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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re Z.N., a Person Coming Under the Juvenile
Court Law.

MERCED COUNTY HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

JOSE N.,

Defendant and Appellant.

F069774

(Super. Ct. No. JP000706)

OPINION

APPEAL from orders of the Superior Court of Merced County. Brian L. McCabe,
Judge.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and
Appellant.

James N. Fincher, County Counsel, and Sheri Damon, Deputy County Counsel,
for Plaintiff and Respondent.

Jose N. (father), appeals from orders of the juvenile court denying his Welfare and Institutions Code section 388¹ modification petition and terminating his parental rights over his daughter Z.N. at a hearing held pursuant to section 366.26. Father contends the juvenile court improperly denied his section 388 petition because the juvenile court failed to find that he was not properly noticed of various hearings and that reinstatement of reunification services and/or placement with father would be in Z.N.'s best interests. He contends further that the juvenile court improperly terminated his parental rights because it made no finding that return of Z.N. to his custody as a nonoffending parent would be detrimental. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 15, 2012, the Merced County Human Services Agency (agency) filed a section 300, subdivision (b) petition, alleging that Michelle R. (mother) and newborn W.W. both tested positive for methamphetamine. The petition also alleged that mother had an unresolved substance abuse problem, and that she left her other children, seven-year-old Z.N., and one-year-old K.W., in the care of their maternal grandmother, who was also a methamphetamine user.² Father, who did not live with mother, expressed an interest in custody of Z.N.

At the nondetain detention hearing held November 16, 2012, father was present, was appointed counsel, and was found to be Z.N.'s presumed father. When asked if his address was on "Acacia Court" (hereafter incorrect address), father replied "No," that it

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

² Mother is not a party to this appeal and K.W. and W.W. are not subject children of this appeal. The petition also alleged under section 300 subdivision (g) that K.W. and W.W.'s father failed to provide for their support due to his incarceration.

was on “Alexander” (hereafter correct address). The three children were not detained and remained in maternal grandmother’s home subject to oversight by the agency.

At the jurisdiction/disposition hearing held November 29, 2012, father, as a nonoffending parent, requested custody of Z.N. Counsel for father claimed that father had had contact with Z.N. over the last few months, although he acknowledged that visitation “over the years” had been difficult because of mother. Counsel stated father was “ready to have his child placed with him right now.” Counsel stated that father had, in the past, obtained “some documents” to try and obtain custody of Z.N., but acknowledged that “he didn’t get them filed.”

Counsel for the agency argued that father was “not necessarily” a nonoffending parent because he had been aware of mother and maternal grandmother’s drug use “for quite some time,” but never contacted Child Protective Services or law enforcement about it. Father had not yet been evaluated for possible placement of Z.N.

Counsel for Z.N. stated that she would like to see father evaluated for placement and, if the agency was able to do so before the next hearing, to have Z.N. placed with him.

The juvenile court found father was “arguably a non-offending parent” and appeared to be in a position to assume temporary custody of Z.N. The juvenile court stated that it was “leaning toward that direction, if it checks out.” Father offered to do a drug test that day and asked for a visit with Z.N., which the juvenile court stated could be arranged through the social worker.

The three children were not detained but left in the home of maternal grandmother with agency oversight. Father was ordered to appear at the next hearing on December 4, 2012.

An amended section 300 petition filed December 3, 2012, stated that father tested negative for drugs on November 30, 2012. The petition alleged that father acknowledged

he knew mother and other adults in the home where Z.N. lived were using drugs, but he did not contact law enforcement or child welfare. He also claimed he saw Z.N. regularly when she visited her paternal grandmother's home.

At the December 4, 2012, detention hearing on the amended petition, the agency recommended detention of all three children, with the intent to place Z.N. with father "pending further court order." Father, who was present, was in favor of Z.N.'s detention from maternal grandmother. Father's counsel noted that Z.N. might be in need of counseling services because she showed behavioral issues during a recent weekend trial visit with father.

The juvenile court found that prima facie evidence supported the petition, ordered the children removed from the custody of their parents, and ordered temporary placement of the children, with the understanding that Z.N. "will be placed with her father." Agency's counsel agreed that that was the agency's intent. At the end of the hearing, the juvenile court ordered father back for the January 9, 2013, jurisdiction/disposition hearing.

In the report prepared in anticipation of jurisdiction/disposition, the agency recommended that Z.N. be adjudged a dependent of the court and that reunification services be ordered for mother and father. Z.N. expressed to the social worker that she was not certain whether she wanted to live with mother or father.

According to the report, during December of 2012, the social worker made repeated attempts to interview father for the report, but he did not make himself available and did not return phone calls. When asked to come in for an interview, father first stated that he was busy working. He eventually agreed to be interviewed, but then failed to appear. Earlier statements made by father in November of 2012 were that he regularly visited Z.N. at the paternal grandmother's house, but could not visit her at her mother's

house due to a restraining order mother had against him from August of 2009 to August of 2012. Father presently lived with his girlfriend and their children.

According to the report, father was assessed and approved for Z.N.'s placement. But following a trial weekend visit with father which "did not go well," father indicated that he would prefer to "share custody" with mother and have visits with Z.N. Father did not contact the agency for further visitation. The social worker recommended that Z.N.'s placement with father was "not appropriate at this time."

According to the proof of service, on November 16, 2012, father was given notice "in-person" of the January 9, 2013, jurisdiction/disposition hearing, although the incorrect address is listed on the proof of service. Father was not present at the January 9, 2013, hearing, although he was represented by counsel. The hearing was continued to January 14, 2013.

Father was not present at the January 14, 2013, continued hearing although he was again represented by counsel. At the hearing, the agency recommended that Z.N. be placed in an approved relative placement. Father's counsel submitted on the recommendation. The juvenile court found the petition true, found father was "unwilling to provide care" for Z.N., removed Z.N. from her parents' custody, ordered reunification services for mother and father, and set the matter for a six-month hearing on July 10, 2013.

The agency sent notice of the six-month status review hearing to father at the incorrect address, this time via first class mail. In the report prepared in anticipation of the six-month status review, the agency recommended continued reunification services for father, but termination of services for mother. Z.N., who was placed with a maternal great-aunt, was in general good health and was developmentally on target, but had difficulty with school work and an Individual Education Plan was prepared for her. Z.N.

was receiving counseling for difficulty adjusting to being away from mother and maternal grandmother.

During this reporting period, father did not call the agency to schedule visitation with Z.N. and he did not keep in contact with her. On June 19, 2013, father was advised by a social worker of his option to participate in adoption planning and voluntarily relinquish Z.N. for adoption if an adoption agency was willing to accept the relinquishment. Father replied that he would “have to think about that.” On June 26, 2013, father told the social worker, “I need to see if Z[N.] gets along with my wife. I just can’t bring her in right away with my wife and children. I need more time to see if they get along.”

Father was not present at the six-month status review hearing on July 10, 2013, but counsel for father submitted on his behalf. The juvenile court found that it was detrimental to return Z.N. to parental custody and that reasonable services were provided. The juvenile court terminated mother’s reunification services, but continued services for father. The juvenile court ordered monthly supervised visitation for father.

Notice of the 12-month review hearing to be held January 9, 2014, was sent to father on December 13, 2013, at the incorrect address via first class mail. In the report prepared in anticipation of the 12-month review hearing, the agency recommended termination of father’s reunification services and setting a section 366.26 permanent plan hearing for Z.N. Z.N. continued to reside with a maternal great-aunt. According to the social worker, father did not respond to letters and the case plan mailed to him by the agency. The report itself listed father’s correct address, although it is unclear what address was used for this mailing. The report stated that father had had only one visit with Z.N., which took place on July 2, 2013, and he had not contacted the agency since then for additional visits.

Father was not present at the 12-month status review hearing January 9, 2014, and his counsel submitted on the agency's report, stating he had had "[n]o contact" with father "for a very, very long time." The juvenile court terminated father's reunification services, finding he had not made himself available and not complied with his case plan. A section 366.26 permanent plan hearing was set for April 9, 2014. Writ rights and blank forms JV-820 and JV-825 were sent to father at the incorrect address.

On January 29, 2014, the agency personally served father with notice of the upcoming April 9, 2014, section 366.26 hearing recommending termination of parental rights. At the time of service, father stated that he did not want Z.N. to be adopted, that she should be home with him, and that he had done "nothing wrong."

The report prepared in anticipation of the section 366.26 hearing recommended termination of father's parental rights and recommended Z.N.'s adoption with the maternal great-aunt. Z.N., now eight years old, was healthy and developmentally on target. She continued in counseling to address her occasional anger and tantrum issues. She was progressing in school, but needed improvement in language arts and mathematics. She was happy in her placement and wanted to remain. The maternal aunt had no criminal or child abuse history. She was committed to adopting Z.N. Z.N. maintained contact with her younger half siblings, who were in legal guardianship with paternal relatives. A copy of the report was mailed to father at the correct address.

Father was present at the April 9, 2014, section 366.26 planning review hearing. At his request, a contested hearing was set for May 6, 2014.

On April 28, 2014, father filed a section 388 petition requesting that Z.N. be placed with him or that his family reunification services be reinstated so that he and Z.N. "can work on our relationship." According to father's section 388 petition, he never received notice of the six-month and 12-month review hearings and was not told about reunification services. Father reported that he was employed, lived with his wife and

three children, and believed it was in Z.N.'s best interest to be placed with him. A combined section 366.26 and section 388 hearing was set for June 24, 2014.

On May 30, 2014, the agency filed a response to the section 388 petition stating that father had not shown his circumstances had changed and that father had been adequately noticed. The response stated that father was present at the initial detention hearing and had requested custody of Z.N., but that, after the December 1, 2012, trial weekend visit, father had informed the social worker that the visit did not go well. Father told the social worker Z.N. wanted constant attention and he had no time for other family members. Father then requested shared custody and visits with Z.N.

The response stated that, after the January 9, 2013, jurisdiction/disposition hearing, father provided names of relatives he would like Z.N. placed with. But other than that, father failed to maintain any contact with the agency. Phone calls to father by the social worker on December 10, 17, 20 and 21, 2012, to be interviewed for the jurisdiction/disposition report went unanswered. Father also did not show for a scheduled December 21, 2012, appointment with the social worker. The agency next had contact with father when a social worker went over the case plan with father at his home on June 26, 2013. At that time, father said he needed to see if Z.N. got along with his wife: "I just can't bring her in right away with my wife and children. I need more time to see if they get along." The social worker requested that father contact him to set up a visit with Z.N. and provided him with a business card and a copy of the case plan.

Father had a one-hour supervised visit with Z.N. on July 2, 2013, at the agency, after which father was reminded of the July 10, 2013, review hearing. Father stated he would be present. The social worker told father that a case plan had been submitted to the juvenile court and, after the hearing, the social worker would review the case plan with father. Father did not attend the hearing, did not contact the agency for information

on his case or Z.N., and did not request further visitation “nor show willingness” to have custody of Z.N.

The response stated that the agency sent a letter to father at the correct address on November 6, 2013, asking that father contact the social worker to address the case plan and father’s lack of participation and visitation, but father did not respond.

The response did note that father and Z.N. interacted well during two recent visits on April 22 and May 13, 2014, both of which took place after father was told of the permanent planning hearing. Father’s wife and son also joined one of the visits. Nevertheless, the agency recommended that father’s petition be denied as it believed it was not in Z.N.’s best interests to be removed from the placement she had been in since April of 2013.

Father was present at the June 24, 2014, contested combined sections 366.26 and 388 hearing. The juvenile court admitted into evidence the agency’s reports and father’s and social worker’s testimonies, and took judicial notice of the file.

Father testified that he did not receive notice of the various hearings and that he was under the impression that the juvenile court had granted him custody of Z.N. Although he made some telephone calls to the social worker, he did not maintain much contact or request visitation because he was waiting for the agency to place Z.N. with him. Father claimed not to remember being told about hearing dates, being ordered back to court, making suggestions for Z.N.’s placement with relatives, being contacted by the social worker, scheduling an interview with the social worker, being asked to provide information about the case to the social worker, or of having a case plan. Father acknowledged receiving some paperwork, but did not read it and was not sure what it was about. When asked Z.N.’s birth date, he stated she was born in 2004 instead of the correct year of 2005.

The social worker testified that she authored the jurisdictional and disposition report in the matter, and reiterated that father did not return her attempts at contact for an interview for that report.

The juvenile court, in making its ruling, reiterated the dates in which father was present in court and ordered back. The juvenile court found father's testimony not credible, in particular citing father's testimony that he received paperwork (which included his case plan) from the social worker, but that he did not read it. The juvenile court found there was no significant change in circumstances and denied the section 388 petition. It then found Z.N. adoptable and terminated father's parental rights.

DISCUSSION

Father contends that the juvenile court abused its discretion in denying his section 388 petition because the agency failed to provide proper notice of the hearings during the pendency of the case and it was in Z.N.'s best interests to have the opportunity to reunify with father. Father also contends the section 366.26 order terminating his parental rights must be reversed because he, as a noncustodial parent, was entitled to custody as no finding of detriment was made. As we explain below, we find no merit to father's arguments and affirm the juvenile court's orders.

I. NOTICE AND SECTION 388 MODIFICATION PETITION

Father first argues that the juvenile court erred in denying his section 388 modification petition because there was change of circumstance or new evidence and continued reunification services or trial placement of Z.N. with father should have been granted. Specifically, father argues that he was not properly noticed of "almost every hearing during the underlying dependency case,"³ which resulted in a due process

³ Father argues that notices for the following were sent to the incorrect address: (1) the original jurisdiction/disposition hearing and report thereto; (2) the six-month review

violation and lack of reasonable services while in the reunification stage. As argued by father, the lack of various notices and case plan “illustrated that father was not aware of the important case plan requirements, visitation plan, or the court dates in order to reunify with his daughter.” We address the issue de novo within the framework of section 388. (*In re J.H.* (2007) 158 Cal.App.4th 174, 183 [notice errors reviewed de novo].)

Section 388 allows the juvenile court to modify or set aside an order if a parent establishes, by a preponderance of the evidence, that there are changed circumstances or new evidence and the proposed change would promote the child’s best interests. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) A section 388 petition is an appropriate method of raising a due process challenge based on lack of notice. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189; *Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 481, 487-488.)

In order to address father’s claim, we first review the requirements of notice in a dependency proceeding. Section 291 requires that notice of a jurisdiction or disposition hearing be given to certain persons, including parents such as father, and provides in pertinent part: “After the initial petition hearing, the clerk of the court shall cause the notice to be served in the following manner: [¶] (a) Notice of the hearing shall be given to the following persons: [¶] ... [¶] (2) The father or fathers, presumed and alleged.” If the person to be noticed is at the initial petition hearing, notice shall be by personal service or by first-class mail. (§ 291, subd. (e)(2).)

A parent’s constitutional due process right to notice was explained in *In re Claudia S.* (2005) 131 Cal.App.4th 236 as follows:

“Parents are entitled to due process notice of juvenile court proceedings affecting the care and custody of their children, and the absence of due

hearing; (3) the 12-month review hearing; (4) advisement of writ rights posttermination of reunification services; and (5) the original section 366.26 hearing.

process notice to a parent is a ‘fatal defect’ in the juvenile court’s jurisdiction. [Citation.] Due process requires ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’ [Citation.] The means employed to give a party notice for due process purposes must be such as one, desirous of actually informing the party, might reasonably adopt to accomplish it. [Citations.]” (*Id.* at p. 247.)

Father testified at the section 388 hearing that he did not receive notice of the various hearings and that he was under the impression that the juvenile court had granted him custody of Z.N. and he was waiting for the agency to place Z.N. with him. Father claimed not to remember being told about hearing dates, being ordered back to court, making alternate suggestions for Z.N.’s placement, being contacted by the social worker, having scheduled an interview with the social worker or being asked to provide information about the case, or of having a case plan. Father acknowledged receiving some paperwork, but did not bother to read it.

In denying father’s motion, the juvenile court noted that father was present at the detention hearings and “present with counsel” when ordered back for the jurisdiction/disposition hearing, but failed to appear. The juvenile court found the information contained in the various social worker reports to be accurate and father’s testimony not credible, noting father had received paperwork, including the case plan, but, “by his own words,” “didn’t read the report or the documents that were in his possession.” In denying the motion, the juvenile court stated it “does not find that there’s a significant change in circumstances and does not find that it is in the best interest of the minor”

We find no abuse of discretion on the part of the juvenile court in denying the section 388 modification petition. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318 [denial of a section 388 petition is reviewed for an abuse of discretion].) The evidence before the juvenile court was that father had actual notice of the dependency proceedings in that he

and his attorney were present at the November 16, 2012, nondetain detention hearing on the initial petition, the November 29, 2012, jurisdiction/disposition hearing on that petition, and the December 4, 2012, detention hearing on the amended petition when the juvenile court set the January 9, 2013, date for jurisdiction/disposition on the amended petition and father was ordered to appear for that hearing. And in the weeks prior to the January 9, 2013, hearing the social worker attempted numerous times to contact father and father made, but did not keep, an appointment with the social worker.

Although the agency sent notice of the July 10, 2013, six-month review hearing to the incorrect address, the social worker contacted father prior to the hearing on several occasions: on June 19, 2013, father was advised by the social worker of his option to participate in adoption planning for Z.N. and was asked if he wished to voluntarily relinquish Z.N. for adoption, which he said he had to “think about that”; on June 26, 2013, the social worker went over the case plan with father and he told the social worker that he would need to see if Z.N. got along with his wife before he took custody of her; and on July 2, 2013, father had a visit with Z.N., at which time he was reminded by the social worker of the July 10, 2013, upcoming hearing, which he said he would attend.

While notice of the January 9, 2014, 12-month review hearing was sent to father at the incorrect address, the social worker had sent a letter and the case plan to father in November of 2013 at the correct address and father had not responded. The case plan specifically advised father that he was to demonstrate his commitment to meeting Z.N.’s basic needs and develop a healthy, supportive relationship with her by scheduling at least monthly visits; participating in school meetings and other appointments; attending counseling sessions with her, including his family in the sessions as well; and to participate in a father’s support group.

And while written notice of father's advisement rights was sent to father at the incorrect address, he was personally served with notice of the section 366.26 hearing recommending termination of parental rights.

Father argues that the notice errors were "structural" and mandate automatic reversal. However, "the structural error doctrine that has been established for certain errors in criminal proceedings" is not "imported wholesale, or unthinkingly, into the quite different context of dependency cases." (*In re James F.* (2008) 42 Cal.4th 901, 915-916.) The fundamental fairness of the proceedings is not implicated where a parent has had notice of the dependency proceedings from the beginning and an opportunity to be heard, including through his appointed counsel even if he is unable to attend, but failed to attend a hearing as originally noticed or notify his attorney, the agency or any other participant as to his position in the matter. (*In re Angela C.* (2002) 99 Cal.App.4th 389, 395; in contrast see *In re Claudia S.*, *supra*, 131 Cal.App.4th at pp. 250-251 [reversible error where court conducted all hearings, then terminated reunification services, without any notice to the parents or children, all of whom were out of the country].)

We also note that, in dependency cases, personal appearance by a party is not essential; "appearance by an attorney is sufficient and equally effective." (*In re Jesusa V.* (2004) 32 Cal.4th 588, 602.) Father, who was at all times represented by counsel had notice from the beginning and failed to appear at various hearings, or to convey his position to his attorney or any other participant. In such circumstances, the lack of notice will not invalidate the proceedings if the absence of notice was harmless beyond a reasonable doubt. (*In re J.H.*, *supra*, 158 Cal.App.4th at p. 183 ["errors in notice do not automatically require reversal but are subject to the harmless beyond a reasonable doubt standard of prejudice"].)

The record reveals several facts that indicate there is no reason to believe father's attendance at the January 9, 2013, and July 10, 2013, proceedings would have changed

the outcome of the proceedings. Prior to the January 9, 2013, and continued January 14, 2013, jurisdiction/disposition hearing, father failed to respond to numerous attempts by the social worker to interview him. And, after a weekend trial visit with Z.N., father backed off on his request for custody and expressed his preference for shared custody with mother and visits with Z.N. instead. Prior to the July 10, 2013, six-month review hearing, father had only one recent visit and did not request any additional visits with Z.N. and he still expressed to the social worker his reluctance to have custody of Z.N. Father was provided at least 12 months of reunification services and failed to follow through on any of it.

In sum, there is no evidence that actual written notice to father would have changed the outcome of the jurisdiction/disposition hearing and various hearings that followed. (See *In re J.H.*, *supra*, 158 Cal.App.4th at pp. 184-185.) For this reason, we are convinced beyond a reasonable doubt that any deficiency in notice to father was harmless error, and there was no abuse of discretion on the part of the juvenile court to conclude that there was no change of circumstances or new evidence demonstrating that it was in Z.N.'s best interest that reunification services be reinstated and/or that she be placed with father to warrant granting father's section 388 petition. (*In re J.H.*, *supra*, at p. 183; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

II. SECTION 361.2 AND TERMINATION OF PARENTAL RIGHTS

Father next argues that, because he was a nonoffending parent, he was entitled to custody of Z.N. under section 361.2, subdivision (a), unless the juvenile court found that reinstating reunification services or placement with him would be detrimental to Z.N. Father argues that no "detriment finding" was ever made against him to justify depriving him of custody of Z.N.

In order to address father's argument, we first consider section 361.2, which establishes the procedures a court must follow for placing a dependent child following

removal from the custodial parent pursuant to section 361. (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1820.) When a court orders removal of a minor under section 361, the court first must determine whether there is a parent who wants to assume custody who was not residing with the minor at the time the events or conditions that brought the minor within the provisions of section 300 occurred. (§ 361.2, subd. (a).) “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 to the safety, protection, or physical or emotion well-being of the child.” (*Ibid.*) The juvenile court must make the detriment finding by clear and convincing evidence. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 700.) Subdivision (c) of section 361.2 requires the juvenile court to “make a finding either in writing or on the record of the basis for its determination”

Thus, “a nonoffending parent has a constitutionally protected interest in assuming physical custody, as well as a statutory right to do so, in the absence of clear and convincing evidence that the parent’s choices will be ‘detrimental to the safety, protection, or physical or emotional well-being of the child.’” (*In re Isayah C., supra*, 118 Cal.App.4th at p. 697.) It is not the nonoffending parent’s burden to show that he or she is capable of caring for the child. Rather, it is the party opposing placement who has the burden to show by clear and convincing evidence that the child will be harmed if the nonoffending parent is given custody. (*In re Z.K.* (2011) 201 Cal.App.4th 51, 70.)

In the absence of a finding of detriment, 361.2, subdivision (b) gives the juvenile court three options when it places a dependent child with a nonoffending, noncustodial parent. The court can (1) order that the parent become the legal and physical custodian of the child and terminate jurisdiction over the child (*Id.*, subd. (b)(1)); (2) order that the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months (*Id.*, subd. (b)(2)); or (3) order that the parent assume custody subject to the supervision of the juvenile court (*Id.*, subd. (b)(3)).

Section 361.2 is designed to apply to the dispositional phase of the dependency proceeding, when the court first elects to remove the child from the custody of the custodial parent. (*In re Jonathan P.* (2014) 226 Cal.App.4th 1240, 1253-1256.) It does not - at least in the course of an ordinary dependency case - apply at the section 366.26 hearing. The purpose of a section 366.26 hearing is to select and implement a permanent plan for the child, and the juvenile court's dispositional options ordinarily do not include return to parental custody. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) The issue of a return to parental custody can be raised late in the dependency proceedings, however, by means of a section 388 petition to change, modify, or set aside a previous order based on a change in circumstances or new evidence. (*In re Marilyn H., supra*, at pp. 307-310.)

As explained in *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1131, when section 361.2, subdivision (a) refers to a parent's request for "custody," it means the parent is asking for the exclusive right to control decisions about the child and to have possession of the child - i.e., the parent is seeking sole legal and physical custody. It is the noncustodial parent's request for custody that triggers application of section 361.2, subdivision (a); where the noncustodial parent makes no such request, the statute is not applicable. (*In re A.A.* (2012) 203 Cal.App.4th 597, 605.) Failure to object to noncompliance with section 361.2 in the lower court results in forfeiture. (*In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1419.)

Here, father requested that Z.N. be placed in his custody at the November 29 and December 4, 2012, detention hearings, which he claims triggered section 361.2, subdivision (a)'s mandate that "the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." Father contends however that the juvenile court erroneously never made a finding that placing Z.N. with him would be detrimental to her safety, protection or physical or emotional well-being.

The agency argues the provisions of section 361.2 were inapplicable because the juvenile court found that father, while at first stating he wanted custody of Z.N., subsequently showed by his actions and words that he did not want custody of Z.N. We agree.

The evidence before the juvenile court was that, according to the initial petition dated November 15, 2012, father expressed an interest in placement of Z.N. Father attended the detention hearing the following day and was found to be the presumed father. At the jurisdiction/disposition hearing on November 29, 2012, father requested custody of Z.N. and offered to take a drug test, which he subsequently passed, to hasten the process of gaining custody. At the December 4, 2012, detention hearing on the amended petition, the agency then recommended that the children be detained. Father agreed that Z.N. should be removed from mother's care, and he was ordered to return to court for the January 9, 2013, jurisdiction/disposition hearing.

But father failed to show for the January 9, 2013, hearing. Instead, following the December 1, 2012, trial visit with Z.N., father informed the social worker that the visit did not go well and he would prefer joint custody of Z.N. with mother and maintain visitation. Despite being told to contact the agency for further visitation, he never did. Nor did father respond to the social worker's repeated requests to be interviewed for the upcoming jurisdiction/disposition hearing. When he finally agreed to come in for an interview, he failed to show. All of this led to the social worker's recommendation that placement with father was "not appropriate at this time." Under these facts it is reasonable for the juvenile court to conclude that by the time of the January 9, 2013, jurisdiction/disposition hearing, father no longer wished to assume custody of Z.N.⁴

⁴ We also note that father, by his actions and words, expressed no interest in custody of Z.N. during the 12 months that followed, further bolstering our conclusion that father abandoned his request for custody of Z.N.

It is the noncustodial parent's request for custody that triggers application of section 361.2, subdivision (a), but where the noncustodial parent makes no such request, the statute is not applicable. (*In re A.A., supra*, 203 Cal.App.4th at p. 605.) Here, while father at first requested custody of Z.N., he then relinquished his request. The juvenile court therefore did not commit any technical violation of section 361.2 when it failed to make a finding of detriment. Had father wished to object to the juvenile court's failure to comply with section 361.2 and make a detriment finding, he should have done so at the jurisdiction/disposition hearing. But father did not contest the findings at this juncture, and by failing to do so, father has forfeited the issue. (*In re A.A., supra*, at p. 606; *In re Sabrina H., supra*, 149 Cal.App.4th at p. 1419.)

We affirm the order terminating father's parental rights.

DISPOSITION

The orders are affirmed.

FRANSON, J.

WE CONCUR:

HILL, P.J.

GOMES, J.