infer from its statement that it did so based on J.C. and C.C.’s young age, the seriousness of Jorge’s crime, the possibility that the children witnessed their mother’s death, the strong likelihood that Jorge faced a long prison term, and the unlikelihood he would reunify with the children.

Jorge contends there was no actual evidence that J.C. and C.C. witnessed their mother’s death or that they would suffer emotionally if they visited him. It is true there is no evidence the children were present during the assault. However, they were present during the resuscitative efforts and saw their mother motionless and unresponsive. Undoubtedly they also witnessed the confusion and the emotion of their siblings. In addition, they witnessed other incidents of Jorge hitting their mother. As the juvenile court stated, one does not need a psychiatric evaluation to know that the children were

emotionally harmed by Jorge's behavior and would be further traumatized by contact with him.

Jorge further contends the juvenile court did not expressly find that visitation would be detrimental by clear and convincing evidence and that this court cannot infer such a finding. Jorge is correct that the minute orders do not reflect that the juvenile court made its finding of detriment by clear and convincing evidence and that finding is not noted in the reporter's transcripts. However, "we will infer a necessary finding provided the implicit finding is supported by substantial evidence." (*In re S.G.* (2003) 112 Cal.App.4th 1254, 1260.) In this case, for all the reasons cited above, we conclude substantial evidence supports the juvenile court's finding by clear and convincing evidence that visitation would be detrimental to J.C. and C.C.

We find no error.

#### **DISPOSITION**

The order denying Jorge visitation is affirmed.